

(1962) 01 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 624 of 1961

Shri Krishna Rangnath Mudholkar

APPELLANT

Vs

Gujarat University and Others

RESPONDENT

Date of Decision : 24-01-1962

Acts Referred:

Constitution of India, 1950 — Article 13, 226, 246, 29, 29(1)
Gujarat University Act, 1949 — Section 18, 28, 38A, 4(27), 5

Citation : AIR 1962 Guj 88 : (1962) 3 GLR 204

Hon'ble Judges : P.N. Bhagwati, J; M.R. Mody, J; J.M. Shelat, J

Bench : Full Bench

Advocate : C.T. Daru and H.B. Shah, for the Appellant; M.P. Amin, V.M. Amin, B.G. Thakore, H.K. Thakore and I.M. Nanavaty, J.M. Thakore, General, instructed by Bhaishankar Kanga and Girdharlal, for the Respondent

Final Decision : Allowed

Judgement

Shelat, J.—This petition raises questions of considerable importance regarding the construction of certain provisions of the Gujarat University Act, 1949, the Impact of Articles 29 and 30 of the Constitution on those provisions and the competence of the State Legislature to enact them. The facts giving rise to this petition are few and for the most part undisputed and may be briefly stated.

2. The petitioner is the father of Shrikant, at present studying in St. Xavier's College, which is affiliated to the University of Gujarat under the Gujarat University Act, 1949. Shrikant took his Secondary education in P. G. T. High School, Bombay, and M. S. N. High School, Ahmedabad, and passed his S. S. C. examination in June 1960. The medium of instruction as well as examination throughout the period of his Secondary education was Marathi. He took the S. S. C. Examination in Marathi and his mother-tongue is also Marathi. His aim was and continues to be, as stated in the petition, to qualify himself for practising as an advocate in any of the High Courts in India and with that object in view he decided to take higher education in St. Xavier's College, Ahmedabad. He joined

St. Xavier's College, Ahmedabad, in the First Year Arts Class in June 1900 and passed the First Year Arts Examination in March 1961. He was instructed in the First Year Arts Class in the English medium and he also answered all papers at the First Year Arts Examination in English language. It was when he tried to get admission in the Inter Arts Class conducted by St. Xavier's College in the English medium of instruction that difficulty arose which led to the filing of this petition.

3. St. Xavier's College receives financial aid out of State funds and is affiliated to the University of Gujarat under the provisions of Section 33 of the Gujarat University Act, 1949. It is not an institution established, managed or maintained by the University but is a private institution established and administered by Xavier Kelavani Mandal Private Limited, a Private Limited Company, registered at Rajkot under the provisions of the Indian Companies Act VII of 1913. It has its own educational aims and is an institution imparting higher education in humanities and sciences. It inter alia provides for teaching and training students in the approved courses of study prescribed for the Inter Arts Examination held by the University and for that purpose runs two classes, one in which the medium of instruction is English and the other in which the medium of instruction is Gujarati. Students whose mother-tongue is not Gujarati as also students whose mother-tongue is Gujarati have been admitted to the class in which the medium of instruction is English and all subjects are being taught to students in this class in the English language. This class with English as the medium of instruction is being conducted by the College under the permission granted by the second opponent by his circular dated 26th June, 1961 addressed to the Principals of all affiliated Colleges.

4. Shrikant having passed his First Year Arts Examination applied to St. Xavier's College for admission to the Inter Arts Class and desired that he should be admitted to that class in which the medium of instruction was English. The third opponent, who is the Principal of St. Xavier's College, informed Shrikant and the petitioner that by reason of the provisions of the Gujarat University Act, 1949, and Statutes 207, 208 and 209 made by the Senate of the Gujarat University under the provisions of that Act, it was not possible for him to permit Shrikant to attend the Inter Arts Class with English as the Medium of instruction and that it was incumbent upon Shrikant to attend the Inter Arts Class with Gujarati as the medium of instruction. The third opponent, however, informed Shrikant and the petitioner that if the Gujarat University gave permission to Shrikant to attend the Inter Arts Class in which English was the medium of instruction, he would have no objection to admit Shrikant to such class. The petitioner accordingly applied to the second opponent through the third opponent seeking permission for Shrikant to take instruction in English medium. By his letter dated 18th July, 1961, the Registrar of the University informed the third opponent that the permission sought by the Petitioner could not be granted. The third Opponent thereafter by his letter dated 23rd August, 1961 informed Shrikant that he would be allowed to keep English as a medium of examination but that he would have to attend the Gujarati medium class for instruction. This letter was, as is clear

from what is stated in it, addressed by the third opponent to Shrikant under instructions from the second opponent. Shrikant was thus denied admission in the Inter Arts class with English as the medium of instruction and was compelled to attend the Inter Arts Class in which Gujarati was the medium of instruction.

5. According to the petitioner, Shrikant has never taken instruction in the past in Gujarati at any stage of his education and has consequently only a superficial knowledge of Gujarati, which is not adequate enough to enable him to understand or appreciate any subject taught in Gujarati. Shrikant's knowledge of English is comparatively better than his knowledge of Gujarati and he is in a position to understand and appreciate subjects taught in English. Shrikant, therefore, wanted admission in the Inter Arts Class with English as the medium of instruction and the third opponent was ready and willing to give Shrikant admission to such class but could not do so by reason of the circular dated 5th June 1961 addressed by the Registrar of the Gujarat University to the Principals of all affiliated colleges and the instructions issued by the second opponent as Vice-Chancellor of the Gujarat University. The Registrar in issuing the circular dated 5th June 1961 and the second opponent in issuing instructions to the third opponent not to admit Shrikant to the English medium class purported to act under Sections 4 (27) and 38A of the Gujarat University Act, 1949, and Statutes 207, 208 and 209 made by the Senate of the Gujarat University in 1954 and amended by the Senate at the meetings held on 9th, 10th, 30th and 31st March, 1961- Since Shrikant was denied admission to the Inter Arts Class in which English was the medium of instruction, in purported enforcement of Sections 4 (27) and 38A of the Gujarat University Act, 1949, and Statutes 207, 208 and 209 made by the Senate under the provisions of the Gujarat University Act, 1949, the petitioner filed the present petition challenging the legality and vires of Sections 4 (27) and 38A and Statutes 207, 208 and 209 which stood in the way of Shrikant being admitted to the Inter Arts Class with English as the medium of instruction.

6. The Gujarat University Act, 1949, was passed on 23rd November, 1949 by the Legislature of the then Province of Bombay. The long title of the Act shows that the Act was passed to establish a teaching and affiliating University to be known as the Gujarat University. The reason for establishing the University was, as the preamble shows, to decentralize and reorganize university education in the then Province of Bombay. By the Act the University was constituted a body corporate having perpetual succession and a common seal. Since a great part of the argument before us turned on the question as to what are the powers of the University under the Act in relation to the medium of instruction and examination, it is necessary to briefly refer to some of the provisions of the Act.

7. Section 2 (1) defines an "Affiliated College" to mean a college affiliated u/s 5 or 33 of the Act. "College" u/s 2 (2) means a degree college or an inter-mediate college. "Degree College" is defined in Section 2 (3) to mean an affiliated college which is authorised to submit its students to an examination qualifying for any

degree of the University and "Intermediate College" means u/s 2 (6) an affiliated college other than a degree college. A "Recognized institution" is defined in Section 2 (8) to mean an institution for research or specialized studies Other than an affiliated college and recognized as such by the University. As distinguished from an "Affiliated College" Or a "Recognized institution" a "Constituent College" as defined in Section 2 (2A) means a University College or an affiliated college made constituent u/s 41. Section 2 (15A) defines a "University College" to mean a college established or maintained by the University under the Act or a college transferred to the University and maintained by it. Similar to a "University College" is a "University Department" which is defined in Section 2 (16) to mean any college, post-graduate or research institution or department maintained by the University. It will thus be seen that whereas a "University College" is a college established or maintained by the University or a college transferred and maintained by it, and a "University Department" is a college, post-graduate or research institution or department maintained by the University, an "Affiliated College" is a private college which is associated with the University only by way of affiliation. The leaching function of the University would obviously be conducted through University Colleges and University Departments as distinguished from Affiliated Colleges which relate only to the affiliating function of the University.

8. Section 4 has twenty-seven clauses and they enumerate the powers of the University. Since the University has both teaching and affiliating functions, some of the powers relate only to the teaching function, some other powers relate only to the affiliating function while some others are general in nature. Clauses (1), (3), (4), (5) and (6) relate to the teaching function of the University and they have, therefore, nothing to do with affiliated colleges. One of the arguments advanced by the learned Advocate-General appearing on behalf of the State of Gujarat was founded upon Clause (1) and while dealing with that argument, we shall have occasion to consider this clause in some detail. It is sufficient to state for the present that this clause does not, in our opinion, contain any powers of the University in relation to Affiliated Colleges. Clause (7) empowers the University to lay down the courses of instruction for various examinations and Clause (8) authorizes the University to guide the teaching in colleges or recognized institutions. These powers are conferred on the University because they are incidental to the power of the University under Clause (10) to hold examinations and confer degrees, titles, diplomas and other academic distinctions. Clause (13) confers power on the University to admit educational institutions to the privileges of the University and to withdraw such privileges while power to inspect colleges and recognized institutions and to take measures to ensure that proper standards of instruction, teaching or training are maintained in them is given to the University by Clause (14). University has under Clause (15) the power to control and co-ordinate the activities of, and give financial aid to, affiliated colleges and recognised, institutions. Clauses (23) and (26) deal with the powers of the University to co-ordinate, supervise and control

the conduct of post-graduate research work and teaching in the affiliated colleges and recognized institutions and to co-operate with other Universities. Then comes Clause (27) which has raised a bitter controversy between the parties. If empowers the University-

"to promote the development of the study of Gujarati and Hindi in Devnagari script and the use of Gujarati Or Hindi in Devnagari script or both as a medium of instruction and examination".

Prior to the coming into force of Act IV of 1961, there was a proviso to Clause (27) which ran as follows :

"Provided that English may continue to be the medium of instruction and examination in such subjects and for such period not exceeding ten years from the date on which Section 3 comes into force as may from time to time be prescribed by the Statutes."

This proviso was substituted by a new proviso by Section 2 of Act IV of 1961 which came into force on 29th March, 1961. The new proviso, so far as it is material for our purpose runs as follows :

"Provided that English may continue to be the medium-

(i) of instruction and examination for such period as may from time to time be prescribed by the Statutes until the end of May, 1966 in respect of such subjects and courses of study as may be so prescribed".

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Clause (28) empowers the University to do all acts and things whether incidental to the powers conferred by the preceding clauses or not as may be requisite in order to further the objects of the University and generally to cultivate and promote arts, science and other branches of learning and culture. It may be mentioned here that the objects of the University as appearing from the long title and the preamble are only teaching and affiliation and it nowhere appears that it is an object of the University to impose or enforce any particular language as a medium of instruction and examination.

9. Section 5 confers a monopolistic dominion to the University over all educational institutions within the University area specified in the Schedule to the Act. Under this section no educational institution situate within the University area can, save with the sanction of the State Government, be associated in any way with, or seek admission to any privileges of, any Other University established by law. This section also provides that any such privileges enjoyed from such other University before the date on which this section comes into force by any educational institution situate within the University area shall be deemed to be withdrawn with effect from such date and with effect from such date all educational institutions admitted to the privileges of the University of Bombay and situate within the University area shall be deemed to be admitted to the

privileges of the University and the University shall, as far as may be possible and consistent with the Act, admit such institutions to all such privileges as they had from the University of Bombay immediately before such date. The result of the provisions contained in this section, therefore, is that an educational institution situate within the University area cannot save with the consent of the State Government, be affiliated to any other University and must get affiliated to the University if it wants to exist as an educational institution. Section 22 of the University Grants Commission Act, 1956, provides that the right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act or a State Act or an institution deemed to be a University u/s 3 of that Act or an institution specially empowered by an Act of Parliament to confer or grant degrees and that no other person or authority shall confer, or grant, or hold himself or itself out as entitled to grant or confer, any degree. An educational institution would have, therefore, no utility or value and it would be impossible for it to exist as such unless it is affiliated to a University mentioned in Section 22 of the University Grants Commission Act, 1956 so that it can submit its students for examinations held by such University for the purpose of enabling the students to receive degrees from such University. It would not be possible for students in an educational institution to receive degrees unless it is affiliated to some such University. If its students are not entitled to obtain degrees, no one would go to such educational institution and such educational institution would have to cease to exist. It is, therefore, clear that if an educational institution situate within the University area wants to exist as an educational institution it must get itself affiliated to the University and submit to the conditions of affiliation which might be lawfully imposed by the University and subject itself to the provisions of the Act and the Statutes, Ordinances and Regulations made by the various authorities of the University under the Act.

10. Section 6 makes provision to give to the University a complexion of catholicity and throws open the doors of education to all alike irrespective of sex, race, creed, class, religious belief or political or other opinion. Section 7 gives the right of inspection and inquiry to the Chancellor of the University. Section 10 deals with the nomination of the Vice-Chancellor and Section 11 lays down his powers. Amongst these powers is the power u/s 11(4)(a) under which the second respondent issued the circular dated 22nd June, 1961 permitting students who had their secondary education through the medium of English and who had further continued their studies in First Year Arts Class in 1960-61 through English as the medium of instruction, to continue to use English as a medium of instruction and examination in the Inter Arts Class for the year 1961-62. The next relevant section is Section 16 which provides for the constitution of the Senate and Section 18 lays down the powers and duties of the Senate. This Section provides that the Senate shall exercise the powers and perform the duties set out therein namely to make provision for instruction, teaching and training in such branches of learning and courses of study as it might think fit,

for research and for the advancement and dissemination of knowledge, to make such provision as will enable affiliated colleges and recognized institutions to undertake specialization of studies, to organize and make provision for common laboratories, libraries, museums and other equipment for teaching and research, to establish and maintain departments and institutes of research and specialized studies, to institute Professorships, readerships, lecturer/ships and any other post of teachers required by the University, to institute fellowships, travelling fellowships, scholarships, studentships, exhibitions, medals and prizes, to institute and confer degrees, titles, diplomas and other academic distinctions, to confer honorary degrees, titles or other academic distinctions, to make, amend or repeal the Statutes, to consider the annual financial reports, annual accounts and financial estimates and pass resolutions with reference thereto and to elect office bearers and authorities as provided in the Act and the Statutes. Clause (xiv) of this section was strongly relied on both by Mr. Amin on behalf of the University and the learned Advocate-General on behalf of the State and one of the powers to be exercised and duties to be performed by the Senate under this clause is

"to make provision relating to the use to Gujarati or Hindi in Devnagari script or both as a medium of instruction and examination".

Section 19 deals with the constitution of the Syndicate and its powers and duties are enumerated in Section 20. These powers and duties are inter alia to hold control and administer the property and funds of the University, to enter into, vary, carry out and cancel contracts on behalf of the University, to administer funds placed at the disposal of the University for specific purposes, to frame the annual financial estimates of the University and to submit them to the Senate, to make provision for buildings, premises, furniture, apparatus and other means needed for carrying on the work of the University, to make provision for extra-mural teaching and research, and for physical and military training, to manage departments, institutes of research or specialized studies, laboratories, libraries, museums and hostels maintained by the University, to recognize hostels and to provide housing accommodation for University teachers and Other employees, to arrange for and direct the inspection of affiliated colleges, recognized institutions and hostels, to issue instructions for maintaining their efficiency and for ensuring proper conditions of employment for members of their staff, to call for reports, returns and other information from colleges, recognized institutions or hostels, to award fellowships, travelling fellowships, scholarships, studentships, exhibitions, medals and prizes, to appoint teachers and servants of the University, fix their emoluments, if any, and define their duties and the conditions of their service and discipline, to recognize a member of the staff of an affiliated college or recognized institution as a professor, reader, lecturer or teacher of the University and withdraw such recognition, to appoint examiners, to fix their remuneration and to arrange for the conduct of, and for publishing the results of, the University examinations and other tests and to exercise such other powers and perform such other duties as may be conferred or imposed on it by

the Act, Statutes, Ordinances and Regulations. Section 21 lays down the constitution of the Academic Council and its powers and duties are prescribed in Section 22. The power to make Statutes having been conferred on the Senate by Section 18, Section 28 enumerates the matters for which the Senate may make Statutes. These matters are conferment of honorary degrees, holding of convocations to confer degrees, powers and duties of the officers of the University, institution and maintenance by the University of departments, institutes of research or specialized studies and hostels, constitution, powers and duties of the authorities of the University, acceptance and management of bequests, donations and endowments, registration of graduates and maintenance of a register of registered graduates, procedure at meetings of the authorities of the University and for the transaction of their business, qualifications of professors, readers, lecturers and teachers in affiliated colleges and recognized institutions and all matters which by the Act are to be or may be prescribed by the Statutes. It is important to note that medium of instruction and examination in affiliated colleges is not a matter mentioned in Section 28 for which the Senate can provide by making the Statutes. Sections 30 and 31 provide for the making of Ordinances by the Syndicate while Section 32 provides for the making of Regulations by the Academic Council and the framing of Rules by any authority of the University other than the Senate, the Syndicate and the Academic Council.

