

Krishnagiri District and Krishnagiri Vs The State of Tamil Nadu

Court: Madras High Court

Date of Decision: April 30, 2010

Acts Referred: Constitution of India, 1950 " Article 1, 14, 19, 19(1), 19(6)

Tamil Nadu Matriculation Schools Regulations " Regulation 42, 7

Uniform System of School Education Act, 2010 " Section 11, 12, 14, 2, 21

Hon'ble Judges: Prabha Sridevan, J; P.P.S. Janarthana Raja, J

Bench: Division Bench

Advocate: R. Krishnamoorthy, for V.P. Sengottuvel, in W.P.3051/2010, R. Muthukumarasamy, for V.P. Sengottuvel, in W.P.3052/2010, N.R. Chandran, for Paramasiva Doss, in W. Ps.3053 to 3056/2010, K. Doraisami, for Muthumani Doraisami, in W. Ps.3398 and 3516/2010, S. Silambanan, for Profex Associates in W. Ps.3386, 3387 and 3982/2010, S. Silambanan, for K. Sathish, in W.P.3410/201, S. Silambanan, for S. Kalimuthu, in W.P.3431/2010, K. Venkatachalapathy, for M. Sriram, in W.P.3603/2010, for the Appellant; P. Wilson, A.A.G.-III a/b., G. Sankaran, Spl. Govt. Pleader (Education), S. Naganathan, Addl. Govt. Pleader (Education) and Dakshayani Reddy, Government Advocate for Respondent-1 and 2 in W.P.3603/2010 and P.B. Suresh Babu, for Respondent-3 in W. Ps. 3053 to 3056, 3386, 3387, 3398 and 3410/2010, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Prabha Sridevan, J.

The ""Samacheer Kalvi Thittam"", i.e., The Uniform System of School Education Act, 2010 (Act 8 of 2010),

hereinafter referred to as "the Act", has been enacted to introduce a common syllabus, textbooks and examination system to the four streams of

education in the State. According to the State, this will achieve social justice and introduce quality education; and it is for the benefit of the children.

According to the writ Petitioners, who are Matriculation Schools, this Act is unreasonable and not in the interest of the child. The most important

persons, the children, were not there to express their views and so, with their best interests in mind, we have examined this issue.

2. The Petitioners in most of the writ petitions are Private Schools Associations from various Districts, while some writ petitions are filed by

individuals too. Only the Matriculation Schools contend that they are aggrieved. There is no challenge from the other two streams, viz. the Anglo-

Indian Schools and the Oriental Schools. The grievance of the writ Petitioners was expressed by learned senior counsel Mr. R. Krishnamoorthy,

Mr. N.R. Chandran, Mr. K. Doraisami, Mr. R. Muthukumarasamy Mr. M. Venkatachalapathy and Mr. S. Silambanan. The State was defended

by the learned Additional Advocate General, Mr. P. Wilson. In some of the writ petitions, a third party filed impleading petitions supporting the

State, which have been ordered.

3. According to the Petitioners, the Act interfered with the right of the children to choose the preferred system of education; it interfered with the

right of the parents to choose which system of education was suitable for their children; it interfered with a teacher's independence, imagination

and inventiveness in adapting and adopting teaching methods which were best for her class. Learned senior counsel submitted that the professed

object of the Act, which is to ensure social justice, will not be achieved, as "levelling down" the education pattern by making the system uniform

cannot achieve social justice. If the State was really interested in achieving social justice, it should uplift the ones who are lagging behind instead of

dragging down the ones who are superior. This is exactly what the State will achieve by the Act, and this has also been made clear in the counter

affidavit filed by the State, where it is stated that the Act will ensure that the prevailing gaps in quality will be eliminated and there will not be islands

of excellence or branded dullards among children, which shows that the islands of excellence will be brought down to a lower level. It was

submitted that in the present days of global competition, when the children of the State are grappling to meet those challenges, it is indeed

unfortunate that the State has brought such an arbitrary Act, which will in effect blunt the children's skills, as a result of which they will not be in a

position to meet the global challenge. According to them, the Act has made serious inroads in the matter of children's education. The Act does not

even give the schools the option to choose textbooks. The regimentation which the Act seeks to bring in, violates the right of the parent and that of

the child, and any attempt on the part of the schools to impart an individualistic type of education will be met with punishment in view of the penal

provisions contained in the Act. The provisions of the Act have no nexus to the objects that it sets out to achieve. The State had declared that it

will use the National Curriculum Framework-2005 ("NCF" in short), but many of the provisions of the present Act are contrary to the principles

set down in the NCF. The NCF stresses a "decentralised and participatory manner of education", which is exactly opposite to what the State has

introduced by the Act. The NCF has suggested that there should be multiple textbooks, the choice of which is left to the teachers, but the Act is

contrary to this. According to the learned senior counsel, these are only some of the examples to show how the Act is contrary to the framework

which it professes to fall in line with. Nowhere in the counter has the State said that there is any major deficiency in the system followed by the

schools at present. It that is so, then there is no justification to interfere with the schools' autonomy and the schools' right to decide how they will

impart education and transact with the children. Limiting the choice of systems of education amounts to violation of Article 14 of the Constitution of

India. According to the learned senior counsel, the popularity and growth of private schools is a clear indicator of the doubtful quality of

Government Schools. If the Government Schools had met with the standards that the parents expect for their children, the Matriculation Schools

would not have proliferated. The reason for doing away with the existing system does not pass the constitutional tests. There has to be a

consultation process before introducing any new system and school children are too precious to be treated as Guinea Pigs and it will really affect

the growth of the children. The system that is sought to be introduced will hinder the development of individuality of the children. The examination

pattern itself shows that it will reduce the quality. Three Science subjects are now combined into a single Science paper. The schools cannot be

treated like factories producing uniform toys. The State must realise that the schools should produce individualistic children capable of rising to the

challenges of life. The Act will not achieve this. When even the method of teaching is fixed, as is sought to be done by the Act, the teachers will not

have any inclination or inspiration to have a standard of excellence, and with the provisions for punishment looming large, their teaching capacity

will be severely curtailed. According to the learned senior counsel, Section 4 of the Act must be quashed forthwith, since it runs contrary to the Full

Bench judgment of this Court in *Tamil Nadu Tamil and English Schools Association Vs. The State of Tamil Nadu and two others*, , and the issues

raised in paragraph 25 of the counter are contrary to the Full Bench judgment.