11. Then comes a fasciculus of sections dealing with affiliation and recognition. A college applying for affiliation to the University has to satisfy the Syndicate and the Academic Council that the provisions set out in Section 33 (1) have been carried out or will be carried out by the college. It is important to note that none of the provisions in Section 33 (1) which are required to be carried out by a college seeking affiliation lays down that the College shall adopt any particular medium of instruction and examination which may be prescribed by the University, Section 33 (2) lays down the procedure to be followed on the application for affiliation and Section 33 (3) vests the power to grant or refuse the application for affiliation in the State Government. Section 37 lays down the circumstances under which the rights conferred on a College by affiliation may be withdrawn. This section enacts that the rights conferred on a college by affiliation may be withdrawn in whole or in part or modified if the college has failed to carry out any of the provisions of Section 33 (1) or the college has failed to observe any of the conditions of its affiliation or the college is conducted in a manner which is prejudicial to the interests of education. The power to make an order of withdrawal or modification of the rights conferred on a college by affiliation is vested by this section in the State Government and the State Government may, after the prescribed procedure is followed, make such order of withdrawal or modification as it thinks fit. It will be noticed that under this section there is no power to withdraw the rights conferred on a college by affiliation on the ground of breach of any of the provisions of the Act or the Statutes, Ordinances or Regulations made under the Act. It was presumably with a view to remove this lacuna that Section 38A was introduced in the Act by Act IV of 1961. This section

is in the following terms :

"38A. (1) Every affiliated college and recognised institution, shall in respect of the medium of instruction, teaching, training and examination therein, comply with the provisions made in that behalf by this Act, and the Statutes, Ordinances" and Regulations made under it.

(2) If any affiliated college or recognised institution contravenes the provisions of Sub-section (1), then notwithstanding anything contained in the other provisions of this Act-

(a) the rights conferred on such college or institution by the affiliation or recognition shall stand withdrawn from the date of such contravention, and

(b) such college or institution shall cease to be an affiliated college or recognised institution for the purposes of this Act.

(3) *****

This is one of the Sections the validity of which is challenged in the present petition.

12. We next turn to the Statutes made by the Senate of the University. The Senate in purported exercise of its powers under the Act, made Statutes 207, 208 and 209 in 1934. Statute 207 provided that-

(1) Gujarati shall be the medium of instruction and examination;

(2) Notwithstanding anything in Clause (1), English shall continue to be the medium of instruction and examination for a period, not exceeding ten years from the date on which Section 3 of the Act came into force, except as prescribed from-time to time by the Statutes;

(3) Notwithstanding anything in Clause (1), non-Gujarati students and teachers will have the option, the former for their examination and the latter for their teaching work, to use Hindi as the medium, if they so desire; and

(4) Notwithstanding anything in Clauses (1), (2) and (3), the medium of examination and instruction for modern Indian languages may be their respective languages.

It will be observed that under this Statute the option of Hindi to non-Gujarati students was given only for examination and not for instruction. Statute 208 provided that the medium of instruction and examination in all subjects from June 1955 in First Year Arts, First Year Science and First Year Commerce, and in all subjects from June 1956 in Inter Arts, Inter Science, Inter Commerce and First Year Science (Agri.) shall cease to be English and shall be as laid down in Statute 207 (1). This Statute, however, provided that a student or a teacher who feels that he cannot use Gujarati or Hindi tolerably well, would be permitted the use of English in examination and instruction respectively upto November 1960, which according to academic year would mean June 1961, in one or more

subjects. This concession created an anomaly in the sense that though a student was given an option to take examination in English, he could not take instruction in English but was bound to take instruction in Gujarati, though he did not know Gujarati well. Statute 209 provided that the medium of instruction and examination in all subjects in the examinations enumerated therein shall cease to be English and shall be as laid down in Statute 207 (1) with effect from the years mentioned against the respective examinations. It was, however, provided that a student for the purpose of examination and a teacher for the purpose of instruction, would be permitted to use English upto November 1960 i.e., upto the academic year end-jug June 1961 if he felt that he could not use Gujarati or Hindi well. This provision also created the same anomaly, namely, that a student who did not know Gujarati or Hindi well was permitted to use English as a medium in examination but was not permitted to take instruction in English and was bound to take instruction in Gujarati which he did not know well.

13. Statutes 207 and 209 were amended by the Senate at the meetings held on 9th, 10th, 30th and 81st March 1961, after Act IV of 1961 was passed. Statute 207 as amended provides inter alia as follows :-

(1) Gujarati shall be the medium of instruction and examination, but Hindi will be permitted as an alternative medium of instruction and examination in the faculties of medicine, technology including engineering and law and in all faculties for post-graduate studies.

(2) Notwithstanding anything in Clause (1), English be continued to be the medium of instruction and examination for such period and in respect of such subjects and courses of study as may from time to time be prescribed by the Statutes u/s 4 (27) for the time being in force.

(3) Notwithstanding anything contained in Clause (1), students and teachers whose mother-tongue is not Gujarati will have the option, the former for their examination and the latter for their instruction, to use Hindi as the medium if they so desire.

(4) Notwithstanding anything contained in Clauses (1) and (3), affiliated colleges, recognised institutions and University departments as the case may be, will have the option to use for one or more subjects Hindi as the medium of instruction and examination for students whose mother-tongue is not Gujarati.

It is clear from this Statute that no affiliated college or recognised institution can use any language other than Gujarati or Hindi in certain limited cases as a medium of instruction or examination and that English can be used as a medium of instruction and examination only for such period and in respect of such subjects & courses of study as may be prescribed by the Statutes u/s 4(27). Statute 208 remains the same as before while Statute 209 as amended provides that the medium of instruction and examination in all subjects in the examinations enumerated therein shall cease to be English and shall be as laid down in Statute 207 as amended with effect from the years mentioned against

the respective examinations. Amended Statutes 207 and 209 were enacted in purported exercise of the powers of the Senate u/s 4 (27) with the new proviso substituted by Act IV of 1961 and it must, therefore, follow as a necessary corollary that if the new proviso was ultra vires the legislative competence of the State Legislature and was consequently null and void, the amended Statutes 207 and 209 must also fall along with the new proviso.

14. There is one further fact which must be mentioned before we proceed to consider the contentions urged on behalf of the petitioner in support of the petition. That fact is that after the amended Statutes were made by the Senate, the Registrar of the University, by a circular dated 5th June 1961, circulated Sections 4 (27) with the new proviso and 38-A and the amended Statutes 207 & 209 inter alia to the Principals of affiliated Colleges and warned them that the Act & the Statutes, Ordinances and Regulations made under the Act relating to the medium of instruction must be complied with for otherwise the penalty of automatic disaffiliation u/s 38A would be incurred by such affiliated colleges. The second opponent thereafter issued the circular dated 22nd June 1961 in purported exercise of his powers u/s 11(4) (a) permitting students who had done their secondary education through the medium of English and who had further continued their studies in First Year Arts class in the year 1960-61 through English as a medium of instruction, to continue to use English as the medium of instruction in the Inter Arts Class for the year 1961-62 and the colleges to make arrangements for giving instruction to such students through the medium of English for the year 1961-62. This concession was however, not available to Shrikant since he had not done his secondary education through the medium of English. The petitioner attacked this concession as discriminatory but the attack was given up at the hearing of the petition and nothing, therefore, now turns on this concession and we need not consider whether this concession was or was not validly granted by the second opponent.

15. Mr. Daru, the learned advocate appearing on behalf of the petitioner, raised in the main the following contentions in support of the petition:

(1) (a). On a true construction of Section 4 (27) whether read with the new proviso or with the old proviso, the University has no power to impose Gujarati or Hindi as a medium of instruction. and examination on affiliated colleges or to prohibit the use of English as a medium of instruction find examination by affiliated colleges and that Statutes 207, 208 and 209 are, therefore, ultra vires and void in so far as they impose Gujarati or Hindi as a medium of instruction and examination for affiliated colleges and prohibit affiliated colleges from using English as a medium of instruction and examination.

(b) Even if Section 4(27) with the proviso old or new refers to medium of instruction and examination in affiliated colleges, the power of the University under that Section is at best to impose Gujarati or Hindi as only one of the media of instruction and examination and not as the only medium of instruction and examination and does not extend to forbid the use of English or any other

language as a medium of instruction and examination and that Statutes 207, 208 and 209 in so far as they prescribe Gujarati or Hindi as the only medium of instruction and examination and prohibit the use of English as a medium of instruction and examination are, therefore, ultra vires and void.

(2) The new proviso substituted for the old proviso in Section 4(27) by Act IV of 1961 is in any event beyond the Legislative competence of the State Legislature since the subject matter of medium of instruction and examination falls within Entry 66 of List 1 or is in any event ancillary or subsidiary to the subject matter or that entry and is, therefore, null and void and Statutes 207 and 209 as they exist at present having been made in purported exercise of the power u/s 4(27) with the new proviso, these Statutes also fall along with the new proviso and are null and void.

(3) If on a true construction Section 4(27) with the new proviso or the old proviso empowers the University to impose Gujarati or Hindi as the only medium of instruction and examination or even as one of the media of instruction and examination on affiliated colleges and to forbid the use of English as a medium of instruction and examination in affiliated colleges, the provision enacted in Section 4 (27) and the proviso whether old or new is violative of the fundamental rights conferred on religious and linguistic minorities under Articles 29(1) and 30(1) of the Constitution and is, therefore, null and void and Statutes 207, 208 and 209 being in the nature of subordinate legislation are also, therefore, null and void. Statutes 207, 208 and 209 are in any event violative of the fundamental rights of religious and linguistic minorities under Articles 29(1) and 30(1) of the Constitution and are, therefore, null and void-Mr. Paru contended that Section 4(27) and the proviso whether old or new and Statutes 207, 208 and 209 being null and void, Shrikant could not be denied admission in Inter Arts Class with English as the medium of instruction in purported enforcement of these impugned provisions. He urged that the petitioner wanted that Shrikant should be admitted to the Inter Arts Class with English medium of instruction and the third opponent was ready and willing to admit Shrikant to such class but the impugned provisions contained in Section 4(27) and Statutes 207, 208 and 209 stood in the way of the petitioner. The impugned provisions being null and void, argued Mr. Daru, they could not stand in the way of the petitioner and the petitioner was, therefore, entitled to the reliefs claimed in the petition. We shall now proceed to examine these contentions in the order in which they were pressed.

16. Taking up the first contention it is clear that the purpose for which the Act was passed as its preamble declares, was decentralization and reorganisation of University education in the province of Bombay and the object of the Act, as its title suggests, was to establish not merely an affiliating but also a teaching University. The University was thus established to fulfil two functions -- teaching and affiliation. As the University was expected to be a teaching University also, it was given powers u/s 4 of the Act, inter alia to provide for instruction and

teaching in such branches of learning and courses of study as it may think fit and to make provision for research and dissemination of knowledge, to establish, maintain and manage departments and institutions of research or specialized studies, to institute professorships, readerships, ships and any other posts of teachers required by the University, to appoint or recognise persons as professors, readers, or lecturers or otherwise as teachers of the University and to establish, maintain and manage hostels, etc. The University thus was given powers to have its own teaching institutions and departments and to have hostels for the students of such institutions and departments and to appoint therefore its own professors, readers and lecturers. As an examining body and a body having the powers of granting degrees and diplomas, Section 4 confers powers on the University inter alia to hold examinations, to lay down courses of instruction for various examinations, to guide for that purpose teaching in colleges affiliated to it or otherwise and to ensure proper standards of instruction, teaching or training.

17. Mr. Amin for the University conceded that the words "to provide for instruction, teaching and training" occurring in Section 4(1) and similar words in Section 4(xiv) have no relation to the subject of medium of instruction and examination. But both he and the learned Advocate General relied on Clause (10) of Section 4 as providing a power to enforce On affiliated colleges a certain medium of instruction and examination. This submission is, in our view, devoid of any merit because Clause (10) of Section 4 deals with the power of the University to hold examinations and confer degrees, diplomas etc. But their contention was that the words therein, namely "in the manner prescribed by the Statutes, Ordinances and Regulations" should be read in conjunction with the words "pursued approved courses of study in the University or in an affiliated college" occurring earlier in that clause and that if so read, the clause would mean that the University is empowered to hold, examinations and to confer degrees etc., on persons who have pursued approved courses of study in the University or in an affiliated college "in the manner prescribed by the Statutes, Ordinances and Regulations" and have passed the examination prescribed by the University. The construction suggested on behalf of the University and the State is not correct since on a plain grammatical construction, the words "in the manner prescribed" go with the words immediately pre-ceding them namely, "unless exempted therefrom". This construction is borne out by Section 22 (2) (xi) which specifically empowers, amongst other things, the Academic Council constituted under the Act "to make Regulations prescribing the manner for granting exemptions from approved courses of studies in the University or in affiliated colleges for qualifying for degrees, titles" etc. It is thus vain to look to this clause for a power in the University to impose or enforce a particular language as a medium of instruction and examination on affiliated colleges.

18. There can be no doubt that the effect of the impugned Statutes is to create conditions under which a student whose tongue is not Gujarati or Hindi cannot take benefit of higher education imported by colleges affiliated to this University.

Students from Maharashtra, Bengal or Madras for example whose language is Marathi, Bengali or Tamil and who are not equipped with adequate knowledge of Gujarati or Hindi, but, who, by sheer stress of circumstances, have to reside in Gujarat, are precluded from taking higher education in any of the colleges run by private concerns or individuals, which have got to be affiliated under the provisions of Section 5 of the Act. It is clear that the University Statutes in question have virtually closed the doors of the University against all students whose tongue is not Gujarati or Hindi, unless they acquire sufficient knowledge in either of these two languages. Mr. Daru pointed out not only this consequence but also other consequences flowing from the switch-over to Gujarati as the medium of instruction and examination from English, such as the non-availability of proper text-books and suitable teachers, the fissiparous linguistic parochialism that they tend to create and other undesirable results in the context of the present day urgent necessity of integration of the people of this country. On the other hand, it might be urged that the appropriate and the most beneficent mode of imparting education, be it primary secondary or higher education, should be through the medium of the language of the people and that the inherent strength of this country lies in its unity through the diversity of its languages, arts and culture. We are not concerned with these rival contentions as they are a proper field of debate amongst those who claim to be educationists. We have, as Mr. Amin rightly pointed out, to examine these Statutes and the provisions of the Act solely from the point of view of their legal validity.

19. As we have said, Section 4 deals with the powers of the University. Amongst the powers conferred in that Section from Clause (1) to (26), one searches in vain, unless in desperation one seeks to misconstrue them, any power in the University to impose or enforce any particular language as a medium of instruction and examination on affiliated colleges. That leaves Clause (27) and the proviso thereto for a close scrutiny.

20. Clause (27) of Section 4 seeks to do two things namely, (1) to promote the development of the study of Gujarati and Hindi in Devnagari script and (2) to promote the use of Gujarati or Hindi in Devnagari script or both as media of instruction and examination. It may be remarked that the Act throws no light on how this policy provided for by the Legislature is to be achieved, namely, the promotion of the development of the study of Gujarati and Hindi and the use of either of them as a medium of instruction and examination. The dictionary meaning of the word "to promote" is, to help forward, to further, to rise to a higher grade to further the growth, development, progress or establishment of anything, to support activity, the passing of a law or a measure. It was argued that promotion of a thing cannot be achieved by banishing another thing, in this case by banishing the use of one language only, namely, English language and not languages other than Gujarati and Hindi. The policy enunciated in this clause is one for the promotion of development of the study of the two languages and that promotion can be done, it would appear, by encouraging their study, their development and growth by, for instance, establishing chairs in those languages,

encouraging research and other work, literary, historical and otherwise, giving scholarships, fellowships and other gifts, but certainly not by prohibition of only one language, namely English. Similarly, the promotion of the use of these two languages as media of instruction and examination can be had by making them alternative media of instruction and examination, subject of course to the provisions of law for the time being in force, but not again by putting an embargo on one language only, viz., the English language. But a person inclined towards another way of thinking might well contend that the promotion of development of study of these two languages and the use thereof as media can (sic) be stured by throwing the rest, and particularly the English language, out of the field of competition, as there was always a lear that a particular language to which people were accustomed for long as the medium might still find favour with a number of parents and pupils. These may be the rival contentions as regards the mode of promotion and it becomes therefore necessary to turn to the proviso, keeping in mind the salient fact that Clause (27) of Section 4 empowers the University but does not cast an obligation on it to do what is set out there.

21. The proviso as it originally stood laid down that English language which until then was the sole medium of instruction and examination in higher education

"may continue to be the medium of instruction and examination in such subjects and for such period not exceeding ten years from the date on which Section 3 comes into force"

(i.e., till November 1960) "as may from time to time be prescribed by the Statutes". The proviso uses the word "may" and empowers the University to continue English language as the medium of instruction and examination in such subjects and for such period not exceeding ten years as may from time to time be prescribed by the Statutes. The proviso like the substantive part of Clause (27) is again enabling provision though it limits the exercise of that power to a specific period viz. upto November 1960. It contains a power to continue English, no doubt upto the period mentioned therein, but not a power much less an obligation or duty to prohibit. It is true that the University cannot continue English as the medium of instruction and examination beyond ten years and the proviso empowers it to continue that language for such period or periods and in such subjects as may be prescribed by its Statutes, but not exceeding the period specified therein. But this does not and cannot mean that the University has been empowered to exclude languages other than Gujarati and Hindi as media of instruction and examination. The proviso in fact is in the nature of power empowering the University to continue English language as the medium of instruction and examination upto a specified period or for such periods and in such subjects and courses of study as may be prescribed by its Staples. There is nothing in the proviso, however, empowering the University to impose upon the colleges affiliated to it a ban or a prohibition not to use as a medium of instruction and examination for them any languages other than Gujarati or Hindi upto the prescribed period or beyond such period.

22. The new proviso which was substituted by Act No. IV of 1961 likewise provides that English may continue to be the medium of instruction and examination for such period as may from time to time be prescribed by the Statutes of the University but not beyond May 1966, except that that period was to be until May 1968 and May 1969 in respect of certain subjects therein mentioned. There is thus nothing either in the original or in the new proviso which substituted it, which confers a power or imposes an obligation on the University to impose Gujarati or Hindi as the medium of instruction on affiliated colleges and recognized institutions, Though Section 4 deals with the powers of the University, it nowhere contains in express terms, a power in the University to prohibit affiliated colleges to carry on teaching and instruction in such manner and in such language or languages as they think fit. The scheme of Section 4 and the powers entrusted to the University therein show that such a power is not and could not have been intended to be conferred upon it. The University having been set up for a dual object viz., teaching and affiliation the Act deals with these two objects and if is in reference to its teaching object that Section 4 (27) empowers the University to promote the development of the study of Gujarati and Hindi and their use as media of instruction and examination. But considering the consequences that may result from a sudden switchover from English as the medium to these two languages or either of them, Clause (27) of Section 4 and the proviso give the University the power to phase the change over by the prescribed time in institutions established by, transferred to or maintained by it. It is impossible to find any Power in Section 4(27) or the proviso thereto which enables the University to impose Gujarati and/ or Hindi as the only medium of instruction and examination on colleges not established or maintained by it, nor is it possible to see in Section 4 (27) anything which disables Such colleges from giving instruction and teaching in the manner they think fit. Indeed, the Act does not deal with such colleges except in so far as they are affected by the powers of the University in such matters as compulsory affiliation as provided by Sections 5 and 33 and the incidental control by way of maintenance of standards of education arising from the University's power to hold examinations and to confer degrees, diplomas etc. If the legislature intended to impair the usual autonomy of educational Institutions like the affiliated colleges by imposing upon them an obligation to carry on instruction in only one particular way through the medium of Gujarati and/or Hindi and in no other language of their choice, it is inconceivable that the Legislature would not have done so in clear and express terms. Such a restriction of far-reaching character could not have been provided by implication.

23. It is also well to remember, and a Court of law is entitled, while construing an Act, to look to the history of the time when the impugned Act was enacted, that this Act was passed in 1949 at a time when this country after a long period of serfdom, and bondage was endeavouring to frame a Constitution of which the most fundamental object was to achieve national unity. It is impossible to contemplate that at such a time the State Legislature could have thought of

conferring upon the University power to prevent higher education being imparted to students in no other language except Gujarati and in limited cases in Hindi thereby restricting in a manner fantamount to almost forbidding the other sections of the youth of the country from taking the benefit of higher education in colleges set up in Gujarat. It is, therefore, futile to search for a power to impose a particular language as medium and a ban against teaching and instruction in private colleges in any language other than Gujarati or Hindi.

24. Mr. Amin was constrained to admit that there is no reference to the medium of instruction in Clauses (1) and (14) of Section 4, where only, the words "instruction, teaching and training" are used. It is obvious that these words in these two clauses refer in one case to the University itself and not to the private colleges, and in the other to the University's power to maintain academic standards and instructional efficiency. Clauses 3, 4, 5, 6, 17, 18 and, 20 of Section 4 show that those powers were conferred on the University as it was also to perform teaching function. Mr. Amin even contended that if there was any power in the University to impose a medium of instruction it was to be found Only in Clause (10) of Section 4 and that if that power was not there, it was nowhere else. He, however, relied on Section 18(xiv) and Section 28(x), but those clauses relate to the powers of the Senate and the Syndicate, and if the University has not the power, the Senate and the Syndicate which are its limbs, cannot have such power.

25. But the learned Advocate General was not prepared to admit what the learned counsel for the University was prepared to concede and contended that looking to the scheme of the Act and the control of the University over the affiliated. colleges therein provided, the words "to provide for instruction"" etc., in Clause (1) and the word "guide" in Clause (8) of Section 4 would include the power to make Statutes, Ordinances and Regulations in regard to the medium of Instruction even in affiliated colleges. This construction is not warranted by the language of these clauses and seeks to read in them what obviously they do not contain. Such of the powers of inspection, guidance and control as are conferred on the University In relation to the affiliated colleges are referable to the University's functions of examination, affiliation, and conferment of degrees, diplomas etc., and have been inserted in the Act as incidental to those functions and necessary to maintain standards for the examinations it holds without which its degrees and diplomas would lose their value. The words "to provide for instruction" etc., in Clause (1) of Section 4 clearly mean the power to make provision for teaching and instruction in regard to the teaching function of the University and following from that power are the other powers given to it in Clauses 4, 6, 6, 16, 17 and 20 of Section 4 to (sic) its teaching function. We agree with Mr. Daru that the power of the University to promote the use of Gujarati and/or Hindi as "a medium of instruction" in Section 4(27) has reference only to those institutions which are established and maintained by the University in pursuance of its teaching function and not to colleges over which it exercises a certain amount of control prescribed under the Act by reason of affiliation and

the power of the University to hold examinations to lay down as incidental thereto approved courses of studies and to confer degrees etc. If the power of the University to make provision for the use of Gujarati and/or Hindi were to be restricted to its own institutions, the Senate which is its own organ cannot have greater power than the University and the power conferred on the Senate in Section 18(xiv) must be read to apply to the University's teaching institutions only. But even apart from this argument it is clear from the language of Section 18(xiv) and particularly the words "to make provision relating to the use" as also from the fact that no power to make Statutes prescribing a particular language as a medium of instruction and examination for affiliated colleges is conferred u/s 18(ix) read with Section 28 that Section 18(xiv) applies only to the teaching function of the University.

26. Clause 10 of Section 4 empowers the University to hold examinations and to confer degrees and diplomas on the two categories of persons set out in Sub-clauses (a) and (b). It was argued by the learned Advocate-General that the language in which the University is to hold such examinations is left to the University since the medium of examination is a matter incidental or subsidiary to the power to hold examinations. It was contended that the University has the competence to make provision as to the manner in which it should carry out its function of holding examinations and in doing so, the University can decide to hold examinations in such language or languages as it thinks fit. The contention was stressed in the form of an interrogation : If the University can hold examinations in any language or languages as it thinks fit, could it have been intended by the legislature that affiliated colleges should be entitled to adopt any medium of instruction they like irrespective of the language or languages in which the University may decide to hold examinations? This contention is however, ill-placed for two reasons. In the first instance we are not concerned in this petition with the question as to whether it is competent to the University to hold examinations in any particular language or languages irrespective of the language or languages in which affiliated colleges can legitimately give instruction to students studying in such affiliated colleges, since Mr. Daru has not challenged Statutes 207, 208 and 209 on the ground of want of competence of the University to prescribe Gujarati or Hindi as the medium of examination. Secondly, the contention begs the question which has to be answered. If on a true construction of Section 4 (27) the University is not entitled to impose Gujarati or Hindi as a medium of instruction on affiliated colleges and affiliated colleges are entitled to give instruction to students in English if they so like, it is reasonable to assume that the University will hold examinations in English for the purpose of enabling the students in such affiliated colleges to receive degrees conferred by the University. Let us take for example the Bombay University. There is no provision in the Bombay University Act in regard to medium of instruction and examination. It is, therefore open to the Bombay University to decide to hold examinations in any language or languages it likes and equally it is open to the colleges affiliated to the Bombay University to give instruction to

the Students in such language or languages as they like. Can it be argued in the case of the Bombay University that if the Bombay University decides to hold examinations in Marathi which is the official language of the State of Maharashtra in which the Bombay University is situated, the colleges affiliated to the Bombay University must adopt Marathi as the only medium of instruction and stop English as a medium of instruction on the ground that if students are continued to be instructed in English it would be impossible for them to be examined by the University? We can reasonably expect that academic institutions like Universities which are not guided or governed by any political considerations and which act only for advancing the cause of education and for the benefit of students would not refuse to hold examinations in English if under the Act affiliated colleges are permitted to continue English as a medium of instruction. It must be noted in this connection that all that Section 4 (27) authorizes the University to do for itself is to promote the use of Gujarati or Hindi as a medium of instruction and examination and not as the only medium of instruction and examination and to discontinue English as the sole medium of instruction and examination and not as a medium of instruction and examination. We shall presently consider this aspect of the matter in some detail but it is significant to note that u/s 4 (27) the University has not been given the power to promote Gujarati or Hindi as the only medium of instruction and examination or to stop English as one of the media of instruction and examination. And this the Legislature has deliberately done for it was aware that having regard to the requirements of national unity and the fundamental right of every citizen of India, to whichever linguistic group he might belong, to reside and settle in any part of the territory of India contained in the Constitution which was soon to come into force and particularly in view of the fact that English was the medium of instruction and examination in all Universities in the country and there would have to be free transference of students and teachers from one institution of higher education to another throughout the length and breadth of the country in the interests of advancement of higher education, Gujarati or Hindi cannot be imposed as the only medium of instruction and examination for that would shut the doors of education to all those who do not know Gujarati or Hindi reasonably well but who either voluntarily or by stress of circumstances reside in the University area and make it impossible for free transference of students and teachers from one institution of higher education in the country to another and thus regard the development and advancement of higher education, for this reason the Legislature empowered the University to promote the use of Gujarati or Hindi as one of the media of instruction and examination and that too only in its own teaching institutions and to discontinue English, as the only medium of instruction and examination in its own teaching institutions. The Legislature did not empower the University to adopt Gujarati or Hindi as the only medium of examination nor did it empower the University to stop the use of English as a medium of examination. If, therefore, affiliated colleges can under the Act give instruction to students in any language other than Gujarati or Hindi including English and the University can also under the Act hold examinations in such

language, it cannot be a valid argument on construction that because the University can hold exa-(sic) in any language or languages it likes, must be spelt out in the University to im-any particular language or languages as of instruction on affiliated colleges. It must also be remembered that under Article 30(1) every (sic) religious or linguistic, has the right to establish and administer educational institutions own choice and for reasons which we will later such right includes the right to con-educational institutions in any language of its choice as a medium of instruction, if a reli-(sic) or linguistic minority is entitled to establish administer an educational institution with lish as the medium of instruction under Article 30(1), it can well be said that such right would become illusory if the University can tell the minority that it will not hold examinations in English but will hold examinations only in Gujarati Hindi. It can also be said that the refusal all the University to hold examinations in English would amount to a denial of the fundamental right of the minority under Article 30(1) to establish and administer an educational institution with English as the medium of instruction, for the and of such refusal would be that the students in such educational institution would not be able the appear at examinations held by the University and it would be impossible for them to receive degrees conferred by the University and the educational institution would, therefore, lose all utility and value and would have to cease to exist as in educational institution having regard to the provisions of Section 5 of the Act. There is, there-fore, in our opinion, no substance in the contention that from the power of the University to hold examinations in any particular language or languages a power can be spelt Out in the University in impose such language Cr languages as media of intention affiliated colleges.

27. The question whether Section 4 (27) em- powers the University to impose or enforce Gujarati and/or Hindi as the exclusive medium of and examination whether on its own (sic) or on institutions affiliated to it can resolved from the language of that clause and not from any other considerations. A Court of law can spell out the legislative intention from the words used by the Legislature and not by speculating as to what its intention must be. The language used in Section 4 127) and the Proviso thereto makes clear that the Legislature does not give such power to the University. The Advocate General suggested that the proviso to Section 4 (27) is a substantive provision and unlike an ordinary proviso does not carve out an exception or a qualification from the substamive enacoment in Section 4(27). He argued that Clause (27) of the section empowers the University to provide Gujarati or Hindi or both as media of instruction and examination and though the clause does nut in express terms contain a corresponding duty or obligation on the part of the University to make provision for the two languages or either of them as medium of instruction and examination, and though the proviso uses the word "may" and does not use mandatory words, in effect it does so by the use of the words ""not exceeding ten years". The words "not exceeding" convey an obligation on the University not to continue English as medium of instruction and examination beyond the prescribed period. We cannot agree with the learned Advocate-General that the

clause and the proviso enact an obligation or a duty. To read the proviso in the way he does would be to read into it something that is not there and to overlook certain words used therein and to omit to give them their true and full meaning. When the Legislature passed the Act in 1949, English language, all throughout the Province of Bombay including the region which is included in the University area, was the only and the sole medium of instruction and examination. The aim of clause (27) was to promote the development of study of Gujarati which was the language of the majority in this region. The Legislature gave power to the University to promote and to encourage the study of Gujarati or Hindi or both and also to promote the use of them or either of them as a medium of instruction. It should be noted that the words used in Clause (27) are "a medium of instruction" and not "the medium of instruction". But it appears from the proviso that the legislature was not unaware of the difficulties that the University would have to encounter in making at once provision for Gujarati or Hindi as a medium in higher education of which till then English was the only medium of instruction. Therefore, though it empowered the University by clause (27) to promote (the use of Gujarati or Hindi as a medium, it, at the same time, also empowered the University through the proviso "to continue" English as "the medium of instruction" during the transitional period, not exceeding ten years. This construction is consistent with the words used in Clause (27) and the proviso viz. "a medium of instruction" in the clause and "the medium of instruction" in the proviso, the use of different articles in them being deliberate and the words "may" and "continue" in the proviso. The construction offered by the learned Advocate General overlooks these words and their significance. If the Legislature wanted to empower the University to provide for Gujarati or Hindi or both, as the learned Advocate General argued, as the media of instruction in place of English and do away with English, there was nothing easier for it than to provide in explicit language that the University shall or shall have power to provide for Gujarati or Hindi as the medium of instruction in place of English, at such date and in such subjects as it thinks fit. There would have been no necessity then to enact the proviso. While construing an enactment the Court "must as far as possible give meaning to all words contained in such enactment. If the words and the use of the articles "a" and "the" made in the clause and the proviso were given their meaning, the object and the intention of the Legislature in enacting them in the manner they have been done become at once clear. As already observed the clause uses the word "promote" not "enforce" or "impose". That has been done deliberately and not accidentally or through mistake. It is in connection with the word "promote" that the words "a medium of instruction" are used again deliberately, for, the intention of the Legislature was to empower the University to promote the use of Gujarati or Hindi as "a" and not "the" medium, the only or exclusive medium. That was why it used also the word "promote" and not "enforce" or "impose". This shows that the intention of the Legislature was to promote the use of Gujarati or Hindi as an alternative medium along with the other language, viz., English, which was then "the" medium, the only medium of instruction. This construction also makes clear why the proviso

became necessary. Having given power to promote the use of Gujarati or Hindi as "a medium", the Legislature realized the difficulties of the University in making Gujarati or Hindi as a medium of instruction and examination at once. Since English was the only medium of instruction and examination, it would be difficult to expect the students to take either instruction or examination in a language in which instruction was not given so far. Therefore, the proviso enacted that English may be continued, notwithstanding Clause (27) for a period not exceeding ten years, as "the" medium of instruction i.e., the exclusive medium as hereto before. In this view even if it were held that instruction means and includes instruction not only in the University colleges and other institutions established by the University but also affiliated colleges as well, the only power given to University was to provide for Gujarati or Hindi as one of the media of instruction and examination and not as the only and exclusive medium prohibiting English language altogether as a medium of instruction and examination.

28. This construction gets support from the fact that after the ten years" period was over and the Legislature substituted the proviso by Act IV of 1961 knowing or at any rate being presumably aware of the constitutional difficulties by way of Articles 29(1) and 30(i), it repeated the same language and the same words in the new proviso except for extending the period upto May 1966. The new proviso again shows that what it seeks to do is to empower the University to continue English as "the medium of instruction and examination" upto May 1966, subject to the use of Gujarati or Hindi as "a" medium but not "the" or the only medium as may from time to time be prescribed. Therefore even under the new proviso there is no power in the University to and prohibit English as a medium and to (sic) Gujarati or Hindi as the only medium of instruction and examination.

29. If we are right in our conclusion the construction and content of Section 4(27), the next question is whether the insertion to Section 38-A into the Act by Act IV of 1961 can make any difference in regard to the question of the power of the University. Reading the new Section, it would appear that the intention of the State in enacting it was to introduce a sanction byway of compulsion and therefore to provide the drastic penalty of automatic disaffiliation. It is obvious that by reason of Section 5 and Section 38-A a college run within the University area which under the new section becomes disaffiliated or is deemed to be disaffiliated, would at once have to be closed down for it cannot serve its educational purpose unless its students are allowed to appear in examinations held by the University and become eligible to obtain degrees and diplomas of the University. If we are right in the construction we place on Section 4(27) and the other provisions of the Act that they do not in fact contain power in the University to impose a particular medium of instruction on affiliated colleges, the Statutes made by the Senate for that end would be beyond the competence of the University and the Senate. Any penal consequence imposed or incurred u/s 38-A cannot be said to be warranted by any law because Section 38-A cannot penalize a breach of a Statute which is ultra vires the Senate. Section 38-A

appears therefore to have been enacted on an erroneous assumption that the Act did contain a power in the University to impose a particular language as medium of instruction and cre-mination on the affiliated colleges. It may be con-tended, however, that in enacting Section 38-A, the State Legislature wanted to make it clear that the Act did contain such a power in the University and upon that footing enacted the new correction laying down both compulsion and which were not in the Act before the passing the Amendment Act. But the true rule of construction is that it is only where the interpretation of a Statute is obscure or ambiguous or readily capable of more than one interpretation, may be thrown on the true view to be taken of it by the aim and the provisions of a subsequent Statute but except in such a case parliamentary exposition by a subsequent legislation of a prior Act Cannot be relied in aid while construing such a prior Act. If, therefore Section 4(27) of the Act did not contain the power to provide Gujarati or Hindi as a medium and to impose it as such even on colleges other than the University colleges, the subsequent insertion of Section 38-A in the Act can-not affect the construction of Section 4(27). The Supreme Court while negating such a contention raised in Hariprasad Shivshankar Shukla Vs. A.D. Divikar, approved the dictum of Lord Alkinson in Ormond Investment Co. Limited v. Belts 1928 A.C 143

"an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it" and said that

"legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the Legislature had erroneously assumed to be so".

Section 38-A, therefore, cannot be relied on to show, that the Legislature was of the view that the Act contained the power which, ja fact, it did not. It is for the Court to construe laws enacted by the Legislature and the Court uses so from the the language .deployed in the law and not on a consideration as to what the Legislature thought or assumed.