4. All the learned senior counsel submitted that while the State has the power to legislate on this subject, the unconstitutionality springs from the

unreasonableness and irrationality. It was submitted that the attempt to unify the four systems cannot be sustained since un-equals cannot be

treated as equals and it would run contrary to the promise of Article 14. As per Section 4 of the Act, even for adopting English or Tamil as the

medium of instruction, approval will be required. It was submitted that the since both the CPC and the Code of Criminal Procedure are entries in

List-III, the State should have obtained the President's assent as per Article 254(2) of the Constitution, especially when the Act intends to

incorporate sections relating to bar of suits or initiation of criminal proceedings and without such assent, it is void. The Act is contrary to the

provisions of the Convention on the Rights of the Child and Convention against Discrimination in Education, as our Supreme Court has drawn from

such International Conventions while interpreting our Fundamental Rights, as in Vishaka and others Vs. State of Rajasthan and Others, . It was

submitted that by Regulation 7 of the Code of Regulations for Matriculation Schools in Tamil Nadu, the State assured that the Matriculation

Schools will continue to be free as hitherto, to innovate with regard to their curriculum, and this freedom was a legitimate expectation that they had,

which was also affirmed in the Full Bench judgment cited supra and now, the State has transgressed its limits. The word ""norms"" used in the Act is

vague and when violation of the norms visits the school with harsh fine, then the penal provisions have to be struck down for vagueness since the

norms which have not been clearly specified. Article 45 and Article 51 of the Constitution are violated by this Act. Learned senior counsel

submitted that it may be contended by the State that ours is the only State which has hitherto prescribed school syllabus for matriculation schools,

and the syllabus has been revised as recently as 2005, for which there has been no complaint and therefore, it is not as if the State has suddenly

usurped any power. But the learned senior counsel countered this by submitting that all along, the Regulations had been only recommendatory and

not forced down the ""throats of the schools"". The Schools' right to engage in co-curricular activities is curbed. When computer education has

become a necessity for every individual, the syllabus introduced in the Act does not include computer education. ""The fundamental postulate of

personal liberty excludes the power of the State to standardise and socialise its children by forcing them to attend public schools only. A child is

not a mere creature of the State"" - vide The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . But the

State has actually violated this, by standardising the system. The State has misunderstood quality education to mean stultifying educational

progress. It is only at the early age of the child that it is possible for her to assimilate and learn as many subjects as are offered and this Act

interferes with that right. The learned senior counsel also submitted that now that the Central Act, viz. The Right to Education Act ("RTE Act" in

short) has come into force with effect from 1.4.2010, the impugned State Act would have to give way to the Central Act, in view of Article 254(1)

of the Constitution. Now the entire field of elementary education is occupied by the RTE Act and the State cannot lay down the syllabus nor

specify norms nor can it punish schools for not complying with the Act so long as the schools are in conformity with the RTE Act. It was submitted

that in the Preamble to the Act, it is stated that the four streams of education ""are not uniform"". The fact that they are not uniform does not mean

that they do not provide quality education. Therefore, the fact that they are not uniform cannot justify the introduction of the present system which

professes to ensure quality education. Diverse systems of education can equally provide quality education and therefore, the object has no nexus

with the provisions of the Act. It is very doubtful whether the object sought to be achieved will become a reality merely because the Act has been

introduced. There is also one other factor, i.e., if the Act really intends to achieve a common system of education, then it could not have excluded

the other systems which still exist, viz. CBSE, ICSC, Baccalaureate and the children studying under those systems. If these Boards are also not

brought under the scheme, then the object of social justice will remain on paper. It was submitted that the teacher will have to adapt the method of

teaching depending on whether the school is in a rural area, or an urban area or a tribal area so that it is fine tuned to the local needs, but this Act's

rigid formula will defeat the prime object, which is educating the child. The State's professed object can be achieved only after due deliberation,

research, collaboration and consultation with experts in the field, but without any of these, the Act has been suddenly introduced. The Act ignores

the psychological impact of the child which has been referred to in the Full Bench judgment cited supra. Though it is stated that there was a

consultative process, in actual fact, the invitees to the meeting were only "informed" but not consulted. Even the counter affidavit mentions only two

dates with regard to the consultation. Two dates would not be sufficient for such an ambitious enterprise and before really examining the issue from

all perspectives, the State has brought the Act in haste. It was submitted that as children want to pursue higher education, students of Matriculation

Schools find it easier to score marks and their performance in competitive examinations is much better than the students who have studied in State

Boards. Now this Act will take away the edge which the Matriculation students enjoyed in the past. The State ought to have brought the State

Board students to the level of Matriculation students, instead of which, they are reducing the Matriculation students to a lower level. Learned senior

counsel relied on several judgments, which will be dealt with later.

5. In response, the learned Additional Advocate General submitted that none of the objections raised in the writ petitions can be sustained. The

legislative power of the State is found in Entry 25 of List-III of the Constitution. The object of the Act is to ensure that there is no disparity and

division amongst children, so that a child who had studied in a rural school would feel no inferior to a child who studied in an urban school, since

the method of education would be uniform. He submitted that the objection raised by the schools itself is questionable since at the stage of Public

Examination, all the streams coalesce into one. For Plus One and Plus Two, i.e., XI and XII Standards, it is only the State which decides the

syllabus and it is the State which conducts the examination and this position has been so right from 1978. When the students belonging to the

various streams have had no complaints in this regard all along, the bona fides of the present objection itself is to be examined. He submitted that

the Petitioners are not really advancing the cause of the child, but their personal interest. He also submitted that out of the four streams, it was only

the Matriculation system which has raised this objection. No Anglo-Indian School or Oriental School has filed any writ petition. He submitted that

it is not as if this Act has been brought into existence in haste. Soon after Independence, several Commissions and Committees had deliberated on

this issue and they had recommended a common system of education; he referred to the Kothari Commission, the Ramamurthy Report and the

Yashpal Committee Report. He submitted that the Act is in conformity with the NCF. He submitted that since the disparity in the education and the

heavy load that was imposed on the children, both physical and otherwise, came to the attention of the Government, the Government constituted a

Committee under the Chairmanship of Thiru. Muthukumaran, the former Vice Chancellor of the Bharathi-dasan University, to examine the

implementation of the Uniform System of Education. The Committee examined all the issues and offered its recommendations. Thereafter, a One

Man Committee was constituted under Thiru. M.P. Vijayakumar, I.A.S. (Retired). He looked into the Muthukumaran Report and he also

submitted his recommendations. He headed a team of educationalists which visited the States of Kerala, Kamataka, Gujarat and Maharashtra and

reviewed the system that was in vogue in those States and it was after much deliberation that the idea was accepted. He submitted that it is unfair

to suggest that without any consultation, without any research and very casually, the Government has brought this system into vogue. He submitted

that the Matriculation Schools choose their textbooks in an arbitrary manner and the reasons for their choice are not clear. The Government

appointed a Committee to examine the various textbooks which are now used in Matriculation Schools and many of them were found wanting with

regard to crucial aspects. He submitted that, that is why in Section 3 of the Act, the Government had laid down the norms for imparting instructions

and norms for conducting examinations. He submitted that the present system of education is a colonial import and by referring to the ancient

system of education that prevailed in this country, which was individualistic and which developed the potential of each child, submitted that there

can be no complaint when a system of education which has its values based in the Constitution of this country is sought to be introduced. He

submitted that the textbooks have been chosen with great care by a committee of experts whose credentials are beyond question. He also

submitted that there have been various reports regarding the heavy load which a school child bears, both because of the nature of the syllabus and

also because of the books the child has to carry. He referred to the negative impact this load has on the child. Learned Additional Advocate

General submitted that in no other State are there so many systems of education. All the other States have only two Boards, the State Board and

the Central Board and obviously this pattern has not been prejudicial to the interests of the child. The mere fact that historically this State has had

four streams of education does not mean that the State, with its avowed object of ensuring social justice and quality education, cannot bring in a

uniform, quality based system of education. He submitted that the Muthukumaran Committee had studied all the different streams and found that

they are basically the same and therefore, the uniform system that is now sought to be introduced is only a question of adjustment and modulation

of the existing system and not a system where quality is sacrificed. He referred to the affidavit filed where the textbook for each class has been

assessed. Learned Additional Advocate General submitted that by G.O. Ms. No. 159 dated 8.9.2006, the Dr. S. Muthukumaran Committee was

constituted, which consisted of representatives of Matriculation Schools, Oriental Schools and Anglo-Indian Schools; so it was only after a due

consultative process that the recommendations were made. He submitted that therefore there can be no justification for any complaint. He

submitted that this Act is not contrary to the RTE Act. The RTE Act speaks of a curriculum which occupies a larger field, whereas a syllabus only

forms a part of it and therefore, both can co-exist. According to the learned Additional Advocate General, it is not as if such penal provisions have

been introduced for the first time. Even the Tamil Nadu Private Schools Regulation Act contain a similar provision and there is an in-built statutory

safeguard since without sanction, no proceedings can be initiated. He referred to K.R. Ramaswamy @ Traffic Ramaswamy Vs. State, The