30. The University owes its existence to a Statute and its constitution, functions and privileges are governed by the terms of that Statute alone-Colleges on the other hand are constituted and administered according to the terms of the instruments on which they are founded. They have their own independent existence and are entitled in law to carry on their educational activities independently, subject, of course, to control and restrictions imposed upon them by law or under the conditions of affiliation. As stated above, St. Xarier"s College is an educational institution founded and administered by the Xavier Kelavani Mandal Private Limited. The objects of the Company as set out in Clause (3) of its Memorandum of Association are, inter alia, to acquire and take over fill Or any part of the movable and Immovable properties now or hereafter vested in the Superior Regular of Ahmedabad Mission or vested in any other person or persons or body and used or devoted for or to any purposes of the Roman Catholic religion or any educational or charitable or other purpose whatsoever in connection therewith, to Provide and/or administer colleges, schools, hostels,

churches, chapels orphanages etc., and other educational, charitable, social and religious institutions in India, to take Over the effects and liabilities of existing religious charitable or educational institutions whose objects are similar to the objects of the Company, to administer or manage local or parochial funds of churches or parishes and to administer, manage or control religious institutions and establishments, to construct maintain and alter any houses, colleges, schools, hostels, churches etc., necessary or convenient for the purposes of the Company and to apply the monies and properties of the Company generally for the support and maintenance of Roman Catholic educational, charitable, social and religious purposes. The promoters who have signed the Memorandum of Association were all residents either of Ahmedabad or of Saurashtra. Article 4 of the Articles of Association of the Company provides that the Company shall be a private One and accordingly no member can transfer any share save to a transferee approved by the Board of Directors, who shall be under no obligation to approve of a proposed transfer. The number of members exclusive of persons in the employ of the Company shall not exceed fifteen and no invitation shall be made to the public to subscribe to Shares and debentures of the Company. Article 5 then provides that notwithstanding any of the provisions of Table A, it is agreed between the Company and every member thereof both present and future that if he shall leave India permanently or die, the share or shares held by such member shall, forthwith be transferred by him or his personal representative as the case may be, to such person or persons as may be nominated in that behalf by the Directors to the Company upon payment of the face value thereof to such member or his personal representative and every member of the Company both present and future, shall and doth hereby appoint the Superior Regular of the Roman Catholics of Ahmedabad Mission for the time being as attorney for the purpose of carrying out any such transfer. Article 9 is to the effect that the Superior Regular for the time being and in his absence and in his stead his substitute as acting Superior Regular shall be the Director General of the Company and as such Director General shall have vested in him the whole control and management of the Company to the full extent and powers that he may, independently of the Board or of the Directors and free from any control or supervision by it or them, exercise all the powers and discretions of the Board or of the Directors without their consent or concurrence and in the event of any conflict of opinion between him and the Board or any of the Directors shall have power to override any decision taken by the Board or a majority of the Directors and substitute therefore his own decision and any such decision taken by him shall be as valid and effective as if it had been so taken by the Board or the majority of the Directors. These provisions show that St. Xavier's College is an educational institution established and administered by a private limited company for the objects set Out in its Memorandum of Association. The principal object of the Company is to support and maintain Roman Catholic educational, charitable, social and religious institutions- Articles 4, 5 and 9 of the Articles of Association appear to have been inserted to vouch-safe that no outsider should obtain shares or control in the Company not approved of by the Directors of the

Company or acquire any power over the Company. These provisions also show that the Company which has established and maintained the college and other institutions is an independent entity and owes its existence to its incorporation under the provisions of the Indian Companies Act. The college so established and administered by the Company has also an independent existence subject only to those restrictions which are to be found by reason of its affiliation to the University and to the extent found in the provisions of the University Act. Neither in the conditions prescribed in Clauses (a) to (i) of Section 33 of the Act nor in any other provisions of the Act do we find any restriction on the power of an affiliated college of management and administration or of prescribing the medium of instruction to be employed in such college. Indeed, there is no provision in Section 33 of the Act which is the only section which prescribes conditions of affiliation, dealing with the language in which instruction should be imparted by a college seeking affiliation. As stated above, there are only three grounds on which affiliation of a college Once granted can be withdrawn u/s 37. These are: (1) failure to carry out any of the provisions of Section 33 (1), (2) failure to observe any of the conditions of affiliation and (3) conducting the college in a manner prejudicial to the interests of education. Obviously none of these three grounds is referable to the medium of instruction. The Act does not even vest the ultimate power in the University either to grant or to withdraw affiliation. The Act vests that power in the State Government. The fact that prior to the enactment of Section 38-A, there were no provisions in the Act conferring power on the University to enforce a particular language as a medium of instruction or a medium for examination held by affiliated colleges themselves, is an indication that the words "medium of instruction and examination" in Section 4(27) did not apply to affiliated colleges and did not mean medium of instruction and examination for the purposes of those colleges and were limited only to institutions established or maintained by the University. The Statement of objects and reasons for introducing the Act to which Mr. Amin drew our attention for the limited Purpose of showing the reasons for enacting the measure shows that the University was first to be an affiliating one and later on was to have a residential and teaching nucleus in Ahmedabad and the University was to be empowered "to adopt" Gujarati or the national language as a medium of instruction. The statement though it cannot be used in aid of construction, clearly shows what the Legislature had in mind while establishing the University and the functions which it was expected to perform. The word "adopt" used therein shows that the University was to adopt Gujarati or Hindi as a medium of instruction for its own purposes. It does not mean that it was to enforce it on others, namely, the affiliated colleges who were merely to associate with the University as the word "affiliate" Would mean.

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

substitution of the new proviso in Section 4(27) and the addition of Section 38-A in the Act by Act IV of 1961 make no difference and do not add any such power to the powers of the University under the Act. Consequently, Statutes 207, 208 and 209 as they stood originally or as amended are ultra vires the powers of the University and the Senate and are, therefore, null and void.

32. The next contention urged on behalf of the petitioner was that the new proviso substituted for the old proviso by Act IV of 1961 was ultra vires the State Legislature as being beyond the legislative competence of the State Legislature. The new proviso was substituted for the old proviso by Act IV of 1961 and the vires of the new proviso must, therefore, be tested by the provisions of the Constitution "and not by the provisions of the Government of India Act, 1935. Tested by these provisions we are of the opinion that the new proviso Cannot withstand the challenge on the ground of legislative incompetence. We are, for the reasons which follow, inclined to take the view that the State Legislature was no competence to legislate on medium of instruction and examination and any provision enacted by the State legislature in regard to medium of instruction and examination in Universities and colleges which are institutions of higher education Would be beyond the competence of the State Legislature and, therefore, ultra vires and void.

33. In order to appreciate the contentions which have been urged on this part of the case, it is necessary to refer to Article 246 of the Constitution which distributes legislative power between the Union and the States as regards the subjects of legislation. Clause (1) of Article 246 vest in the Parliament exclusive power to make laws with respect to any of the matter enumerated in List I. Clause (3) empowers the State Legislature, subject to Clauses (1) and (2) to make laws for its own State or any part thereof with respect to any of the matters enumerated in List II. Under Clause (2), notwithstanding anything in Clause (3), Parliament and subject to Clause (1), the State Legislature, have power to make laws with respect to any of the matters in List III. The words "notwithstanding anything" in Clauses (1) and (2) and the words ""subject to Clauses (1) and (2)" in Clause (3) have been used to secure the predominance and supremacy of Parliament in cases of overlapping as between Lists I, II and III. The gist of Article 246 is that Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. The State Legislature has similarly exclusive power to legislate in respect of matters in List II minus matters which fall in Lists I and III and has concurrent power to legislate with respect to matters in List III minus matters falling in List I. But as observed by the Privy Council in *Prafulla Kumar v. Bank of Commerce Ltd.* AIR 1947 PC 60 , where they come in conflict, List I has priority over Lists III and II and List III has priority over List II. There are certain principles relating to interpretation of entries in the Legislative Lists which are well-settled by decisions and can no longer be disputed. The first principle is that while considering the scope of the various entries in the Legislative Lists the widest possible amplitude must be given to the words used and each general

word must be held to extent to ancillary or subsidiary matters which can be said to be comprehended in it. "It is well settled" to use the words of the Supreme Court in *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, ,

"that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included In the power given". The second principle is that (or the purpose of determining whether a particular piece of legislation is legislation with respect to matters in one list or the other it must be examined to ascertain the pith and substance or its true nature and character. This principle may be stated, again in the words of the Supreme Court in the same case namely *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, as follows:

"These Entries, it has been ruled of many an occasion though meant to be mutually exclusive are sometimes not ready so. They occasionally overlap, and are to be regarded as enumeration simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding."

This principle was reiterated by the Supreme Court in *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*, where Kapur, J., delivering the judgment of the Supreme Court observed:

"In every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists it is necessary to examine the pith and substance of the Act and if the matter comes substantially within an item in the Central List, it is not deemed to come within an entry in the Provincial List even though the classes of Subjects looked at singly overlap in many respects". It is within the competence of the Central legislature to provide for matters which may otherwise fall within the competence of the Provincial legislature if they are necessarily incidental to the effective legislation by the Central legislature on a subject of legislation expressly within its power." On this principle whenever an enactment is challenged as being beyond the legislative competence of the legislature which made the enactment, the enactment must be examined to ascertain its pith and substance or its true nature and character and if in its pith and substance or its true nature and character it falls substantially within an entry or entries conferring legislative power on the legislature, it would be valid even though it may provide for matters which may otherwise fall outside the legislative competence of the Legislature if such matters are necessarily incidental to effective legislation by the legislature.

34. How is this pith and substance or true nature and character to be determined? In the first instance the entries in the legislative Lists must be compared with a view to ascertaining whether the legislation in question, fairly

considered, falls prima facie within an entry or entries in List J or List II or List III. The result of the comparison will not by itself be conclusive, but it will go some way to supply an answer to the problem which has to be solved. The next step in a case of difficulty will be to examine the effect of the legislation (Union Colliery Co. of B (sic) C 1 mbia Ltd. v. Bryden 1899 AC 580) . As observed by S. R. dAS, C. J. in In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , it is the effect of the, legislation to which regard must be had in determining the constitutional validity of the legislation. For the purpose of ascertaining the effect of the legislation the Court may take into account any public general knowledge of which the Court would like judicial notice, and may in a proper case require to be (sic) by evidence as to what he effect of the legislation will be. A (sic) the object or purpose of the legislation in question. It is not competent enter for the Union or a State under the guise, or the (sic) or in the form of an exercise of its own powers, to carry out an object which is beyond its powers and a (sic) on the executive powers of the other: (Attorney-General for Ontario v. Reciprcal (sic) 1924 AC 328 and In re Insurance Act of Canada, law AC 41). Here again, matters of which the Court would take judicial notice must be borne in mind, and other evidence in a easy which calls for it. These principles were applied in the Privy Council in Attorney General for Alberta v. Attorney General for Canada 1939 AC 117 : (AIR 1939 PC 53). In that case the Privy Council in an appeal from the judgment of the Supreme Court to Canada on a reference made to the Supreme Court of Canada, by the Governor General of Canada u/s 55 of the Supreme Court Act (Revised. Statutes of Canada, 1927, C- 35) corresponding to Article 143(1) of the Constitution to India, held that a Bill passed by the Legislative Assembly of the Province of Alberta at its third session in 1937 entitled "An Act respecting the Taxation of Banks" and reserved by the Lieutenant-Governor of Alberta for the signification of the pleasure of the Governor-General in Council, was ultra vires the Provincial Legislature- The Privy Council took the view that on a comparison of the categories of subject-matters within the exclusive legislative competence of the Dominion and Provincial Legislatures respectively under Sections 91 and 92 of the British North America Act, 1867, and on a consideration of the object of the impugned Bill and its effect if it became operative in the Province of Abtrta, the proposed taxation was not in any true sense taxation "in order to the raising of a revenue for Provincial purposes" so as to be within the exclusive legislative competence of the Provincial Legislature but was merely part of a legislative plan to prevent the operation within the Province of Alberta of these banking institutions which had been called into existence and given the powers there to con-duct their business by the only proper authority the Parliament of the Dominion, and that the bill was, therefore ultra vires the Provincial Legislature. The Privy Council thus considered the object of the impugned Bill and the effect it would have if it became law in the Province of Alberta for the purpose of determining whether it fell within the legislative competence of the Dominion or the Province. The same considerations were applied in the earlier case of 1899 AC 580, (supra) where the Privy Council held Section 4 of the "British Columbian

Coal Mins Regulation Act, 1890 ultra vires the Provincial Legislature on the ground that though the Act, regarded merely as a coal working regulation would come within Section 92, Sub-section (10) or Sub-section (13) of the British North America Act, its exclusive application to Chinamen, who were aliens or naturalized subjects established a statutory prohibition which is within the executive authority of the Dominion Parliament conferred by S. 91, Sub-section (25) in regard to naturalization and aliens. At page 587 the Privy Council observed that though the impugned provisions were capable of being viewed in two different aspects, according to one of which they appear to fall within the subjects assigned to the Provincial Parliament by Section 92 of the British North America Act, whilst according to the other, they clearly belong to the class of subjects exclusively assigned to the Dominion Legislature u/s 92 subsection (25), the whole pith and substance of the enactment of Sec- 4, the impugned Section, consisted in establishing a statutory prohibition which affected aliens or naturalized subjects and therefore trespassed upon the exclusive authority of the Canadian Parliament. The object and effect of the impugned Section were considered for the purpose of determining what was the pith and substance of the enactment of the impugned Section and since the pith and substance so considered fell within the exclusive authority of the Canadian Parliament, the impugned Section was struck down as ultra vires the Provincial Legislature. These are the principles which we must apply in considering the question whether Sec. 4(27) with the proviso falls within the legislative competence of the State Legislature or constitutes an encroachment on the forbidden territory of the Parliament.

35. The challenge based on want of legislative competence involves consideration of the true scope and meaning of entry 11 of List II and entry 68 of List I. Entry 11 of List II reads "education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III". We are concerned in this petition only with entries 63, 64, 65 and 66 of List I. Entry 63 of List I mentions the three universities of Benares, Aligarh and Delhi and any other institution declared by Parliament by law to be of national importance. The Vishva Bharati Act. 29 of 1951 includes, in Entry 63 of List I the Vishva Bharati University as that Institution has been declared by that Act to be an institution of national importance and, therefore falling in entry 63 of List I. -The result is that universities other than these four universities fall in entry 11 of List II until any further institutions declared by Parliament to be of national importance. Similarly institutions for scientific or technical education financed by the Government of India and declared by Parliament by law to be of national importance fall in entry 64 of List I and Union agencies and institutions for professional, vocational or technical training Or the promotion of special studies or research or scientific or technical assistance in the investigation or detection of crime fall in entry 65 of List I. There are, in fact, a number of such institutions such as the Indian Council of Agricultural Research, Indian Agricultural Research Institute, Indian Veterinary Research Institute Indian Council of Medical Research, Indian Institute of Sugar

Technology, Central Rice Research Institute and Institute of Hygiene and Public Health. Finally entry 66 of List I deals with co-ordination and determination on standards in institutions for higher education or research and scientific and technical instruction. While entries 60 and 64 of List I require a declaration by Parliament entries 65 and 66 of List I do not contemplate any such declaration.

36. The contention of Mr. Daru broadly was that the words "subject to the provisions or en-tries 63, 64, 65 and 66 of List 1" operate as a limitation on the legislative competence of the State Legislature under entry 11 of LIST II and that the matters covered by entries 63, 64, 65 & 66 of List I are excepted from entry 11 of List II and are therefore, not within the legislative competence of the State Legislature. Mr. Dara urged that the subject of medium of instruction falls within entry 66 of List I or is at any rate ancillary or subsidiary to the subject matter or entry 66 of List I and is, therefore, excluded from entry 11 of List II. The State Legislature has, therefore, no competence to legislate on the subject of medium of instruction and any enactment by the State Legislature deal with the subject of medium of instruction would accordingly be ultra vires the State Legislature by reason of Clause (1) of Article 246. Mr. Amin and the learned Advocate General on the other hand contended that the Subject of medium of instruction falls exclusively within entry 11 of List II and does not fall within entry 68 of List I and that the State Legislature cannot, therefore, in legislating on the subject of medium of instruction be accused of encroaching in the Parliamentary field set out in entry 66 of List I. Mr. Amin and the learned Advocate General also put forward an alternative contention namely that even if the subject of medium of instruction falls Within entry 68 to List I or can be regarded as ancillary or subsidiary to the subject matter of entry 66 of List I, the State Legislature is yet competent to legislate on the subject of medium of instruction so long as Parliament has not occupied the field by its own legislation. This contention turned on the construction of the words "subject to the provisions of entries 63, 64, 65 and 66 of List I" in entry 11 of List II. According to Mr. Amin and the learned Advocate General these words do not have the effect of taking out Of entry 11 of List II the matters covered by entries 63 64, 65 and 66 of List I but they mean only that if the Parliament has already occupied the field, the State Legislature would he incompetent to legislature on those matters. Mr. Amin and the learned Advocate-General contended that since Parliament has not occupied the field by legislating on the subject of medim of instruction, the State Legislature would be competent to deal with the subjec of medium of instruction in any legislation it may make an entment of the State Legislature dealing with the subject of medium of instruction would not be ultra vires the State Legislature. They also urged that even if the subject of medium of instruction falls within entry 66 of List I or is regarded as ancillary or subsidiary to the subject matter of entry 66 of List I. the pith and substance of the impugned provision read in he context of the Act if education including universities and that the impugned provision is, therefore, not ultra vires the State Legislature on the ground that it incidentally encroaches is the field of entry 66 of List I. Mr. Daru

rejoined by contending that since the subject of medium of instruction is excepted out of entry 11 of List II by reason of the words "subject to the provisions of entries 63, 64, 65 and 68 of List I" the State Legislature cannot even under the doctrine of pith and substance legislate in regard to the subject of medium of instruction and that in any event the impugned provision cannot be said to be an incidental encroachment in the field of entry 66 of List I necessary for effective legislation by the State Legislature in regard to the University and constitutes a deliberate intrusion in the field of entry 66 of List I and must, therefore, be held to be ultra vires the State Legislature. These were broadly the rival contentions and we shall now proceed to examine them in the light of the principles mentioned at the commencement of the discussion.

37. Before we examine the contention that the subject of medium of instruction falls within entry 66 of List I or is at any rate ancillary or subsidiary to the subject matter of entry 66 of List I, we would like to dispose of the question as to the correct interpretation of the words "subject to the provisions of entries 63, 64, 65 and 66 of List I" in entry II of List II. Mr. Daru, as pointed out by us, contended that the words subject to the provisions of entries 63, 64, 65 and 66 of List I" mean that these matters are excepted from entry 11 of List II and are, therefore, not within the legislative competence of the State Legislature whereas Mr. Amin and the learned Advocate General contended that On a true construction of these words the State Legislature would not be competent to legislate on these matters if and only if the Parliament has already occupied the field and unless the Parliament has already occupied the field, the competence of the State Legislature to legislate in regard to these matters must remain. Considerable reliance was placed on both sides on certain observations made in *The State of Bihar Vs. Sir Kameshwar Singh*, . That was a case where the Constitutional validity of the Bihar Land Reforms Act, 1950, was challenged on various grounds and one of the grounds of challenge was that the words "subject to the provisions of entry 42 of List III" in entry 36 of List II showed that entry 36 of List II was linked up with entry 42 of List III and that the validity of any law made in exercise of legislative power under entry 38 of List II was conditional on the simultaneous exercise of the Legislative power under entry 42 of List III and since there was no valid exercise of the legislative power under entry 42 of List III the impugned Act which constituted legislation under entry 88 of List II failed. This ground of challenge was rejected by the Supreme Court in separate judgments delivered amongst others by Patanjali Sastri C. J. Mahajan, J., and Das, J. All the three learned Judges declined to read the words "subject to the provisions of entry 42 of List III" in entry 36 of List II in the sense that the law making power under entry 36 of List II was conditional upon the exercise of legislative power under entry 42 of List III and rejected the contention based on such construction. Patanjali Sastri, C. J., observed that the words "subject to the provisions of entry 42 of List III." in entry 36 of List II mean no more than that any law made under entry 38 of List II by a State Legislature can be displaced or overridden by the Union legislature making a law under entry 42 of List III.

Mahajan, J. also similarly observed that the only purpose of the words "subject to the provisions of entry 42 of List III" occurring in entry 36 of List II is to indicate that legislation under entry 36 of List II would be subject to any law made by Parliament in exercise to its legislative power under entry 42 of the concurrent list. Mr. M. P. Amin and the learned Advocate General strongly relied on these observations of Patanjali Sastri, C. J., and Mahajan, J., as supporting the construction sought to be put by them on the words "subject to the provisions of entries 63, 64, 65 and 66" occurring in entry 11 of List II." We fail to see how these observations at all help Mr. Amin and the learned Advocate General in the construction urged by them. It must be remembered, that the learned Judges in making these observations Were not dealing with entries in Lists I and II but were dealing with entries in Lists II and III Which involve different considerations as the matters in List III are matters on which both the Parliament and the State Legislature are competent to legislate and questions relating to the supremacy of Parliamentary legislation and the repugnancy of parliamentary legislation to State Legislation by reason of the former occupying the field of the latter would, therefore, arise in such case. The considerations which apply in regard to entries in Lists I and II must necessarily be different from the considerations in regard to entries in Lists II and III and it is obvious from the following quotation from the judgment of Mahajan, J., as he then was, that the observations relied on by Mr. M. P. Amin and the learned Advocate General were made in the context of the entries in Lists II and III and they cannot apply in the context of entries in Lists I and II. Mahajan, J., observed:

"Both legislatures can legislate under entry 42 but the Parliamentary statute made in exercise of powers under this entry would have preference over a State law in case of repugnancy and it was for this reason that reference was made to entry 42 in the head of legislation mentioned in the State List under Entry 38".

As against these observations of Patanjali Sastri, C. J., and Mahajan, J., Das J., stated that the words "subject to the provisions of entry 42 List III" in entry 36 List II mean "but not" so as to indicate that the scope of entry 36 of List II is restricted that is to say, that the Subject-matter of entry 42 of List III is not within the content of entry 36 of List II. This opinion of Das. J. favours the construction suggested by Mr. Dam. But in our opinion, the matter does not rest merely with the opinion of The State of Bihar Vs. Sir Kameshwar Singh, . There is a recent decision of the Supreme Court in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, which concludes the question as to the true meaning of the words "subject to" when used in an entry in List II in relation to the provisions of an entry in List I. This ejection clearly and unmistakably lays down that the words "subject to" when used in an entry in List II in relation to the provisions of an entry in List J have the effect of taking out the subject-matter of the entry in List I from the content of the entry in List II- The question in this case was whether the Orissa Mining Areas Development Fund Actv XXVII of 1952, assuming that the cese levied thereunder was a fee and was as such relatable to entries 23 and 68 of List II was within the legislative

competence of the State In view of the fact that entry 23 of List II is subject to the provisions of List I with respect to regulation and development under the control of the Union. Entry 23 of List II reads as under:

"Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union".

Entry 54 of List I is as follows:

"Regulation of mines and mineral development to the extent to which such, regulation and development under "the control of the Union is declared by Parliament by law to be expedient in the public interest".

The Supreme Court observed that the effect of reading these two entries was that the jurisdiction of the State Legislature under entry 23 of List II was subject to the limitation imposed by the latter part of that entry and continued :

"If Parliament by us law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration, the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by entry 54 and if the said declaration covers the field occupied by the impugned Act, the impugned Act would be ultra vires, not because of any repugnance between the two Statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of entry 23 is a limitation on the legislative competence of the State Legislature itself.

The Supreme Court thus clearly held that as soon as the Parliament by law declares that regulation and development of mines should in public interest be under the control of the Union, the subject matter of regulation of mines and mineral development, to the extent of such declaration, would fall within entry 54 in List I and go out of entry 23 of List II and the competence of the State Legislature would to that extent be excluded. It was, however, urged by Mr. Amin that in this case there was already a Parliamentary legislation, namely, the Mines and Minerals (Regulation and Development) Act, LIII of 1948, and Section 2 of this Act contained, a declaration as to the expediency and control by the Central Government and that the argument, therefore, was that the Parliament having made the requisite declaration and occupied the field by passing a legislation of its own, the impugned Act which was the State legislation was ultra vires as being beyond the legislative competence of the State Legislature. Mr. Amin contended that this decision showed that in such a case the State legislation would be ultra vires only if the Parliament has made the requisite declaration and has also occupied the field by passing, an Act of its own and that it would be then only that the field would be excluded to the State Legislature so as to render the State legislation beyond the competence of the State Legislature. Mr. Amin relied on the following observation:

"Therefore, if a Central Act has been passed for the purpose of providing for the

conservation and development of minerals and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject matter covered by the said declaration".

But even this observation cannot assist Mr. Amin's contention for apart from using the words "the said declaration" meaning thereby that the declaration was the test and, not Act LIII of 1948 which contained the declaration, the Supreme Court wound up the paragraph by stating;

"In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948."

A little earlier also the Supreme Court emphasised that the declaration and not Act LIII of 1948 was the test for excluding the legislative competence of the State and observed:

"If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals and the said field is indistinguishable from the field covered by the impugned Act." The test which the Supreme Court applied for the purpose of determining whether the State Legislature was competent to enact the impugned Act was not whether there was already a Parliamentary Statute on the subject matter of entry 54 of List I but whether there was any declaration made by the Parliament as contemplated by entry 54 of List I which covered, the field occupied by the impugned Act. If there was a declaration by Parliament which covered the field occupied by the impugned Act, the impugned Act would obviously be ultra vires for to the extent of the declaration, regulation of mines and mineral development would, be excluded from the content of entry 23 of List II and the State Legislature would then have no jurisdiction to pass the impugned Act. The vires of the impugned Act was considered by the Supreme Court not on the ground whether the Parliament having occupied the field, the State Legislature was not competent to enact the impugned Act nor on the ground whether there was any repugnancy between the Parliamentary Statute and the impugned Act but only On the ground whether there was any declaration made by Parliament under entry 64 or List I which carved out and excluded what was covered by the declaration from the content of entry 23 of List II. This decision, in our opinion, supports the construction contended for by Mr. Daru, Following this decision we must conclude that since the subject of education including Universities in entry II of List II is made subject to the provisions of entries 63, 64, 65 and 66 of List I, the matters set out in entries 63, 64, 65 and 68 of List I are carved out and excepted from the content of entry 11 of List II. To use the words of the Supreme Court to the extent of the matters set out in entries 63, 64, 65 and 63 of List I, the jurisdiction of the State Legislature from the subject of education including Universities is excluded and, therefore, though education including Universities is a State subject, the State Legislature has no power to enact any law in regard to

matters falling within entries 63, 64, 65 and 66 of List I or ancillary or subsidiary matters which can be said to be reasonably included in those entries.

38. This takes us to the most vexed question on this part of the case, namely, what is the true meaning and scope of entry 66 of List I, Does it include the subject of medium of instruction? The entire argument of Mr. Daru was built up on the premise that the subject of medium of instruction in institutions of higher education such as Universities and Colleges is covered by entry 66 of List I and if this premise is not established, it is obvious that the argument of Mr. Daru fail. We must, therefore proceed to examine the question whether the subject of medium of instruction in institutions of higher education such as Universities and Colleges is covered by entry 66 of List I-Since in considering the scope of the various entries in the Legislative lists the widest possible amplitude must be given to the words "used and each general word must be held to extend to ancillary or subsidiary matters, which can be said to be reasonably comprehended in it, the question may be put in another form namely, whether the subject of medium of instruction in institutions of higher education such as Universities and college falls expressly within the words used in entry 66 of List I and even if it does not so fall, is it so connected with the subject matter of entry 66 of List I that it can be said to be an Ancillary or subsidiary matter reasonably included in the words used in entry 66 of List I. Entry 63 of List I as stated above relates to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The question which is posed before us, therefore, is : Can it be said that the subject of medium of instruction in institutions of higher education such as Universities and Colleges fall within the subject matter of co-ordination and determination of standards in institutions for higher education and research and scientific and technical institutions, construing that entry in its widest amplitude as the true rule of construction provides and even if it does not, can it be said that there is such a nexus between the subject of medium of instruction in institutions of higher education such as Universities and Colleges and co-ordination and determination of standards in institutions of higher education and research and scientific and technical institutions, that the former can in any event be said to be an ancillary or subsidiary matter reasonably comprehended within the latter?

39. Before we proceed to examine the question whether the subject of medium of instruction in institutions of higher education is covered by entry 66 of List I, we may mention two matters which are of some importance in determining the question, prior to the Constitution the Government of India Act, 1935, was the Co station document and entry 17 of List II of the Sev(sic) Schedule to that Act allotted the entire subject of education to the Provincial Legislatures with the exception of two Universities, namely, the Benaras Hindu University and the Alighr Muslim University which were placed within the exclusive field of the Central Legislature by entry 13 of List I. Entry 17 of List II was amended by the India-Burma Miscellaneous Amendment Act, 1940, and that entry as amended read ""Education, including Universities other than those specified in paragraph

13 of List I." the Universities specified in paragraph 13 of List I being the Banaraas Hindu University and the Aligarh Muslim University. The Constitution added to these two Universities the University of De hi and any other institution which might be declared by Parliament to be of national importance and placed them within the exclusive field of the Parliament by entry 63 of List I. It is significant to note that the Constitution did not place any institution of national importance under the Legislative domination of any State and entry 63 of List I, therefore, includes besides the three Universities of Banaras, Aligarh and Delhi any other institution that may be declared by Parliament by law to be of national importance. The Constitution also excluded from the competence of the State Legislature institutions for scientific or technical education financed by the Government of India, wholly or in part, and declared by Parliament by law to be institutions of national importance as also Union agencies and institutions for professional, vocational or technical training, including the training of Police Officers or the promotion of special studies of research, or scientific or technical assistance in the investigation or detention of crimes by making them subjects of Parliamentary legislation under entries 64 and 65 of List I. This again shows that the Constitution did not think it desirable to leave institutions of national importance such as institutions mentioned in entries 64 and 65 of List I to be dealt with by the Sates and that was why the Constitution placed such institutions under the exclusive legislative competence of Parliament though they were not under the exclusive legislative competence of the Central Legislature under the Government of India Act, 1935. The Constitution also made mother departure from the Government of India. Act. 1935, in so far as he subject of co-ordination and determination of standards in institutions of higher education and research and scientific and technical institutions is concerned. Under the Government of India Act. 1935, the entire subject of education including Universities with the exception of the Banaras Hindu University and the Aligarh Muslim University was allotted to the Provincial Legislate and the Provincial Legislatures could legislate in regard to the subject of education including Universities barring the Benaras Hindu University and the Aligarh Muslim University. The framers of the Constitution felt that if the entire subject of education including Universities was allowed to remain with the State Legislatures without any reservation, different States might start following deferent educational polices and this might affect the standards in institutions of higher education or research and scientific and technical institutions to the detriment of national progress and national unity. If each State were allowed to pursue its own educational policy irrespective of the educational policy followed in the other States, the result would be that in a very short time the standards in institutions for higher education or research and scientific and technical institutions in various parts of the country might become so widely divergent as to impede not only the progress of the nation as a whole but also the achievement of the basic purposes set out in the pre-amble of the Constitution, Apart from the educational policy which may differ from State to State and thus lead to widely divergent standards in institutions for higher education or research

and scientific and technical institutions, the States might vie with one another in establishing institutions for higher education or research and scientific and technical institutions without the necessary personnel and equipment being available and this might result in the lowering of the standards in such institutions. The framers of the Constitution were aware that in the world of today when science is making rapid strides and new horizons of knowledge are opening, when the limits of ignorance are shrinking and the frontiers of knowledge are receding further and further and when the progress and prosperity of nations depend more and more on development and advancement of knowledge, institutions for higher education and research and scientific and technical institutions are vital to the nation if the nation is to regain its place on the map of the world as the great nation it once was when it led the world in several fields of human endeavour. The Constitution-makers obviously realised that institutions for higher education and research and scientific and technical institutions were too important, too precious and too vital to be left in the exclusive domain of the State Legislatures and they, therefore, with a commendable foresight which we find manifested in many a provision of the Constitution, entrusted co-ordination and determination of standards in such institutions to parliament so that high standards can be uniformly ensured in such institutions in the interest of the nation.

40. The declared purpose of the Constitution is to secure to all citizens

Justice, social, economic and political;

Liberty of thought, expression, belief faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the unity of the Nation.

This very purpose might be defeated if institutions for higher education and research and scientific and technical institutions throughout the length and breadth of the country do not maintain uniformly high standards. The students in such institutions in a State where the standards are lower would be at a disadvantage as compared to students in such institutions in another State where the standards are higher. In competition and examinations for all India services as also in employment in semi-government institutions of an all India character, the students in such institutions where the standards are lower would be considerably handicapped as against students in institutions where the standards are higher. Equality of opportunity would in effect and substance be denied to the students studying in such institutions where the standards are lower than in other institutions. The students in such institutions where the standards are lower might not get opportunities which students in other institutions might get and this in its turn, apart from denying equality of opportunity to the students who are not fortunate enough to have been born in or to reside in States having such institutions would retard National progress. There might be students in such institutions with lower standards who might, if

they have the means and the opportunity to drink deep from the springs of knowledge which flow in all their purity and strength in such institutions with higher standards, become the leaders of the world of science, knowledge or education and help carry the Nation forward in its march to progress and prosperity but who would not be able to do so for the springs of knowledge which flow in such institutions with lesser standards run in a shrink-ed stream and are almost dry. This would certainly retard the development and advancement of the Nation. Again, if the standards in such institutions are not uniform throughout the length and breadth of the country, free transference of students and teachers from one Institution to another would become almost impossible resulting not only in inbreeding and intellectual stagnation but also in exclusiveness and islandish tendencies detrimental to the unity of the Nation. The framers of the Constitution, therefore, thought that it was essential that co-ordination and determination of standards in such institutions should be entrusted to Parliament so that not only high standards might be maintained in such institutions but there might be uniformity of standards in such institutions in the interest of national progress and national unity. It was for this reason that the Constitution-makers wisely and deliberately added entry 66 in List I making co-ordination and determination of standards in institutions for higher education and research and scientific and technical institutions, a subject of exclusive Parliamentary legislation. This background and purpose of the enactment of entry 69 of List I must be borne in mind while considering the question whether the object of medium of instruction in institutions of higher education can be said to be covered by entry 66 of List I.