Director, Matriculation School Education and Tamil Language Academy, , where the Tamil Nadu Tamil Learning Act, 2006 was upheld and the

power of the State has been clearly stated in the said judgment, and the definition of "School" in that Act and the present Act is the same so the

same schools had come under the legislation then. Learned Additional Advocate General further submitted that Section 4 of the present Act does

not speak of prior permission, it only speaks of approval and therefore, it cannot be said to be violative of the Full Bench judgment. He also

submitted that the Act does not forbid the schools from teaching other co-curricular subjects or introducing co-curricular activities. The Act only

states that the State syllabus has to be followed. This does not mean that no extra subject can be taught. If the penal provisions are not introduced,

the Act will be toothless. He submitted that the right under Article 19(1)(g) is not absolute it is subject to Article 19(6) restrictions. He submitted

that the Act lays down the maximum number of hours of teaching in a week, out of which the auricular subjects have to be taught in 32 periods and

there are eight periods per week where the school has the freedom to teach whichever subject it chooses to. He submitted that the reason for

fixing two different dates for implementation of the Act, i.e., the present academic year for Standards I and VI and the next academic year for

Standards II and other standards because of the ground realities of preparing the textbooks for each subject. By the year 2011, the Act should be

implemented in full swing. He also submitted that merely because a provision for bar of suits is introduced, it does not mean that the President's

assent for the Act should be obtained. It is only if that particular provision enters the field which the Central Act already occupies, the President's

assent should be obtained and he gave a list of the Acts where there is a similar provision and where only the Governor's assent has been

obtained. He also referred to various decisions.

6. In reply, the learned senior counsel submitted that the Matriculation Schools taught Physics, Chemistry, Biology and Zoology separately, but

they are compressed into one in the present Act. So when the children later pursue higher education in a particular branch, they will find it very

difficult to cope Even the allocation of periods is fixed as per the Act. It may be that in some schools the students may not need as many subjects

for English as is laid down by the State. The schools must have the freedom to distribute the teaching hours amongst the various subjects to suit the

schools' needs. They submitted that the schools and the teachers must be given some "play in the joints". Learned senior counsel submitted that it

is not necessary for the Central Act and the State Act to be diametrically opposite to each other for the Court to strike down one as bad. In this

context, they referred to the observations of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute*

and Others, , which will be dealt with later. Learned senior counsel further submitted that Sections 5 and 9 of the Act are contrary to each other.

While Section 5 provides that the Government will constitute a Board to implement the policy to provide uniform school education, Section 9

declares that the duty of the Board is to advise the Government upon the action to be taken for implementing this policy. Then Section 14 binds the

Board to the directions of the Government on question of policy and the decision of the Government is declared to be final. Therefore, the

Board's stated autonomy in Sections 5 and 9 is taken away by Section 14 and the Board will be merely a spokesperson of the Government.

Further, this is contrary to the RTE Act which provides that after the Act comes into force, all the schools would have to abide by the Framework

of National Curriculum. Moreover, Section 7(5) of the RTE Act provides that the Central Government will develop a framework of national

curriculum and Sections 8 and 9 deal with the duties of the appropriate Government and local authority, and the academic authority which is to be

notified by the appropriate Government must bear in consideration the criterion spelt out in Section 29(2) of the RTE Act. Therefore, not only

should the schools fall in line with the curriculum framed under the Central Act, but this should be laid down by the academic authority notified u/s

29. Learned senior counsel submitted that it will be no answer to state that when Section 29 gives the power to the State Government to the

academic authority, the present Board constituted under the Act can discharge the same duty. According to the learned senior counsel, only the

academic authority notified under the RTE Act, has the power to lay down not only the curriculum, but also the evaluation procedure.

7. The relevant provisions of the impugned State Act are as follows:

2. In this Act, unless the context otherwise requires,--

(c) "Board" means the State Common Board of School Education constituted u/s 5;

....

(f) "matriculation schools" means a school approved as such under the Code of Regulations for Matriculation Schools;

....

(i) "school" means.-

(i) any primary school, middle school, high school or higher secondary school maintained by the State or any local authority; or

(ii) any primary school, middle school, high school or higher secondary school established and administered or maintained by any private

educational agency including minority school established and administered under Clause (1) of Article 30 of the Constitution, whether receiving aid

out of the State fund or not; or

(iii) any matriculation school, Anglo-Indian school or oriental school including minority school established and administered under Clause (1) of

Article 30 of the Constitution, whether receiving aid out of the State fund or not,

but does not include a school affiliated to the Central Board of Secondary Education.

3. (1) Every school in the State shall follow the common syllabus and text books as may be specified by the Board for each subject,-

(a) in Standards I and VI, commencing from the academic year 2010-2011.

(b) in Standards II to v. and Standards VII to X from the academic year 2011-2012.

(2) Subject to the provisions of Sub-section (1), every school in the State shall,-

(a) follow the norms fixed by the Board for giving instruction in each subject;

(b) follow the norms for conducting examination as may be specified by the Board.

4. All the subjects, other than languages, may be taught in Tamil or English or in any other language as may be decided by a school with the

approval of the competent authority.

5. (1) The Government shall, by notification, constitute a Board to be called as the State Common Board of School Education for the purpose of

implementing the policy of the Government to provide uniform school education in the State. The Board shall exercise the powers conferred, and

perform the functions assigned to it, under this Act.

9. It shall be the duty of the Board to take all such steps as it may think fit for ensuring uniform system of school education in the State. The Board

shall,-

(a) prescribe the common syllabus and text books for each Standard and each course of study in the school;

(b) prescribe the norms for conducting the examinations and the minimum standards for the award of certificate.

(c) evaluate the standard of school education and suggest recommendations for improvement of school education;

(d) constitute such number of committees as it may think fit, for the consideration of any business;

(e) advise the Government upon the action to be taken for the purpose of implementing the uniform system of school education; and

(f) perform such other functions as may be prescribed.

11. If any person wilfully contravenes the provisions of this Act or any rules made thereunder, he shall be punishable with fine which may extend to

twenty-five thousand rupees and in the case of continuing contravention, with an additional fine which may extend to one thousand rupees for every

day during which such contravention continues after conviction for the first such contravention.

13. No court shall take cognizance of any offence under this Act except with the sanction of the Government or such officer as the Government

may authorize in this behalf.

14. (1) The Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy, as the

Government may give in writing to it, from time to time.

(2) The decision of the Government as to whether a question is one of policy or not shall be final.

8. We now extract the relevant provisions of the Right of Children To Free and Compulsory Education Act, 2009:

2. In this Act, unless the context otherwise requires,--

(a) "appropriate Government" means--

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no

legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in Sub-clause (i), established within the territory of

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory.

(f) "elementary education" means the education from first class to eighth class.