41. The second factor which we must bear in mind while considering the question before us is that the field of entry 60 of List I has already been occupied by Parliament by passing the University Grants Commission Act, 1956, which as its long title shows was passed "to make provision for the co-ordination and determination of standards in University education" and for that purpose to establish a University Grants Commission. The definition of "University" in Section 2 (f) of this Act applies to the Gujarat University constituted under the impugned Act. Section 12 of this Act provides that it shall be the general duty of the Commission to take, in consultation "with the Universities or other bodies concerned, all such steps as it thinks fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and among other things it may recommend to any University measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation and perform such other functions as may be prescribed or may be deemed necessary for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions, namely, co-ordination, determination and maintenance of standards in Universities. This power conferred on the Commission in the widest terms clearly postulates that if the Commission

considers necessary for the improvement of University education or for the co-ordination, determination and maintenance of standards in Universities in the country that the Universities should have English or any particular language as a common medium of instruction or that having regard to the meagre stage of development reached by a particular regional language Universities should not switch over to that particular regional language as a medium of instruction, the Commission can certainly recommend to the Universities that they should adopt English or any other language as a common medium of instruction or should not switch over to that particular regional language as a medium of instruction. Such a course of action would undoubtedly be within the powers of the Commission for it is the function of the Commission to co-ordinate and determine standards in University education and to do all acts and things necessary for that purpose. This provision throws considerable light on the relation which the subject of medium of instruction in institutions of higher education bears to the topic of co-ordination and determination of standards in institutions of higher education or research and scientific and technical institutions. Section 20 of this Act is also a clear pointer in the same direction. This section provides that in the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government. The words "national purposes" in Section 20 must be read in the light of the preamble of the Constitution which declares that the Constitution has been enacted by the people of India among other things to promote among the citizens fraternity assuring the dignity of the individual and the unity of the Nation. Having regard to the past history of India so much emphasis is laid on national unity that an obligation is imposed On the Commission Section 20 to be guided in the discharge of its functions by directions on questions of policy relating to national purposes which may be given to it by the Central Government. If the Central Government feels that importing of education by Universities and affiliated colleges in regional languages in the present context of linguistic States would encourage fissiparous tendencies and foster regionalism and parochialism destructive of national unity and integration, the Central Government can as a matter of policy give directions to the Commission to recommend to the Universities that they should not impart education in regional languages but should adopt a common language as a medium of instruction We must at once make it clear that whether to do so or not would be a matter of policy for the Central Government and we are not concerned with any questions of policy but the point which we wish to emphasise is that if the Central Government; wishes to take any such action, it can do so under the terms of this Act. This would also show that the subject of medium of instruction in institutions of higher education is closely related to the topic of co-ordination and determination of standards in institutions for higher education and research and scientific and technical institutions.

42. Bearing these considerations in mind, we now approach the examination of the question whether the subject of medium of instruction in institutions of

higher education is covered by entry 66 of List I. Entry 66 of List I relates to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There cannot, in our view, be any doubt of a connection between the subject of medium of instruction in institutions of higher education and the topic of co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The standards in institutions for higher education or research and scientific and technical institutions must necessarily depend not only on the courses of study prescribed in such institutions but also on the quality of instruction imparted in such institutions the availability or proper and adequate books, periodicals and journals which not only purvey physical facts of knowledge but also provoke and stimulate thought and free exchange of views and ideas. It is obvious that these matters must, to a large extent be related to the medium of instruction. If in a particular language which is adopted as a medium of instruction there are no proper and adequate books on the subjects of study and no efficient teachers who can impart instruction in such language, the adoption of such language as a medium of instruction would certainly have a deteriorating effect on standards in institutions for higher education or research and scientific and technical institutions and this, in its turn, would prejudicially affect the value of the degrees and diplomas conferred by the University to which such institutions belong or are affiliated. The intellectual growth of the students In such University would be retarded and their knowledge would be confined only to that contained in the few books to be found in the particular language which is adopted as a medium of instruction. The result would be that not only would the future of the student in such institutions for higher education and research and scientific and technical institutions be blighted but they would be at a serious disadvantage as against students in institutions for higher education and research and scientific and technical institutions with a medium of instruction In which there are proper and adequate books, periodicals and journals and efficient and distinguished teachers. The standards would be so widely divergent that it would be impossible to co-ordinate them. We do not see how it can be disputed that the medium through which instruction is imparted is a vital factor which must affect standards in institutions for higher education and research and scientific and technical institutions. The medium of instruction in institutions of higher education is intimately connected with the standards of education which can be reached in such institutions. If different languages at different stages of development are allowed to be adopted as media of instruction by different Universities, it is clear that the result would be that there would be widely divergent standards in institutions for higher education and research and scientific and technical institutions in different parts of the country and any attempt at co-ordination of standards would be an impossible task. Students in institutions for higher education and research and scientific and technical institutions, where the language which is adopted as a medium of instruction cannot boast of proper and adequate books, periodicals and journals and trained and efficient teachers, would be considerably handicapped as against students in

Institutions where the language in which instruction is imparted is sufficiently well-developed in the sense that there are proper and adequate books, periodicals and journals and suitable teachers to impart instruction in such language. The students in the former institutions would also be precluded by reason of there being at a disadvantage as compared with the students, of the latter institutions from successfully appearing in All India competitions and examinations held by the Union for the purpose of recruitment to All India services. By reason of the paucity of books, periodicals and journals and lack of adequate teachers, the students in the former institutions would be denied the opportunity of acquiring knowledge which would be available to the more fortunate students of the latter institutions. The free movement of students and teachers from one institutions to the other throughout the length and breadth of the country, so essential for the healthy development and advancement of higher education, would become impossible, since the students studying in one institution with a particular language as a medium of instruction would not be able to enter another Institution which might be renowned in any particular subject but which might be teaching in a different language. This difficulty would arise even though both the Institutions are situated within the territory of the same Nation. A teacher teaching in, one institution with a particular language as a medium of instruction would also likewise find it impossible to go to another institution with a different language as a medium of instruction even though the subject of his teaching and study may have been more developed in the latter institution than in the former. These factors are bound to affect co-ordination of standards in institutions for higher education and research and scientific and technical institutions. Whether or not to allow the Universities to adopt regional languages as the media of instruction even at the cost of sacrificing the standards in institutions of higher education or research and scientific and technical institutions and making it impossible for free transference of students and teachers from one University to the other, is a matter of policy with which we are not concerned. Opinions amongst educationists on this question may differ; some educationists may believe that it is necessary for the greatest good of the greatest number in a particular region that the regional language should be adopted as a medium of instruction for the University in such region even if it might result in the lowering of the standards in institutions of higher education or research and scientific and technical institutions, whilst some others may believe that uniformity of standards in institutions of higher education or research and scientific and technical institutions should not be sacrificed and that high standards in such institutions must be maintained under any circumstances. But that would be a matter of policy and we are not concerned which view is the correct one. We are concerned only with the legality of the impugned provision and in considering the legality of the impugned provision we have to consider whether the subject of medium of instruction in institutions of higher education is so connected with the topic of co-ordination and determination of standards in institutions of higher education that it can be said to fall within entry 66 of List I. We are for the reasons stated above of the opinion that the subject of medium of

instruction in institutions of higher education falls within entry 66 of List I. In this connection It may be noted that in September 1949, consequent upon a change-over effected by some of the Universities, the University Grants Commission felt constrained to appoint a Working Group to study the effects of such a change-over and to advise the Commission as to the steps which it should take. In its report dated 21st November, 1960. produced by Mr. Darn, the Working Group at page 5, expressed its apprehensions in the following words: -

"Some Universities fear that a kind of Gresham's Law may operate With regard to University standards. If for all India purposes or for any other competitions a degree or a class is material or is the minimum qualification, the pressure is strong for imitating those Universities which progressively lower the standards to secure eligibility or qualification for appointment. Local public opinion is vociferous if the acquiring of a degree or the securing of a class is more difficult in the local University than in a neighbouring one. So the race proceeds.....This variation of standards might become much greater, more rapid and even incapable of being estimated if the medium of instruction is changed and that too with varying degrees of preparation or no preparation at all."

The Working Group recommended that

"where the changes have been made so as to impair standards, the University Grants Commission should use its powers persuasive as well as legal, to prevent a fall in the standards".

We may make it clear that we do not regard these observations as final or superlative nor do We propose to use them as an aid to the construction of entry 66 of List I. We have quoted this passage only for the limited purpose of illustrating a situation where the Parliament might decide to intervene by legislation. If such a situation arises Parliament might well think it necessary to enact a law that all Universities must adopt a common language or languages as media of instruction for the purpose of attaining co-ordination, and uniformity of standards in institutions of higher education or research and scientific and technical institutions. Parliament might well take the view that during the transitional period until the national language can be adopted as a medium of instruction, English should continue as a common medium of instruction in all Universities and Parliament might in such an event enact a law for that purpose. Can it be contended that such a law for the purpose of achieving uniform standards or raising existing standards or coordinating standards in institutions for higher education and research and scientific and technical institutions is beyond the legislative competence of Parliament or constitutes an encroachment in the field of entry II of List II. In our view Parliament can legislate in regard to medium of instruction in Universities and other institutions for higher education or research and scientific and technical institutions affiliated to Universities under entry 68 of List I for the purpose of co-ordination and determination of standards in such institutions. If this be the valid test, as we think it is, there can be no doubt that the subject of medium of instruction in institutions of higher education

must fall within entry 66 of List 1.

43. If the subject of medium of instruction in institutions of higher education is covered by entry 66 of List I, as we hold it is, Parliament alone can legislate in regard to the subject of the medium of instruction and the State Legislature would be incompetent to deal with the same. Mr. Amin and the learned Advocate-General, however, relied on the doctrine of pith and substance and contended that the pith and substance of the impugned provision falls within entry 11 of List II and that the impugned provision is, therefore, valid notwithstanding a slight transgression into the field of entry 66 of List I. There are at least two good reasons why the doctrine of pith and substance cannot be invoked on behalf of the University and the State to support the validity of the impugned provision.

44. In the first place the doctrine of pith and substance cannot fall for consideration unless the subjects of entries in different lists overlap. If there is no overlapping, the matter is capable of easy solution: in fact no problem arises. The only question then is: does the impugned provision fall within the entry countervailing the legislative power? If the impugned provision does not fall then obviously, there being no overlapping, the impugned provision cannot fall within any entry in the prohibited list and would be within the competence of the Legislature. If on the other hand the impugned provision falls within an entry in the prohibited list, then again, there being no overlapping, the impugned provision cannot fall within the entry which is claimed to confer legislative power and in that event the impugned provision would be ultra vires as being beyond the competence of the Legislature. But difficulty often arises because in practice it is not possible to make a clean cut between the powers of the various Legislatures: they are bound to overlap from time to time. The entries in the Legislative lists are, to quote the words in *The State of Rajasthan Vs. G. Chawla and Dr. Pothumal*, , merely "enumeratio simplex (sic) categories" and are not mutually exclusive with any mathematical precision. "It must, therefore, happen from time to time" as observed by Sir Maurice Gwyer, C. J., in a passage in AIR 1941 47 (Federal Court) :-

"that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that"

This oft-quoted passage illustrates the reason behind the doctrine of pith and substance and clearly shows that this doctrine can have no application where there is no overlapping of subjects of legislation. The Privy Council in AIR 1947 PC 60, approved this passage as correctly describing the grounds upon which the

doctrine of pith and substance is founded and Lord Porter delivering the judgment of the Privy Council observed :

"Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap."

He then quoted the above passage from the Judgment of Sir Maurice Gwyer, C. J., and in reference to it stated :

"Their Lordships agree that this passage correctly describes the grounds upon which the rule is founded, and that it applies to Indian as well as to Dominion legislation. No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting time lists for two or even by arranging for a hierarchy of jurisdictions.

Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with."

It is, thus clear that unless there is overlapping of subjects of legislation, the question of ascertaining the pith and substance of the impugned provision for the purpose of determining whether it is legislation with respect to the subject in one list or with respect to the subject in another list cannot arise. In the present case if the words "subject to the provisions of entries 63, 64, 65 and 66 of List I" were not present in entry 11 of List II and the subject of education including Universities could be regarded as including as an ancillary or subsidiary matter, the subject of medium of instruction in institutions of higher education, as contended by Mr. Amin and the learned Advocate General, it is obvious that there would have been overlapping between entry 66 of List I and entry 11 of List II and in that event the University and the State could have invoked the doctrine of pith and substance. Whether the doctrine of pith and substance could have saved the validity of the impugned provision is another matter, but the foundation for the application of the doctrine could have been secured. But this foundation is wanting. The words "subject to the provisions of entries 63, 64, 65 and 66 of List I" have the effect of excluding from the content of entry 11 of List II the subject-matter of entry 66 of List I and there cannot, therefore, be any overlapping between the subjects of legislation in entry 66 of List I and entry 11 of List II.

The doctrine of pith and substance cannot, therefore, be called in aid by the University and the State.

45. But even if the doctrine of pith and substance could be invoked by the University and the State, we do not see how it can assist them in the present case. Of course for the purpose of the present argument we will assume in favour of the University and the State that the subject of medium of instruction in institutions of higher education falls not only within entry 66 of List I but also within entry 11 of List II -- an assumption which, in our opinion is for reasons already stated by us, plainly unsound. The question then would be: What is the pith and substance of the impugned provision, namely, Section 4 (27) with the new proviso? Does the impugned provision in its pith and substance fall within entry 66 of List I or within entry 11 of List II. The answer to the problem is not difficult to find if we apply the test formulated by the Supreme Court in *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*, where Kapur, J., observed in the passage already quoted above, namely:

"It is within the competence of the Central Legislature to provide for matters which may otherwise fall within the competence of the Provincial Legislature if they are necessarily incidental to the effective legislation by the Central Legislature on a subject of legislation expressly within its power."

Can it be said that the provision regarding medium of instruction and examination in Section 4 (27) with the new proviso was necessarily incidental to the effective legislation by the State Legislature on the subject of the Gujarat University under entry 11 of List II? Was it necessary for the effective legislation by the State Legislature on the subject of the Gujarat University that it should incidentally, provide for the subject of medium of instruction and examination in the Gujarat University? The answer is in the negative and is best illustrated by a reference to other Acts passed by State Legislatures establishing new Universities or dealing with existing Universities. There are Acts recently passed by State Legislatures such as the Maharaja Sayajirao University of Baroda Act, 1949, the Calcutta University Act, 1931. and the Bombay University Act, 1953. In none of these Acts is there any provision relating to medium of instruction and examination. It is obvious that the State Legislatures passing these Acts did not consider it necessary for effective legislation on the subjects of the respective Universities to lay down a particular language as a medium of instruction and examination or to place an embargo on any particular language as a medium of instruction and examination. The *Shrimati Nathibai Damodar Thackersey Women's University Act, 1949*, was brought into force on the same day as the *Gujarat University Act, 1949*, but this Act also does not contain any such provision as Section 4(27) or the proviso prescribing a particular language as a medium of instruction and examination or prohibiting a particular language as a medium of instruction and examination. In fact numerous Acts establishing Universities can be cited in which the State Legislatures did not consider it necessary to lay down or to prohibit any particular medium of instruction and

examination and left it to the Universities to decide which language they should adopt as a medium of instruction and examination. Even in the Vishva Bharati Act, 1956, Parliament did not think it necessary for effective legislation on the subject of the Visbva Bharati University to provide for the medium of instructor and examination. These Acts show that the provision as regards medium of instruction and examination cannot be said to be necessarily incidental to effective legislation On the subject of Universities. It is not altogether insignificant, as Mr. Daru informs us, and that has not been contradicted either by Mr. Amin or by the learned Advocate-General that there is hardly any University Act in any State in India which has a provision akin to Section 4 (27) laying down any particular language as a medium of instruction and examination or forbidding the use of any particular language as a medium of instruction and examination. How can under these circumstances any contention be maintained that in the present case it was necessarily incidental to the effective legislation by the State Legislature on the subject of the Gujarat University that a provision should be made in regard to medium of instruction and examination in the Gujarat University? Such a provision could not, in our opinion, be said to be an Incidental encroachment on the field of entry 68 of List I. Of course, at the date when the Gujarat University Act, 1949, was enacted the Constitution was not in force and the entire subject of education including Universities other than the Benaras Hindu University and the Aligarh Muslim University, being within the Legislative competence of the State Legislature it was competent to enact a provision relating to medium of instruction and examination in the Gujarat University. But the new proviso read with the substantive part of Section 4 (27) was certainly not a provision necessarily incidental to the effective legislation by the State Legislature on the subject of Gujarat University and could not be said to be an incidental encroachment on the field of entry 66 of List I so as to be saved under the doctrine of pith and substance. We reach the same conclusion even if we consider the object or purpose of Section 4 (27) with the new proviso. The Gujarat University was established both as a teaching and affiliating University with a view to decentralizing and reorganizing higher education in the Province of Bombay. There was until then one single University, the University of Bombay, for the whole Province of Bombay and the object or purpose of the Gujarat University Act, 1949, was to establish a beaching and affiliating University for the region of Gujarat as a step in the decentralization and reorganization of higher education in the Province of Bombay. The University of Bombay existed for the benefit of all students who resided in the Province of Bombay or who came to the Province of Bombay in pursuit of education, whether they belonged to one linguistic group or the other. The University of Bombay, therefore, followed as a medium of instruction and examination English which was the language of all other Universities in the country so that no student would be handicapped by reason of having to re-side in the Province of Bombay and receive education in the University of Bombay. The Gujarat University was established to serve the identical purpose in the region of Gujarat as the University of Bombay the reason for the establishment being nothing else than

decentralization and reorganization of higher education in the Province of Bombay. The University was, therefore, expected to cater to the needs of all students who might re-side in the region of Gujarat or who might choose to come to Gujarat for their education, whatever be their language, in the same manner as the University of Bombay did prior to the establishment of this University. There was no provision in the Bombay University Act 1928, which was the Act in force at the time when the Gujarat University Act, 1949, was passed relating to medium of Instruction and examination and no provision need, therefore, have been made in the Gujarat University Act, 1949 in regard to medium of instruction-and examination. Poona and Karnatak Universities were also established with a view to decentralizing and reorganizing higher education in the Province of Bombay and no provision regarding medium of instruction and examination was made in the Acts establishing those Universities since they too were established as a measure of decentralization and reorganization of higher education in the Province of Bombay and were intended to take the place of the University of Bombay in their respective areas of operation. The object or purpose of Section 4 (27) with the old proviso was, therefore, not to enact something which was necessarily incidental to effective legislation on the subject of the Gujarat University but to make a deliberate provision in regard to medium of instruction and examination which provision was not to be found in the Bombay University Act, 1928, and was not considered necessary in any of the Acts establishing the aforesaid Universities. The old proviso being substituted by the new proviso, by Act IV of 1961, the object or purpose of Section 4 (27) with the new proviso would remain the same and if that is the object or purpose of Section 4 (27) with the new proviso, as we find it is, it is obvious that the pith and substance of Section 4 (27) with the new proviso does not fall within entry 11 of List II but falls clearly within entry 66 of List I. It is clear that in enacting Section 4 (27) with the new proviso, the State Legislature has under the guise or pretence of an exercise of its own power of legislating on the subject of education including Universities attempted to carry out an object or purpose which is beyond its powers and a trespass on the exclusive field of Parliament. The effect of Section 4(27) with the new proviso is likely to interfere with co-ordination and determination of standards in institutions of higher education in the country and it is clear, therefore, that Section 4 (27) with the new proviso is by its effect calculated to encroach upon the field of entry 66 of List I which is exclusively within the domain of Parliamentary legislation. The State Legislature has, in our opinion, attempted to make use of its power to legislate under entry 11 of List II in such a manner as materially to interfere with the exclusive power of Parliament under entry 66 of List I and the new proviso is, therefore, ultra vires the competence of the State Legislature and cannot be saved by the doctrine of pith and substance. If Parliament finds it necessary to legislate in regard to the subject of medium of instruction and examination in Universities and colleges for the purpose of co-ordinating and determining standards in Universities and colleges -- which parliament can certainly do under entry 66 of List I Section 4 (27) read with the new proviso would materially hamper or stand

in the way of the exercise of such power by Parliament. It is clear that if an use is attempted to be made by a State Legislature of its legislative power in such a manner as to materially interfere with Parliamentary power, the action of the State Legislature would be ultra vires 1939 AC 117 : (AIR 1939 PC 53) (supra). Since in our opinion Section 4 (27) with the new proviso is calculated by its effect to interfere materially with the Parliamentary power under entry 68 of List I, the doctrine of pith and substance cannot help the University and the State in repelling the contention as regards the invalidity of the new proviso enacted by Act IV of 1901. The new proviso enacted by Act IV of 1961, is, therefore, in our opinion, null and void as being beyond the legislative competence of the State Legislature.

46. The learned Advocate-General then contended that if the new proviso was invalid by reason of its being beyond the competence of the State Legislature, the effect would be that the new proviso would disappear leaving the old proviso as it originally was. That would mean that the prescribed period for the use of English language even as "a" medium of instruction would be until May 1960 and no more and, therefore the Statutes of the University putting an embargo on English language as a medium would be valid as having been enacted under a valid law. He relied on *Frost v. State Corporation Commission* (1928) 73 LEd 483 and *Reitz v. Mealey* (1941) 88 LEd 21, find a passage from *Crawford's Construction of Statutes* (1940 Ed.) page 182 where the principle stated is that if the amendatory statute is wholly void, the statute sought to be amended is not affected but remains in force. The amendatory statute is as inoperative as if it had never been enacted; and the Act sought to be amended is at least reinstated in its effectiveness upon the established invalidity of the amendment. Assuming that this principle were to apply, even then the provisions of the Act as they stood before the amendment, if we are right in our construction, did not empower the University to stifle or prohibit English as a medium of instruction. They only enjoined upon the University not to continue that language as "the" and only medium and promote the use of Gujarati or Hindi as "a" i.e., one of the media or as an alternative medium or media as the case may be. The Statutes of the University which seek to put an embargo on all languages other than those two languages as media of instruction in affiliated colleges are in any event beyond the authority of the University and the Senate and, therefore, the learned Advocate-General cannot find solace in the proposition laid down in the American authorities or *Crawford's* work. Moreover, Statutes 207 and 209 were amended in March 1961 after Act IV of 1961 was enacted and it is the amended Statutes 207 and 209 with which the petition is concerned. As the amended Statutes 207 and 209 were enacted on the purported authority contained in the new proviso to Section 4(27) the now proviso being invalid, the amended Statutes must also fall with the new proviso and must be declared null and void.

47. The third contention was that in any event, if the construction sought to be put on Section 4(27) and the proviso whether old or new, by the State and the University was correct, namely that under that provision the University was

entitled to enforce Gujarati or Hindi as the sole medium of instruction and examination or even as one of the media of instruction and examination on affiliated colleges and to forbid the use of English as a medium of instruction and examination in affiliated colleges, that provision was void as being inconsistent with and Violative of Articles 29(1) and 30(1). Article 29(1) confers a fundamental right upon a section of citizens residing in India or any part thereof having a distinct language, script or culture of its own to conserve the same. Clause (2) of Article 29 prohibits a denial of admission to educational institutions maintained by the State Or receiving aid out of State funds on the ground only of religion, race, caste, language or any of them. Reliance was placed on Article 30(1) which confers a right on all minorities whether based on religion or language to establish and administer educational institutions of their choice. It was argued that Articles 29(1) and 30(1) should be read together and when so read, they would mean that a minority whether religious or linguistic in a particular part of the territory of India, has a right to conserve its religion or language and as a corollary of that right Article 30(1) guarantees to such a minority the right to establish and administer educational institutions of its choice. Thus while Article 29 guarantees to a minority the right to maintain religious and charitable institutions Clause (1) of Article 30 guarantees to such a minority the right to establish its own educational institutions and to administer them.

48. In order to establish that Articles 29(1) and 30(1) are applicable, the authorities of St. Xavier's College filed a supplemental affidavit and also produced the Memorandum of Association and Articles of Association of the Xavier Kelavni Mandal Private Ltd., which has established and is at present conducting, the College of which the third opponent is the Principal. We allowed the supplemental affidavit to go on "record as" we felt that it was in the interest of justice to do so though it was objected to both by Mr. Amin and the learned Advocate-General on the ground of delay. No such ejection was taken to the memorandum of Association and the Articles of Association going on record. Before admitting the supplemental affidavit, we informed Mr. Amin and the learned Advocate-General that if they desired, we would permit them to file affidavits in reply and if necessary, even adjourn the case to enable them to file such affidavits. But both of them pointed out that they did not wish to file any affidavits in reply. The supplemental affidavit points out that St. Xavier's College was established and is being conducted with the object of conserving the culture of Christians, a minority in this State within the meaning of Article 30(1). Even if we do not take into consideration the supplemental affidavit, the Memorandum of Association and the Articles of Association of the Company make abundantly clear that St. Xavier's College has been established for the promotion of religious and cultural interests of those who follow the tenets of the Roman, Catholic faith. It cannot be gainsaid that persons following these tenets would be a minority in the State, religious and/or linguistic, the members of which would have the right to conserve their own culture and to establish and maintain educational

institutions of their choice.

49. The words "of their choice" in Article 30(1) are of wide import, there being no restrictive language therein used and if read with Article 29(1) would mean that a minority has a right not only to conserve its own language and culture but also has a right to establish, educational institutions of its choice and to administer them in such manner as the members thereof choose without the State having a right to impose upon them any particular mode or method of administering them. The words "of their choice" do not connote, and there is nothing in Article. 30(1) to, show, that instruction imparted in such institutions need be imparted only in the language of such a minority. If a minority were to establish an educational institution to conserve and propagate its language or culture, the Constitution gives to such a minority such a right as also the right to administer it in such suitable manner as members of such minority think fit. To conserve a culture or language includes the right to promote it by propagating it. Consequently a minority may decide to establish an educational institution to impart instruction best suited to its culture in a language which is not only its own language, if it has such distinctive language, but in some other language which it considers best suited for conserving its culture. The right to administer such an educational institution implies that the State has no right to interfere in the mode and method of such administration. Of course the words "to administer" do not mean "to maladminister" and therefore Where an institution seeks State aid, the State would, have the general right before it grants such aid, to impose reasonable directions.

50. Considered from this point of view, Statutes 207, 208 and 209 have clearly the effect of prohibiting St. Xavier's College from imparting instruction in English language which was the language so far used as the medium of instruction in that institution as in others. These Statutes would make it impossible for a minority to administer its own educational institutions in the sense of imparting instruction therein in English language if the members of such a minority so desired, for a breach of the Statutes would mean automatic disaffiliation u/s 38A of the Act. Under the provisions of the University Grants Commission Act, no college or educational institution can grant any degrees or diplomas. Consequently a college or an institution once disaffiliated must necessarily close down. The Statutes of the University prohibit as media of instruction all languages except Gujarati and to a very limited extent Hindi. Section 4 (27) if construed as Mr. Amin and the learned Advocate-General wanted us to construe, prohibits amongst all languages only English language being used as a medium of instruction and Section 38A furnishes a penalty for the breach of the University Statutes, a penalty not provided for to the Act until 1961. It is clear, that the real effect and even the purpose of these enactments, viz. Section 4 (27) and Section 38A of the Act and the Statutes, framed under the purported authority thereunder though passed under the guise of promoting Gujarati language are that at least one minority, viz., the Anglo Indians, whose mother tongue is English, is prohibited by these enactments from establishing

educational institutions of its choice and to administer them in the manner such minority would think best suited. There can hardly be any doubt that they, are violative of the fundamental rights conferred on minorities by Articles 29(1) and 30(1). They are also repugnant to the spirit of liberal toleration enshrined in Article 350A which provides not only that it is open to minorities to educate their children in their own tongue but imposes an obligation upon the State to provide for such instruction. A legislation which in effect prohibits an educational institution established by a minority to use a particular medium of instruction of its choice is a clog and a restriction on the minority's right to administer Such institution and therefore violative of the provisions of Articles 29(1) and 30(1). The right to establish and administer educational institutions must as of necessity include the right to select the medium through which instruction should be imparted in such institutions.

51. In 1959 SCR 995: (AIR 1958 SC 956), questions relating to the rights of minorities under these Articles were canvassed and answered. At p. 1047 (of SCR) : (at p. 976 of AIR) of the report it has been observed:

"It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and there-fore the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script Or culture and that is what is conferred on all minorities by Article 30(1)."

The observations made in that decision at pp. 1047 to 1050 (of SCR) : (at pp. 976 to 977 of AIR) of the report show that Christians Muslims and Anglo-Indians were all held to be minorities in the State of Kerala and therefore entitled to the rights under Articles 29(1) and 30(1) by reason of their being numerically smaller throughout the State and the Bill in question being sought to be made applicable to the State. That being the criterion, Christians in the State of Gujarat must be held to be a minority. This position cannot be and in fact, has not been, controverted on behalf of the State or the University. As regards the content of Article 30(1) their Lordships observed at p. 1053 (of SCR) : (at p. 979 of AIR):

"What the article says and means is that the religious and linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation on the subjects to be taught in such educational institutions." If there is no limitation on the subjects to be taught in such educational institutions, there can also be no limitation as to how and in what language those subjects should be taught in such institutions. Their Lordships then further observed that the Article leaves it to the choice of the members of the minority to establish such educational institutions as would serve two purposes, viz, the purpose of conserving their religion, language or culture and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the Article in terms gives a minority, whether based on religion or language, two rights viz. the right to establish and the right to administer

educational institutions of its choice, The key to the appreciation of the true meaning and implication of the Article lies in the words "of their own choice". As stated in the case of the Kerala Bill In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, :

"the ambit of the rights conferred by Article 30(1) has therefore to be determined on a consideration of the matter from the point of view of the educational institutions themselves." Visualizing the danger of the State Legislatures legislating by apparently keeping within their limits but by indirectly so acting as to infringe the constitutional provisions, their Lordships observed at p. 1063 (of SCR) : (at p. 983 of AIR), that the legislative powers conferred by Articles 245 and 246 are subject to the other provisions of the Constitution and in particular Part III which are binding on the State Legislatures.

"The State Legislatures cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the same result. Even the Legislature cannot do indirectly what it certainly cannot do directly." Therefore in determining the validity of an impugned Act, it is not only permissible but necessary to ascertain the real effect and purpose of such an Act.

52. The right of minorities to establish educational institutions of their choice as laid down In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, :

"must mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions."

It is true that there is no fundamental right for recognition by the State of an educational institution, in this case, affiliation to the University which alone entitles an affiliated college to submit its scholars in examinations held by the University. But to deprive them of this right except upon terms tantamount to surrender of their constitutional right of administration of educational institutions of their choice is in truth and in substance to deprive them of their right under Article 30(1). A legislation which prohibits an educational institution established and administered by a minority to use a particular language as the medium of instruction is contrary to the constitutional right of such a minority under Article 30(1) and is nothing but an attempt by the majority, religious or linguistic, to enforce its will upon such a minority. That is not only violative of Article 30(1) but contrary to the very spirit of liberalism and toleration and the obligations towards minorities embedded in our Constitution.

53. A religious or linguistic minority may choose a particular language for its educational institution for conserving and promoting its own culture or language and/or for giving a thorough and adequate general education to their children. Members of such a minority might well regard it essential that education of their children should be in accordance with the tenets of their religion and they might bona fide and quite honestly hold that such education cannot be obtained in

ordinary schools and colleges designed for the members of the majority but can only be ensured in institutions conducted under the guidance of people well-versed in the tenets of their religion and the traditions of their culture. They might also honestly hold that education should be imparted to their children in an atmosphere congenial to the growth of their culture. The members of a minority, whether linguistic or religious might well regard it essential that such education should be imparted in a language of their choice for conserving or promoting their culture or language and/or for equipping their children adequately for future destiny. As In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , the Constitution gives the minorities two distinct rights, one a positive and the other a negative one, viz.:

"(1) The State, is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions including those of the minorities, religious or linguistic; and

(2) The State is under a negative obligation as regards those institutions not to prohibit their establishment or to interfere with their administration."

The right to administer its own educational institutions must therefore carry with it the right to choose any particular language as the medium of instruction therein. The right to administer must inevitably include the right to take into account such considerations as the suitability of a particular language through which the tenets of the religion of the minority can be taught or its culture preserved, the suitability and sufficiency of textbooks and other works in such language and the availability of good and competent instructors who can teach its religion, tenets or promote its culture in a particular language. The authorities of a college established by such a minority might well consider that there might result maladministration, chaos, inefficiency or lowering of teaching standards if instruction in such a college were to be imparted in a regional language which cannot boast either of proper text-books and other literature or of competent teachers. The crux of the protection to a minority given by Articles 29(1) and 30(1) is the prevention of a majority from imposing its language and the right of the minority not to be interfered with in its own choice of medium of instruction which must be and is part of the right to establish and administer its own educational institutions. Any interference with or hampering of such a right by legislation would be constitutionally invalid.

54. But it was strenuously contended on behalf of the State and the University that the petitioner did not claim to be a member of a minority whose constitutional rights under Articles 29(1) and 30(1) were infringed and therefore the petitioner cannot challenge the validity of the impugned sections so long as his own constitutional rights were not affected. It was urged that the position would perhaps have been different if members of a minority had filed this petition and challenged the validity of the impugned provisions on the ground of breach of Articles 29(1) and 30(1). Mr. Daru on the other hand submitted that

the petitioner had sufficient interest in Maintaining the petition, that his right as a parent to direct and guide the education of his son and prepare him for his future obligations as a citizen of this nation was being interfered with by the statutes of the University and the impugned provisions of the Act which were invalid by reason of their being violative of Articles 29(1) and 30(1). He contended that "he was therefore entitled to challenge them under Article 13 which inter alia provides that the State shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution.

55. The question therefore is whether the petitioner can raise questions of validity of the impugned sections on the ground of Articles 29(1) and 30(1) when there is no allegation in the petition that his own fundamental rights have been infringed. In *Pierce v. Society of Sisters of Holy Names* (1924) 69 LEd 1070 the Supreme Court of the United States of America observed that a child is not the mere creature of the State. Those who nurture him and direct his destiny have the right coupled with the high duty to recognise and prepare him for additional obligations. Similarly in *Meyer v. State of Nebraska* (1922) 67 LEd 1042 , the Supreme Court said that it is the natural duty of a parent to give his children education suitable to their station in life. Education and acquisition of knowledge are matters of supreme importance and corresponding to the right of control of a parent it is the natural duty of the parent to give education to his children suitable to their station in life. It was also held that by forbidding the teaching of languages other than English below the 8th grade in schools, the State Legislature there attempted materially to interfere with the calling of modern language teachers, with the opportunity of pupils to acquire knowledge and with the power of the parents to control the education of their own. In *August Bartels v. State of Iowa* (1922) 67 LEd 1047, the Supreme Court for reasons stated in the case of *Nebraska State* (1922) 67 LEd 1042, struck down as invalid the Iowa statute requiring the use of English language as the medium of instruction in all schools within the State. Though these decisions based as they are on the fourteenth Amendment which refers to the doctrine of due process of law may not be quite apt for construing Articles 29 and 30 of our Constitution, it cannot be doubted that parents who nurture their children have the right to direct their destiny coupled with the duty to prepare them for their obligations as citizens of the country.

56. It was urged that the sole object of the University Statutes and the impugned sections of the Act, if construed as submitted by the State and the University was to stifle English language and to compel all non-Gujarati knowing sections of the public in this State to educate their children in Gujarati or Hindi and no other language. Indeed, Mr. Amin went so far as to advocate the proposition that the University and the State have the right to say that those who wish to come and reside in this State shall have to learn Gujarati language and to agree to their children being instructed in that language alone. It is needless to say that this is a proposition very near to apartheid and repugnant to our national policy of integration, the unity of the country and the very spirit of the preamble of our

Constitution. It was also argued that this, being a petition under Article 229 and not under Article 32, it was not necessary that the petitioner must establish that his own fundamental right was being infringed or threatened.