(n) "school" means any recognised school imparting elementary education and includes--

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

7. ... (6) The central Government shall (a) develop a framework of national curriculum with the help of academic authority specified u/s 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

8. The appropriate Government shall-- ... (g) ensure good quality elementary education conforming to the standards and norms specified in the

Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education.

9. Every local authority shall --... (h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(1) monitor functioning of schools within its jurisdiction; and

(m) decide the academic calendar.

20. The Central Government may, by notification, amend the Schedule by adding to, or omitting therefrom, any norms and standards.

29. (1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the

appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under Sub-section (1), shall take into consideration the

following, namely:

(a) conformity with the values enshrined in the Constitution; (b) all round development of the child; (c) building up child's knowledge, potentiality

and talent; (d) development of physical and mental abilities to the fullest extent; (e) learning through activities, discovery and exploration in a child

friendly and child-centered manner;

(f) medium of instructions shall, as far as practicable, be in child's mother tongue;

(g) making the child free of fear, trauma and anxiety and helping the child to express views freely;

(h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

34. (1) The State Government shall constitute, by notification, a State Advisory Council consisting of such number of Members, not exceeding

fifteen, as the State Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the

field of elementary education and child development.

(2) The functions of the State Advisory council shall be to advise the State Government on implementation of the provisions of the Act in an

effective manner.

(3) The allowances and other terms and conditions of appointment of Members of the Suite Advisory Council shall be such as may be prescribed.

THE SCHEDULE

Sl. No. Item Norms and

Standards

1 Number of teachers: (a) For first class to fifth class (b)...

For sixth class to eighth class

2 Building ...

3 Minimum number of working days/ instructional hours...

in an academic year

4 Minimum number of working hours per week for the ...

teacher

5 Teaching learning equipment ...

6 Library ...

7 Play material, games and sports equipment ...

9. We will now look at some International Conventions in the field of child education. The relevant provisions from the Convention on the Rights of

the Child are as follows:

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social

development.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal

opportunity, they shall, in particular:....

(d) Make educational and vocational information and guidance available and accessible to all children;

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential....

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in

which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

Article 31

....

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of

appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

10. The relevant provisions of the Convention against Discrimination in Education are as follows:

Article 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of this

Convention:

....

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which

is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such system? or attendance at such institutions is optional

and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for

education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group

but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that

object, Convention against Discrimination in Education and if the education provided conforms with such standards as may be laid down or

approved by the competent authorities, in particular for education of the same level.

Article 4

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to

the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all;

make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school

prescribed by law....

(d) To provide training for the teaching profession without discrimination.

Article 5

1. The States Parties to this Convention agree that:

....

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than

those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the

competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation,

the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled

to receive religious instruction inconsistent with his or their convictions;

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of

schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities.

11. We shall now see the relevant provisions of the Constitution of India in the field of education. Article 45 of the Constitution reads thus:

45. Provision for free and compulsory education for children.- The State shall endeavour to provide early childhood care and education for all

children until they complete the age of six years.

Article 21-A reads thus:

21-A. Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner

as the State may, by law, determine.

Article 51-A reads thus:

51A. Fundamental Duties.- It shall be the duty of every citizens of India--

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

years"" Entry 25 of List-III reads thus:

25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 6 of List I;

vocational and technical training of labour.

12. The learned Additional Advocate General began with an impassioned plea that because of years of being under Colonial rule, we have

forgotten that our ancient system of education was superior, and if there is an attempt of the part of the State to bring about a system of education

which is more close to our roots, it cannot be attacked. He quoted Lord Macaulay's address to the British Parliament on 2.2.1835 "" I propose

that we replace her old and ancient education system, her culture ...they ill lose their self-esteem..., o show how by replacing the old and ancient

education system, the colonial power took away our national pride and succesfully brought us under their control.. In order to regain the glory that

was ours, one should bring back an education system which more closely reflects our constitutional values and our cultural ethos.

13. Mahatma Gandhi felt that the present educational system is an implantation of the British Rulers and he described his anguish in the following

words:

When they came to India, instead of taking hold of things as they were, began to root them out. They scratched the soil and began to look at the

root or left the root like that, and the beautiful tree perished. I defy anybody to fulfill a programme of compulsory primary education of these

masses inside of a century. This very poor country of mine is ill able to afford such an expansive method of education.

Gandhiji felt that the old village school master, who ran a school and educated both boys and girls, was best suited for our country and wished that

every State would dot every village with such a school.

14. During the Constituent Assembly Debate in 1948-49, a member contended that the commitment made in the draft Article (later to be known

as Article 45) to provide

"free and compulsory education" to children up to 14 years of age should be limited to only 11 years of age as India would not have the necessary

resources. The dilution would have been made but for Dr. Babasaheb Ambedkar's clarity of mind that it is at this age of 11 years that a substantial

proportion of children become child labourers. He forcefully argued that the place for children at this age in independent India should be in schools,

rather than in farms or factories. This is how an unambiguous commitment to provide free education through regular full-time schools to all children

up to 14 years of age (including children below 6 years) by 1960 became an integral component of India's Constitution., there was a discussion

whether free and compulsory education should be provided to children upto 14 years of age or whether it should be limited to 11 years of age. Dr.

Ambedkar felt that it is at the age of 11 that most of the disadvantaged children become child labourers and he insisted that it is at that age that the

children of India should be in schools.

Common School System and the future of India"" by Prof. Dr. Anil Sadgopal,

Professor of Education at the Delhi University

We have now made this a child's right and this also demonstrates how important the formative years between 11 and 14 are and what could be

achieved by a quality education system.

15. In the same article, Professor Anil Sada-gopal observed that,

Most advanced economies including US, Canada, Britain and several European countries have been built on the foundation of a fully funded

government school system providing education of equal or near-equal quality to all children. No country in the world has universalised elementary

education without promoting a common school system.

Among his recommendations, the following is relevant for our case:

A common curriculum framework with shared features of curriculum and comparable syllabi with flexibility relating to texts, teaching aids, teaching-

learning process, evaluation parameters, assessment procedures and school calendar and an affiliation of a common board of examination for all

schools within a State or Union Territory.

Therefore, the argument that a system which advocates a common syllabus will kill excellence can only be rejected.

16. Gurudev Tagore considered the lack of education as the main hurdle in India's race to progress and as the basis of all its problems. He felt that

the colonial education had only one objective and that "was to produce clerks". He felt a national system of education in India should discover the

truths of its civilization which was neither commercialisation nor imperialism, but rather universalism. He was against bookish learning. He felt

books came between our minds and lives. He felt students should gather knowledge and materials "from direct sources and from their own

independent efforts". In his own words,

In every nation, education is intimately associated with the life of the people. For us.... This education has not reached the farmer, the oil grinder,

nor the potter. No other educated society has been struck with such disaster.... If ever a truly Indian university is established it must from the very

beginning implement India's own knowledge of economics, agriculture, health, medicine and of all other everyday science from the surrounding

villages.

- vide Rabindranath Tagore, Addresses by Tagore, p. 9-10, Santiniketan,

Visva Bharati, 1963. For an English translation, M. Das Gupta,

Santiniketan and Sri Niketan, Calcutta, Visva Bharati, 1983.