57. In *The State of Bombay Vs. Bombay Education Society and Others*, , besides the petition filed by the Society whose members were the members of the Anglo-Indian community, there were two other petitions filed by two parents, one being a Christian and the other whose mother tongue was Gujarati, No objection was there taken that these parents and their wards had no sufficiency of interest to maintain their respective petitions. It is true that the petitioner's son to whom admission has been refused in the Inter Arts Class where medium of instruction is permitted to be English for this year only, is not made a co-petitioner, but no objection has been taken either by Mr. Amin or by the learned Advocate-General in the course of their arguments on that footing, though a ground to that effect has been taken in the affidavit in reply. It cannot however be gainsaid that the personal right and liberty of the petitioner to guide and direct the education and career of his son and to prepare him for his future destiny by having him instructed through the medium of instruction of his choice are being infringed by the enactment which prohibits the use of English language as a medium of instruction and so far as the Statutes of the University, a breach of which is made punishable u/s 38A of the Act, are concerned they prohibit the use of any other language except Gujarati and Hindi to a limited extent. There is no doubt that the effect of the circular issued by the Vice-Chancellor is that though St. Xavier's College is permitted to have a class in Inter Arts with English as a medium of instruction for this academic year, the petitioner is not permitted to have his son instructed in that class only because his son has not had his secondary education with English as the medium of instruction.

58. It was further contended on the authority of the *Bombay Educational Society's* case *The State of Bombay Vs. Bombay Education Society and Others*, , that this circular was in breach of Article 29(2) for that Article cools fundamental right upon every citizen and is not confined to a member of a minority to have admission in any educational institution which receives State aid. It is not disputed that St. Xavier's College receives State aid. At page 580 of the report (SCR) : (at p. 566 of AIR), the Supreme Court observed negating such a contention that

"to limit this right only to citizens belonging to minority groups would be to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted in an educational institution for the maintenance of which they make contributions by way of taxes."

In *The State of Madras Vs. Srimathi Champakam Dorairajan*, , also the Supreme Court held that the right to get admission into any educational institution is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. Is then the right of the petitioner under Article 29(2) infringed by the impugned provisions of the Act and the

University Statutes purported to have been made thereunder? Though under Article 29(2) the right of admission in educational institutions receiving State aid is not confined to members of a minority but is one guaranteed to all citizens, the clause envisages a condition before it can be applied. That condition is that a denial of admission must inter alia be on the ground only of language. The petitioner's son was in fact admitted in St. Xavier's College and to all the amenities of the College existent at the date of his admission. Assuming that the refusal to admit him in the English class in Inter Arts division of the College was tantamount in substance to non-admission there would still be two difficulties in applying Article 29(2), viz., (1) that the English Class was permitted to be opened after his admission in the College on the basis that he would be instructed in Gujarati or Hindi and (2) that admission in that class was not refused on the ground that his tongue was Marathi but on the ground that he did not fulfil one of the two conditions for such permission, that is, that he was not instructed in English as his medium of instruction in his secondary education. Article 29(2) therefore cannot have any application in this case.

59. But the point whether the petitioner can raise in this petition questions as to invalidity of the impugned provisions of the Act On the ground of breach of Articles 29(1) and 30(1) requires different considerations.

60. In AIR 1946 66 (Privy Council) , the Privy Council laid down the test of construction of a Statute in the following words :

"The proper test as to whether there is a contravention of the sub-section is to ascertain the reaction of the impugned Act on the personal right conferred by the Sub-section (Section 298(1) of the Government of India Act, 1935) and while the scope and object of the Act may be of assistance in determining the effect of the operation of the Act on a proper construction of its provisions, if the effect of the Act so determined involves an infringement of such personal right, the object of the Act, however laudable, will not obviate the prohibition of Sub-section 1."

It is true that under entry 11 of List II the State has been empowered to legislate on education including Universities. Those powers cannot be lightly disputed if the exercise of them is not inconsistent with or contrary to the fundamental rights guaranty under the Constitution. But it cannot be gainsaid that by reason of Sections 5 and 38A of the Act, St. Xavier's College, as all other colleges and institutions which are or may be established by minority groups are in fact debarred from imparting instruction in a language or languages of their choice. Taking the test laid down by the Privy Council and confirmed by the Supreme Court in Bombay Educational Society case, The State of Bombay Vs. Bombay Education Society and Others, , the true effect of sections 5 and 38A is to debar all educational institutions established or which may be established by minority groups from imparting education in the language of their choice. The minority groups in effect are thus prevented from establishing educational institutions of their own choice if they are prevented from imparting instruction to their scholars in their own language or the language of their choice. The right under Article

30(1) is not a narrow or a technical right to establish and administer educational Institutions but includes impliedly the right of the members of a minority to instruct in a manner of their choice. As observed by Mahajan J. as he then was, in *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , in order to decide the constitutionality of a Statute it is necessary to examine with some strictness the substance of the legislation and determine what it is that the legislature has done. The combined effect of sections 4 (27), 5 and 38A of the Act, assuming that Section 4 (27) contains power in the University to enforce Gujarati Or Hindi as the medium of Instruction is, in our view, to violate the provisions of Article 29(1) and Article 30(1).

61. The main attack of the learned Advocate-General on the question of invalidity was that In the supplemental affidavit by the authorities of St. Xavier's College it was nowhere averred that the distinctive culture of the Roman Catholic Christians who have founded St. Xavier's College and other educational institutions in Gujarat can be conserved only if education to their children in this college was imparted through the medium of English and not in Gujarati or Hindi. In other words, the members of the minority have not declared in the affidavit that They have made a choice of English language as the language through which their religion and culture can best be conserved and nurtured and that being so, there was no conflict between their fundamental right guaranteed under Articles 29(1) and 30(1) and the impugned provisions of the Act and the University Statutes in question. He contended that in the absence of such a concrete and tangible conflict, the Court is not entitled theoretically to imagine a possible clash and hold on such a hypothetical possibility the impugned enactments as constitutionally invalid as such a construction would make it impossible for any law on language to be validly enacted. The learned Advocate General however overlooks the fact that when the Constitution was made its makers were aware of the existence of minorities in his country and it was with a view to allay their fears and to afford protection to their religion, culture and language that these Articles together with Article 26 and others were inserted in the Constitution keeping the ideal of a secular State in mind. If an Act is inconsistent with the provisions of Articles 29(1) and 30(1), it is bad because it is violative of them and not because it is challenged or only when a conflict between it and the fundamental rights guaranteed by these Articles is established. The Act in question would be bad not merely on the ground of an actual clash having taken place but because in its nature and character it violates the rights or puts them into jeopardy. Even if therefore a minority e.g., "Anglo-Indians or Christians in Gujarat, were not to come forward to challenge the Act after making a choice of a particular language as one through Which education in their educational institutions should be imparted if a scrutiny of the impugned legislation satisfies the Court that it infringes the provisions of Articles 29(1) and/or 30(1) it would be enough. To accept the contention of the State would mean that a legislation though violative of the provisions of the Constitution is valid until challenged and becomes invalid only when someone challenges it successfully. To hold so would

be to deprive much of the force of the protection given by the two Articles and to say that a legislation which is bad from its inception remains valid until someone has it held to be invalid. There is nothing in the two Articles to so indicate and the learned Advocate General was fair enough to state that he was not able to find any precedent which lays down the narrow construction he canvassed. As regards his apprehensions that if the contention of the petitioner were accepted no legislation on the question of medium of instruction would be possible, the answer has been given on a similar point raised by the learned Attorney General in the Bombay Education Society's case at page 585 in *Satya Dev Bushahri Vs. Padam Dev and Others*, , *The State of Bombay Vs. Bombay Education Society and Others*, at where the Supreme Court observed that the powers of the State are ample for making regulations including a requirement that instruction should be given in a particular language and such powers cannot be lightly disputed so long as their exercise was not inconsistent with or contrary to the fundamental rights guaranteed to the citizens. Such being the fundamental right, their Lordships stated.

"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." *Satya Dev Bushahri Vs. Padam Dev and Others*, : *The State of Bombay Vs. Bombay Education Society and Others*, .

62. As regards the petitioner's right to challenge the validity of the impugned provisions of the Act, it is true that in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, the Supreme Court held that Article 32 was not directly concerned with the determination of the constitutional validity of particular enactments, what it aimed at was the enforcement of fundamental rights and to make out a case under the Article, it was incumbent upon a petitioner to establish not merely that the law complained of was beyond the competence of the Legislature but that it affected or invaded his fundamental right of which he would seek enforcement by an appropriate writ or order. But that was a case under Article 32 find not under Article 226 which confers jurisdiction on High Courts to issue writs, orders and directions not only for the enforcement of any of the rights conferred by Part 3 but also "for any other purpose". The words "for any other purpose" show, that the High Court has power in exercise of its extraordinary jurisdiction to issue a writ where there is a fundamental right and that is infringed and secondly to issue such a writ where there is a legal right and that is infringed. In *The State of Orissa Vs. Madan Gopal Rungta*, , the Supreme Court held that it was not merely on the infringement of a fundamental right that a High Court could exercise its jurisdiction under Article 226 but that the language of that Article showed that it could also issue writs for any other purpose. The existence of a right therefore is the foundation of the exercise of jurisdiction under Article 226. If (therefore a petitioner establishes that his right as distinguished from a fundamental right is infringed or jeopardised by a law which contravenes the provisions of the Constitution or is beyond the legislative competence of the State, there is no reason why he cannot be allowed to

challenge its validity. There is direct authority on this aspect of the case which answers the contention raised by the learned Advocate General. In *Truax v. Raich* (1915) 60 LEd. 131, Raich a native of Austria and an inhabitant of the State of Arizona, but not a qualified elector, was employed as a cook by Truax in his restaurant in the City of Bisbee Chochise County. Truax had nine employees of whom seven were neither "native born citizens" of the United States nor qualified electors. After the election at which the impugned Act was passed, Raich was informed by his employer that when the law was proclaimed, and solely by reason of its requirements and because of the fear of its penalties that would be "incurred in case of its violation, he would be discharged. Thereupon Raich filed a bill in the District Court of the United States for the District of Arizona, asserting inter alia that the Act denied to him the equal protection of laws and hence was contrary to the 14th Amendment. He made the Attorney-General of the State and the County Attorney as defendants together with Truax, alleging that those officers would prosecute his employer Truax unless he complied with the Act and that in order to avoid such a prosecution the employer was about to discharge him and asked for a declaration that the impugned Act was unconstitutional and restraining action thereunder. Soon after the bill was filed, an application was made for an interim injunction. After notice of the application, Truax was arrested for the violation of the Act On the ground that the law officers were determined to apply the Act and there was therefore danger of Raich's immediate discharge from employment, the District Judge granted a temporary restraining order, A contention similar to the one raised by the learned Advocate-General was also raised there viz. Shut Raich's employment with Truax was not for a term but was at will and therefore he could be discharged, at any time for any reason or no reason at all, the motive of the employer being immaterial. The contention in other words was that Raich had no legal right arising from a contract of employment and therefore he could not contend that his legal right was affected by the Act. It was also urged that he could not sue except to redress his own grievance and that the servant cannot complain for the master and that it was the master who was subject to Prosecution and not the complainant. The Supreme Court held negating both the contentions that (1) the fact that the employment was at the will of the parties did not make it one at the will of others and the employee had manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and (2) that the discharge of the complainant would be solely for the purpose of meeting the requirements of the Act and avoiding threatened prosecution under its provisions and therefore it would be idle to call the injury indirect or remote. For these reasons the Supreme Court held that Raich was entitled to maintain the action. On the same principle the Supreme Court in *Barrows v. Jackson* (1952) 97 LEd 1586, held that if an unconstitutional Act affects or causes injury, the person who suffers such injury can maintain an action challenging the validity of such an Act, though it affects not his but others" constitutional rights. One of the authorities cited there "with approval was the case of (1924) 69 LEd 1070 , already referred to by us. It is not therefore necessary for a petitioner to

establish that his fundamental right is affected or infringed in order to be able to maintain a petition under Article 226 challenging the constitutionality of an Act which contravenes the provisions of Part III of the Constitution, nor is it incumbent upon him to show, as was contended by the learned Advocate-General, that his right arising either under a Statute or a contract was infringed or threatened. It would be sufficient, in order to maintain a petition to establish an Act unconstitutional on the ground of breach of the provisions of the Constitution, that it causes or threatens injury to him. We are fortified in this conclusion by the observations of the Supreme Court in *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . where the learned Attorney-General raised exactly the very same contention as Mr. Amin and the learned Advocate-General have done and relied on *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, . Their Lordships discounted the contention in the following words:

"It is then urged by him that, that being so, the preference share-holders cannot be allowed to complain of the infringement of the rights of the Company or of the other persons which, does not concern or affect them. This argument, however, overlooks the purpose said scope of the suit filed by the appellant for himself and other preference share-holders. The appellant is disputing his liability to pay the call made by the directors appointed under the Ordinance. He is therefore entitled to show that the directors who have made the call are not competent to do so. It is open to him to allege and prove, if he can, that the gentlemen who have purported to make the call are not competent to do so because they are not the directors of the company." They then stated :

"The appellant could show that the Ordinance under which these persons were appointed was beyond the legislative competence of the authority which made it, or that the ordinance has not been duly promulgated. If he can with a view to destroy the locus standi of the persons who have made the call raise the question of the invalidity of the Ordinance on the grounds I have just mentioned, I can see no valid reason why, for the self-same purpose, he should not be permitted to challenge the validity of the Ordinance on the ground of its unconstitutionality for the breach of the fundamental rights of the Company or of other persons. He may not be interested in or concerned with the facts which constitute unconstitutionality e.g. the taking of possession of the property of the Company or of the other persons, but he is certainly interested in getting cut of the law so as to destroy the very foundation of the Status of the persons who have made the call and thereby repel the attack on him and avoid his own liability. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , the petitioner was held to have suffered no loss of his own fundamental right as a share-holder and therefore by raising the question of unconstitutionality of the Ordinance on the ground of the breach of the fundamental rights of the Company or of the other persons, he was really fighting the battle of the Company and the other persons and not of his own. Here the position is different. Here the law has made the imposition of a liability on him and other preference share-holders

possible and he is seeking to resist that liability and as in the premises he is directly affected by the Statute, he has sufficient interest to challenge its validity." It was argued that these observations were made in a suit and not in a writ petition, but at page 134 of the report, Das, J. as he then was dealing again with the same point negated it by stating that

"the mere form of proceeding made no difference. The true principle being that only a person who is directly affected by a law can challenge the validity of that law and that a person whose own right or interest has not been violated or threatened cannot impugn the law on the ground that somebody else's right has been infringed, the same principle must prevail irrespective of the form of the proceeding in which the question of constitutionality is raised".

It cannot be denied, though the American decisions may not be a guide to the Interpretation of the provisions of Part III of the Constitution, that the petitioner is entitled as a parent to direct the education of his son in the manner he considers best suited and to guide thereby his future prospects. The State has no concern and we hope, no right to direct him to do so in a particular manner. That can only happen in countries which do not boast of democratic Constitution. Though such a right may not arise from a Statute or a contract he is entitled and has the liberty in law to educate his son in the manner he thinks best. If such a right or liberty were to be affected in a manner similar to the one in (1915) 60 LEd 131, that is to say, if an institution like the St. Xavier's College were to refuse to instruct his son in English language as the medium of instruction only for the reason that the authorities of the College fear that they would incur penalties as a result of the University Statutes and the impugned provisions of the Act and for no other reason, he must be held to be a person whose interests are affected and to whose right and liberty injury is caused and therefore is a person having sufficient interest to maintain the petition challenging the validity of the impugned provisions of this Act which violates the fundamental rights of minorities and is therefore void. It would not be necessary for him to show that a minority has in fact successfully established or averred such violation or that a clash of choice of language by such a minority and the Act in question has in fact occurred. It would be sufficient if he can show from an examination of the provisions of the impugned Act that the effect or the real object or purpose is such that it is violative of the provisions of Articles 29(1) or 30(1). For these reasons, we are of the view that the contention of Mr. Amin and the learned Advocate-General that the petitioner is not entitled to raise questions as to the invalidity of the impugned provisions of the Act must be rejected.

63. In the result, we hold that:

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

University to lay down Gujarati or Hindi as a medium of instruction and examination for such institutions or to forbid the use of English as a medium of instruction and examination for and in such institutions.

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

(iii) The new proviso enacted by Act IV of 1981 constitutes an encroachment on the field of entry 68 of List 1 and is therefore beyond the legislative competence of the State and consequently null and void and Statutes 207 and 209 purported to have been made thereunder are also therefore null and void.

(iv) Alternatively, even if on a true construction Section 4(27) or any other provisions of the Act empower the University to prescribe a particular language Or languages as media of instruction and examination, for affiliated colleges and prohibit the use of English as a medium of instruction and examination in affiliated colleges such provisions including Section 4(27) and Statutes 207, 208 and 209 purported to have been made thereunder as also the Circulars issued by the Registrar of the University in enforcement of those Statutes are void under Article 13(1) on the ground of their being inconsistent with and violative of the provisions of Articles 29(1) and 30(1). But in that case as laid down in Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, and M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, these provisions, Statutes and Circulars are rendered inoperative under Article 13(1) to the extent of and only in so far as they are inconsistent with the fundamental rights contained in Articles 29(1) and 30(1). Since these provisions, Statutes and Circulars are" rendered inoperative to the aforesaid extent, the effect is that the University has no power or authority to lay down or impose or enforce any particular language or languages as media of instruction on educational institutions or colleges established and/or administered by minorities, whether religious or linguistic. If therefore the authorities of St. Xavier's College decide to instruct its scholars in a language of their choice whether it be English Or any other language in pursuance of the fundamental right of the Christian minority in the State of Gujarat to establishing and administering educational institutions of its choice, neither the State Legislature nor the University has power or competence to prohibit them from doing so by directing them to have Gujarati or Hindi or any other language or languages as media of instruction to the exclusion of the language or languages of their choice Or otherwise. What applies to the Christians as a minority would also apply equally to the other minorities in the State.

64. For the reasons aforesaid we make the petition absolute in terms of prayers (a) (b), (c) and (d). Opponents 1, 2 and 4 will pay to the petitioner costs of the

petition. Since the petition involved complex questions of law and the Constitution and the hearing has taken a number of days we think that the petitioner should be allowed Rs. 2400/- as costs. Order accordingly.