17. In the Draft Common Syllabus (DCS) 2009 prepared by the DTERT under the National Curricular Framework 2005, we learn what an ideal

primary education should be like. It has to be a phase of "joyful learning for the child". The atmosphere in the classroom should not be stressful. It

should allow learning to take place at an individual pace and permit free interaction among children and the teacher. The guiding principles should

be joyful and non-threatening. It is to have a textually relevant content. It should be evocative, sensitive to gender, class, life in a pluralistic society,

encourage exploration and be experiential. The vision takes in quality without compromise and an universal design, which means an inclusive

design. Children come from culturally different backgrounds and therefore, this should be borne in mind while laying down norms for elementary

education. And, the DCS-2009 states that "there are multiple intelligences and multiple learning styles. Multiple modalities of classroom transaction

are, therefore, useful.

18. In order to decide the question whether the attack on the Act, that it will be counterproductive and that it is not a long-term vision, we shall

examine the various Education Committees/Commissions and their recommendations in brief:

I. Secondary Education Commission

On the recommendation of the Central Advisory Board of Education (CABE) made in January 1948, which it reiterated in January 1951, the

Government of India appointed the Secondary Education Commission in order to examine the prevailing system of Secondary Education in the

country and suggest measures for its reorganisation and improvement. Some of the important recommendations made by this Commission in its

report are noted hereunder:

- Multilateral or multi-purpose schools should be established wherever possible to provide varied types of courses for students with diverse aims,

interests and abilities.

- In addition to the introduction of diversified courses of study selected by students, a certain number of core subjects should be studied by all.

- A high-powered Textbook Committee, consisting of a Judge of the High Court, a Member of the Public Service Commission, a Vice-

Chancellor, the Director of Education, a Headmaster and two other distinguished educationists should be appointed for the selection of textbooks.

- The Centre should assume a certain amount of direct responsibility for the contemplated reorganisation of Secondary Education and give financial

aid for the purpose.

- The Central Government should set up small panels of experts drawn from all over the country and ask them to prepare detailed model

syllabuses for various subjects, incorporating the essential items of subject matter and suitable instructions to teachers for its integration with other

subjects.

- Production of Teaching Material I - Textbooks: (a) The State Government or the educational authorities concerned should take up gradually the

production of textbooks and/or source books, of good standard in some subjects, in the light of the recommendations made by the Commission.

Therefore, even in 1951, the idea of a common curriculum and common core syllabus and Government prepared textbooks had been mooted.

II. Kothari Commission

In 1964, the Government of India appointed an Education Commission under the Chairmanship of Dr. D.S. Kothari, Chairman, University Grants

Commission, consisting of eleven Indian and five foreign experts. The Commission was to advise the Government on the national pattern of

education and on the general policies for the development of education at all stages, ranging from primary to post-graduate stage and in all its

aspects, besides examining a host of educational problems in their social and economic context. Some salient features of the Commission's

recommendations are enumerated below:

- Teacher Education - The professional preparedness of teachers being crucial for the qualitative improvement of education, the Commission has

urged that this should be treated as a key-area in educational development and adequate financial provision should be made for it.

- Essentials of Curricular Improvement - For the improvement and upgrading of school curricula, the following measures have been suggested:

....

(b) Revision of curricula should be based on such research;

(c) Basic to the success of any attempt at curriculum improvement is the preparation of text-books and teaching-learning materials; and

(d) the orientation of teachers to the revised curricula through in-service be achieved through seminars and refresher courses.

(ii) Schools should be given the freedom to devise and experiment with new curricula suited to their needs.

(iii) Advanced curricula should be prepared by State Boards of School Education in all subjects and introduced in a phased manner in schools

which fulfil certain conditions of staff and facilities.

Again we see that the recommendation is for a national pattern of education and a State Board prepared curricula in all subjects with freedom to

the schools to improvise according to their needs.

III. Ramamoorthy Committee Thereafter, the Government constituted the Ramamoorthy Committee in order to achieve equity and social justice, to

remove elitist aberrations, to decentralise educational management at all levels, to inculcate values indispensable for creation of an enlightened and

human society. The Committee's recommendations, inter alia, were as follows:

- Decentralised and participative mode of planning and management offers an effective basis for responding to the challenge of regional disparities

in education, including girls' education. Diverse strategies and disaggregated time-frames, worked out locally, constitute the twin instrumentalities to

achieve the goal of universalisation.

- It is recommended that all school textbooks, both by NCERT/SCERTs and other publishers, be reviewed to eliminate the invisibility of women

and gender stereotypes, and also for the proper incorporation of a women's perspective in the teaching of all subjects. This review should also

cover all the supplementary reading material and library books being recommended for schools, particularly those supplied by Operation

Blackboard.

- The first step in securing equity and social justice in education is the building up of a Common School System.

- Phased implementation of the Common School System within a ten year timeframe; and essential minimum legislation, particularly to dispense

with early selection process, tuition fee, capitation fee etc.

Here the Common school system is described as the first step in securing social justice in education.

IV. Yash Pal Committee (Load of School Bags)

Then came to be constituted by the Government, a National Advisory Committee under the Chairmanship of Prof. Yash Pal, a former Chairman of

the University Grants Commission to suggest ways and means to reduce academic burden on school students. As regards the curriculum, the

Committee felt that when (a) it is too lengthy to be completed in time by an average teacher under normal conditions; (b) there is mismatch

between the difficulty level of the concepts of course content with the mental level of the pupils; (c) the language used in the textbooks is

incomprehensible and the style of presentation is verbose and rhetorical rather than simple and straight forward; (d) the basic assumptions

underlying curriculum development area not fulfilled. The Committee considered the problem of curriculum load in detail and identified several

factors which are manifestation of the existence of the problem, which are highlighted hereunder:

- Starting early
- Size of school bag
- Examination system
- w Joyless learning w Syllabi and textbook

After discussing the above indicators or manifestations of the problem of curriculum load, the Committee identified the following as the roots of the

problem:

- Knowledge v. information
- Experts commissioned to write textbooks for school students are isolated from classroom realities - Since they are not familiar with learning

process of children, the textbooks prepared by them prove too difficult for majority of children.

- Centralised character of curriculum

- Convention of teaching the "text" - Majority of teachers perceive the content of the textbook as a rigid boundary or a definer of their work in the

classroom. Boredom is the inevitable outcome when tersely written textbooks is taught in a rigid and mechanical manner.

- Competition based social ethos
- Absence of academic ethos

Few of the important recommendations of the Committee are as follows:

- Greater involvement of teachers in framing curriculum and preparation of textbooks at State/UT level.

- The whole question of curriculum load is a complex question and there are no simple solutions. It has to be tackled in a comprehensive way, and

not through isolated steps. It may not be possible to enhance overnight the level of competence, motivation and commitment of teachers, provide

the facilities required to all the schools, check the growth of commercialisation in education, channelise the parental ambitions and aspirations, and

minimise the importance of annual examinations.

- The measures will naturally include attempts to reform curriculum, raise the level of teachers' competence, motivation and commitment,

strengthen the system of supervision to make teachers responsible for non-performance, provide minimum essential infra-structural facilities to

schools and to regulate the system of homework assignment.

- The Committee was concerned with one major flaw of our system, which is "a lot is taught, but little is learnt or understood". This, Committee

observed the pervasive effect that the examination system had and even the manner in which textbooks are written; it observed that there is a

distance between the child's everyday life and the content of the textbook and had noted the absence of the child's viewpoint in the organisation of

syllabi in different subjects, v. As regards textbook writing, the Committee suggested that teaching cannot improve unless there are better

textbooks etc. The Committee was of the opinion that strategies to improve textbook writing and production must work parallel to strategies for

improvement in teacher training and for creating an ethos in which teachers would feel motivated to take an academic interest in their work. The

perception that a teacher can do little in the classroom that is different from what the textbook says is part of historical legacy. This legacy must be

transcended and the self-perception rooted in it must be changed. Teacher training institutions and the mass media, both can assist in making this

change possible.

- The process of curriculum-framing and preparation of textbooks should be decentralised so as to increase teachers' involvement in these tasks.

Decentralisation should mean greater autonomy, within state-level apparatus, to district-level boards or other relevant authority, and to heads of

schools and classroom teachers to develop curricular materials on their own, best suited to the needs of local environment. All the schools be

encouraged to innovate in all aspects of curriculum, including choice of textbooks and other materials.

- The culture of writing textbooks be changed so as to involve a much large number of teachers in the preparation of textbooks.

- This Committee speaks of the flaws in an exam-driven pattern and advocates decentralisation, innovation by schools in curricular aspects and

also the teacher's role in preparation and choice of textbooks.

V. Position Paper

The salient features of the Position Paper presented by the National Focus Group of the National Council of Educational Research and Training

(NCERT) on Aims of Education are as follows:

- Education must promote and nourish as wide a range of capacities and skills in our children as possible. The gamut of such skills include the

performing arts painting and crafts, and literary abilities.... and, skills as diverse as some children's special capacity to bond with nature - with

trees, birds and animals - need to be nurtured.

- The role of the teacher here is absolutely crucial.

- With regard to the role of textbooks, the Policy Perspective clearly emphasises that no single textbook should be prescribed for any subject of

study, but a reasonable number which satisfy the standards laid down, should be recommended, leaving the choice to the schools concerned.

- The Policy Perspective has commented that,

... At present, there is hardly any common book which all the students in India read and is one of the reasons why our educational system

contributes so little in national integration.

No useful purpose is served by having only one textbook in a subject for a given class as this is almost invariably the position under the existing

programmes of nationalisation. It should be an important objective of policy to have at least three or four books in each subject for each class and

leave it open to the teachers to choose the book best suited to the school. This is necessary even if there were to be a common syllabus for all

schools. We have recommended, however, that there should be more than one approved syllabus and that each school should be permitted to

adopt the syllabus best suited to its own condition.

- Context and the Teaching Learning Material -No single package, however well and professionally designed, can address all the contextual

situations in a country as large as India. Therefore, a large number of packages should be developed at state and district levels with adequate

provision for cluster and school-level modifications and supplementary materials.

- The availability of a number of alternative Teaching Learning Materials TLM packages, all of approved quality, would certainly increase the

choice of the teachers. ... Each school or teacher should be able to choose the package of her liking, given that she is committed to achieve the

required learning levels and all available packages are of proven quality. Freedom to choose methods and materials is likely to enhance the

teacher's self-image and responsibility.

- Process of Development of Teaching Learning Materials Including Textbooks - State run institutions alone cannot develop a large number of

TLM package and involvement of private publishers would become inevitable. If a large number of TLM packages are to be made available all

over the country involving both private and state bodies, it would be important to develop clearly outlined mechanisms of quality control including

the establishment of some standards for the very process of development.

VI. Draft Concept Paper on Pedagogy for Common Syllabus 2009

In this Paper, we find an effort to build a broad consensus among syllabi, by way of Core Content and Competencies, and also keeping in mind

the national mandate of Education for All. The Act is meant for Standards I to X. In the Concept Paper on Pedagogy, they deal with the role of the

text book for a child in the age group of 5 and 10. In the opinion of psychologists, this is the "concrete operational stage where the child learns by

doing and the child grows conscious of learning". Schooling is an attempt to build on this consciousness and this is achieved by (a) regulation of

time, (b) regulation of focus, and (c) regulation of effort. This Paper has given importance to child-friendly learning and child-centred pedagogy.

When children become adolescent and they reach this age while in school, the scenario changes and naturally, compared to younger children, the

adolescents' thinking is "more advanced, more efficient and generally more complex". The five aspects of this transition affect the conceptualisation

of the syllabus and the gradient of the syllabus must accommodate these stages. The Paper observes that the reality is that in most classrooms, as

children reach high school, the atmosphere "is characterised by passivity". The rights of the child require that any scheme of centralised education

must provide a syllabus for active learning.

19. This Draft Concept Paper then takes a look at what a text book can do in this regard., how it can create spaces for children to explore and

question, support democratic classroom processes etc. The integrated vision of a text book requires that it should be creative, functional,

multisensory and structural. The NCF-2005 clearly states that there should be plurality of text books, widening the teachers' choice and also

providing for incorporation of diversity in relation to children's needs and interests.

20. What do we understand by education? What does it mean? "The word "education" has a wide import. It takes into its fold, i) the taught, ii) the

teacher, iii) the text and iv) the training." - vide Dr Preeti Srivastava and Another Vs. State of M.P. and Others, . So if the State wants to succeed

in its object it has to remember the children's interests, it must choose the right teachers, it must ensure that the textbooks are of impeccable quality

and last but not least make the training a joyful but fruitful experience.

21. In *Avinash Mehrotra Vs. Union of India (UOI) and Others*, , the Supreme Court dealt with the right to education as enshrined in Article 21-A

of the Constitution. The relevant paragraphs from this judgment are extracted hereunder:

24. Education occupies an important place in our Constitution and culture. There has been emphasis on free and compulsory education for children

in this country for a long time. There is a very strong historical perspective. The Hunter Commission in 1882-83, almost 125 years ago,

recommended Universal Education in India. It proposed to make education compulsory for the children.

26. Our original Framers of the Constitution placed free and compulsory education in the Directive Principles....

28. Education occupies a sacred place within our Constitution and culture. Article 21A of the Constitution, adopted in 2002, codified this Court's

holding in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , in which we established a right to education.

Parliament did not merely affirm that right; the Amending Act placed the right to education within the Constitution's set of Fundamental Rights, the

most cherished principles of our society. As the Court observed in *Unni Krishnan (supra)*, para 8:

8. The immortal Poet Valluvar whose *Tirukkural* will surpass all ages and transcend all religious said of education:

Learning is excellence of wealth that none destroy; To man nought else affords reality of joy".

29. Education today remains liberation - a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an

informed and questioning citizenry. Then as now, we recognize education's "transcendental importance" in the lives of individuals and in the very

survival of our Constitution and Republic.

32. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and

completely, in order to satisfy its highest duty to citizens.

33. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child,

and on the child herself....

The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction,

or State inaction. The two articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children,

by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is

more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all

participants in our civil society.

22. While challenging the validity of the Act, the writ Petitioners uniformly accepted that a State undoubtedly has the power to legislate on this

subject. But their grievance was that it was unreasonable; it fetters the rights of the parent, the teacher and the child; and it runs contrary to the

Central Act. The Supreme Court, in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , while dealing

with the rights of religious minorities and educational institutions, has explained the right of parents in the following words:

142. The parental right in education is the very pivotal point of a democratic system. It is the touchstone of difference between democratic

education and monolithic system of cultural totalitarianism. When the modern State with its immense power embarks upon the mission of educating

its children, the whole tendency is towards state monopoly. ... Great diversity of opinion exists among the people of this country concerning the

best way to train children for their place in society. Because of these differences and because of reluctance to permit a single iron cast system of

education to be imposed upon a nation compounded of several strains....

We also find that in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, , the Supreme Court held that the State undoubtedly has

the power "to regulate the standard of education" and that "the institutions cannot decline to follow the general pattern of education under the guise

of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. There is a

wealth of authority on these principles.

23. While considering the challenge to an Act, Courts must interpret the Central Act and the State Act in a manner as to avoid conflict -vide Govt.

of *A.P. and Another Vs. J.B. Educational Society and Another etc.*, ; and Courts must ascertain whether the Parliament intended to lay down an

exhaustive code leaving no room for the State to enact a law - vide *Kanaka Gruha Nirman Sahakara Sangha Vs. Smt. Narayanamma* (Since

deceased) by *Lrs. and Others*, . The Supreme Court has also held that while considering the constitutionality, the Court should examine the scope

and object of the two enactments and a provision of one legislation which may incidentally be on the same subject as covered by the other, and to

achieve a different purpose, does not bring about repugnancy covered by Article 254(2) of the Constitution and they must be substantially on the

same subject to attract the Article - vide Vijay Kumar Sharma and others Vs. State of Karnataka and others, . If the State specifies a further

eligibility qualification to the criteria laid down by the Indian Medical Council, there is no repugnancy -vide Dr. Ambesh Kumar Vs. Principal,

L.L.R.M. Medical College, Meerut and Others, ; nor is there repugnancy if the State prescribes standards higher or additional to those prescribed

by the Central Act - vide State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, . Merely because there is a Central Act, it

need not be interpreted so as to destroy the fabric and edifice of the State Act and it is possible to interpret the Central Act as well as the State

Act harmoniously so that both are able to survive in their respective fields - vide Rukmani College of Education v. State of Tamil Nadu, (2008) 1

M.L.J. 1217.

24. In State of U.P. and Others Vs. Deepak Fertilizers and Petrochemical Corporation Ltd., , the Supreme Court held that for an Act to pass the

test of constitutionality, it must not violate the right to equality of the people of India. It must not be repugnant to Article 14 of the Constitution and

therefore, every law has to pass through the test of constitutionality which is nothing but a formal name of the test of rationality. In Bidhannagar

(Salt Lake) Welfare Association Vs. Central Valuation Board and Others, , it was held that an Act which provides for civil or evil consequences

must conform to the test of reasonableness, fairness and non-arbitrariness and the Act in question was held to be per se unreasonable, arbitrary

and violating the principles of natural justice. The Supreme Court held that when a substantive unreasonableness is to be found in a statute, it may

have to be declared unconstitutional.

25. In Public Services Tribunal Bar Association Vs. State of U.P. and Another, , the Supreme Court held as follows:

28. In State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., , this Court indicated the approach which the Court should adopt while

examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down which read:

The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of

constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not

possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less

inexactitude of language employed. Indeed any such defects of drafting should be ironed out as part of the attempt to sustain the

validity/constitutionality of the enactment. After all, an act made by the legislature represents the will of the people and that cannot be lightly

interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds

good while ascertaining the intent and purpose of an enactment or its scope and application.

In the same paragraph the Court further observed as follows:

The Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the

legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution

recognizes and gives effect to the concept of equality between the three wings of the State and the concept of "checks and balances" inherent in

such scheme.

26. The Supreme Court has also held that it is not for the Courts to decide which courses should be taught in a University and what should be the

curriculum - vide P.M. Bhargava and Others Vs. University Grants Commission and Another, , which dealt with the inclusion of a subject, viz. the

science of Astrology, as a course of study in the university curriculum, the Supreme Court observed as follows:

13.... The courts are not expert in academic matters and it is not for them to decide as what course should be taught in university and what should

be their curriculum. This caution was sounded in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, wherein

Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench held that it would normally be wise and safe for the courts to

leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be.... This

principle was reiterated in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, wherein it was held as under:

"While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs,

for that matter any authority in our system are bound by the rule of law and cannot be law unto themselves. If the Chancellor or any other authority

lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read

and understood, it is not fair to keep the court out".

19. A similar challenge to the inclusion of "Jyotir Vigyan" as a course of study was made by one Dr. K. Natarajan by filing W.P. No. 13540 of

2001 (Dr. K. Natarajan v. Union of India) before the Madras High Court. Mr. Justice F.M. Ibrahim Kalifulla who heard the writ petition held that

the very purpose of imparting education is to gain knowledge and therefore there should be every scope for making a study on very many subjects

in order to enrich ones craving for knowledge. Any such attempt from any quarters in furtherance of that pursuit should not be stultified. The

learned Judge further held that it was for the pupil concerned to select any particular field or subject in furtherance of his future career, and merely

because the subject has got its basis or origin traceable to some cult, it cannot be held that same would only result in propagation of a particular

religion. On these findings writ petition was dismissed. We are in agreement with view taken by Madras High Court.

27. In *State of Madhya Pradesh v. Ram Raghubir Prasad* AIR 1979 S.C. 888, the Supreme Court held that the State has the power to prescribe

textbooks. They categorically emphasised that no private publisher has a right to insist that his textbook shall be published by the Government and

they upset the Government's textbook not because the Respondent publisher had a right to have his books necessarily considered by the

Government, but because the syllabi had not been published prior to the prescription of textbooks. In *Naraindas Indurkha Vs. The State of*

Madhya Pradesh and Others, , the Supreme Court dealt with the question whether the State Government could prescribe textbooks to the

exclusion of other text books on the subject for use in primary and middle school classes. They held as follows:

19. One thing is clear that in order to achieve a uniform standard of excellence in education in all the schools within the State, it is necessary that

there should be uniform courses of instruction which are properly thought out and devised by experts on the subject and for giving proper and

adequate training in such courses, there should be standardised text books. That would not only ensure uniformity in standard but also achieve

efficiency in instruction. Moreover, it would prevent use of poor quality text books which frequently find way in the schools on account of certain

dubious financial arrangements between the management and the printers and publishers of those text books. It is, therefore, in the interest of

proper and healthy education of children that scientifically planned courses of instruction should be laid down and text books of high merit and

excellence should be prescribed. That can never be regarded as unreasonable. Now when the Legislature decides to adopt mis course, the

Legislature must necessarily entrust me task of laying down courses of instruction and prescribing text books to some authority fitted and equipped

for mis purpose. We are concerned here only with prescription of text books and we will, therefore, confine our attention to that subject. The

Legislature, when it enacted the Act of 1959, left the task of selecting and prescribing text books to be performed by the Text Books Committee

but u/s 4, Sub-section (1) of the Act of 1973 the Legislature has provided that this task shall be performed by the State Government. Now it can

hardly be disputed that for the purpose of selection and prescription of text books, the machinery of Text Books Committee would be more

efficient and objective, and inspiring of greater confidence as to its fairness and impartiality than that of the State Government, but on that account

alone the entrustment of the power of selection and prescription of text books to the State Government cannot be regarded as bad. The

Legislature may choose one of several methods available to it for achieving its legislative end and the Court cannot interfere simply because it thinks

that another method is better and should have been adopted by the Legislature, for ultimately it is for the Legislature in exercise of its legislative

judgment to determine which of many possible methods it should in the circumstances adopt....

20. ...This Court, however, took the view that no fundamental right of the Petitioners to carry on their business of preparing, printing, publishing

and selling text books was infringed by the notifications issued by the State Government in furtherance of their policy of nationalisation of text books

for students and the Petitioners were, therefore, not entitled to any relief under Article 32 of the Constitution. Mukherjea, C.J., speaking on behalf

of a unanimous Court, pointed out:

... These observations are equally applicable where the State Government instead of prescribing text books in exercise of the executive power

does so in exercise of statutory power such as that conferred u/s 4, Sub-section (1). No fundamental right guaranteed to the Petitioners under

Article 19(1)(g) is infringed if the State Government in exercise of the statutory power conferred u/s 4, Sub-section (1) does not prescribe text

books printed and published by him. The challenge based on Article 19(1)(g) must, therefore, fail.

28. In *Minor Nishant Ramesh v. State of Tamil Nadu* 2006 (2) M.L.J. : 2006 2 L.W. 1, it was held that by abolishing the Common Entrance Test

for State Board students alone while making it mandatory to other Board students, the Act would be making an invidious distinction between State

Board students and students of other Boards and therefore, the impugned legislation was arbitrary and violated Article 14 of the Constitution. In

2007 (5) C.T.C. 113 (supra), a Division Bench of this Court, while dealing with the right of minorities to establish and administer educational

institutions of their choice, observed thus:

... In case the State evolves a policy on an overall assessment, a decision based on such policy shall not be interfered with. The Supreme Court in

the judgment in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, while considering the policy adopted by the educational

authorities in the matters of permitting the starting of new school or of an additional school in a particular locality or an area, had observed as

follows:

The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of the

residents of the particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall

assessment is arrived at after a proper classification on a reasonable basis, it is not for the Court to interfere with the policy leading to such

assessment.

29. In *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, , the Supreme Court, held:

...(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be

regulatory measures for ensuring educational character and standards and maintaining academic excellence.... Such regulations do not in any

manner interfere with the right under Article 30(1)....

In *Public Services Tribunal Bar Association Vs. State of U.P. and Another*, , the Supreme Court observed thus:

27.... Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances it is imperative

upon the courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of

the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the Constitutional Courts

under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or State

Legislature had assumed to enact a law which is void, either from want of constitutional power to enact it or because the constitutional forms or

conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.

30. In *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, , the Supreme Court held as follows:

33.... The expression "reasonable restriction" signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of

an excessive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to

each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable in all cases. The

restriction which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper

balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be

wanting in that quality.

In *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, , the Supreme Court held thus:

7. ...and in that event, the minority institution has to follow prescribed syllabus for examination, courses of study and other allied matters. These

conditions are necessary to be followed to ensure efficiency and educational standard in minority institutions.

In *The State of Bombay Vs. Bombay Education Society and Others*, , the Supreme Court held observed that undoubtedly the powers of the State

to make reasonable regulations for all schools cannot be lightly questioned, insofar as their exercise is not inconsistent with or contrary to the

Fundamental Rights guaranteed to the citizens.

31. In *P.A. Inamdar v. State of Maharashtra* (2005) 6 S.C.C. 537, the Supreme Court has dealt with the concept of education and the role it

plays in transforming a society into a civilised nation. In paragraph 83 of that judgment, the Supreme Court has referred to *The Sole Trustee, Lok*

Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , where the Supreme Court had held that education means,

the systematic instruction given to the young in preparation for the work of life; it also connotes the whole course of scholastic instruction which a

person has received ... what education connotes ... is the process of training and developing the knowledge, skill, mind and character of students

by formal schooling.

In paragraph 87, the Supreme Court referred to Articles 41 and 51 of the Constitution and held that if the golden goals of the Constitution are to

be achieved, the people have to be educated and educated with excellence. In the same judgment, they have held that, ""no right can be absolute.

Whether a minority or a non-minority, no community can claim its interest to be above national interest"". In *Modern School Vs. Union of India*

(*UOI*) and Others, , the Supreme Court held that education is an occupation, ""as per *TMA Pai* and therefore, the Fundamental Right to establish

them is subject to reasonable restrictions under Article 19(6) of the Constitution.

32. In *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , the Supreme Court had referred to the need of the community in

the area where the institution is intended to be served. The Petitioners draw strength from this to support their case that there cannot be regulations

which lay down that ""one size fits all"". In the same judgment, the Supreme Court held that the right to establish an educational institution can be

regulated, but they must in general be to ensure proper academic standards, atmosphere etc. The Supreme Court also observed that some

restrictions would be unacceptable. In the same judgment, as an answer to Question No. 4 posed by the Supreme Court, it was held that the right

to administer education not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence.

According to the State, this is exactly what they have attempted to do by bringing in the "Samacheer Kalvi Thittam".

33. In *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, , the Supreme Court had dealt in detail with reasonable

restrictions and held that the width of the rights and limitations of institutions, whether run by a majority or minority, must conform to the

maintenance of excellence and ""with a view to achieve the said goal, indisputably the regulations can be made by the State"" and then again, the

Supreme Court had held that ""some of the permissible regulations/restrictions governing enjoyment of Article 30(1) of the Constitution are

prescribing courses of study or syllabi or the nature of books"".

34. So, what follows from all these judgments is that we have to presume the constitutionality of the Act. We should read the Central Act and the

State Act harmoniously so that both can be upheld. The manner in which repugnancy has to be understood has been specified in *Adhiyaman*'s

case (*infra*), where the Supreme Court explained how a State Act could be repugnant to the Central Act without running totally contrary to the

Central Act. The Supreme Court has held that the State has the right to regulate the standard of education, but at the same time, the parents' right

is also a pivotal point in the democratic system. The State can lay down standards which are higher than the standards laid down in the Central

Act. The Act has to be reasonable and cannot violate the right of equality; it should be fair. The decision of academic matters are best left to

experts who are familiar with it and Courts may not interfere with it. The State can prescribe textbooks. The suitable curriculum based on a general

consensus which accords with classroom should be evolved. If the State, in the interest of proper and healthy education, prescribes textbooks of

high merit and excellence, it cannot be regarded as unreasonable and when the legislature decides to adopt this course, it must necessarily entrust

this task to some authority. The State can impose conditions which prescribe syllabus, courses of study, regulations of conditions of employment of

teachers etc. and the State can make regulations with a view to achieve the goal of maintenance of excellence. Even the International Conventions

uphold the authority's right to lay down minimum standards of education while protecting the right of choice of the parent and child.

35. In 2002 (II) C.T.C. 344 (cited supra), the Tamil and English Schools Association, challenged the Government Order issued by the State

prescribing that two out of three subjects in all nursery and elementary schools shall be taught in Tamil medium, apart from teaching Tamil as a

subject. The Full Bench struck down the said G.O. terming it irrational, arbitrary and violative of Article 14 of the Constitution. Some of the

reasons given by the Full bench for arriving at this conclusion are:

a) A reading of the report of the committee would only show that it has only expressed its view in the matter and there is absolutely nothing to

show that it considered the views expressed by others.

b) The statement of, Dr. V.C. Kuzhandaiswami in his statement issued in the year 1992, when he was the Vice Chancellor of Indira Gandhi Open

University, New Delhi that ""there should be a realistic approach when dealing with ticklish problem. Tamil should no doubt be made as a

compulsory subject of study from LKG class. English medium may be permitted, if that is the choice of the parents.."" (vide page Nos. 78 and 81

of Annexure E filed by the State)

c) The committee should have called for statistics from each and every school in the State and examined the same in detail to find out if the students

are directed to study the subject in Tamil/mother-tongue whether

it will affect them in any manner which should mean a time consuming process and which is absolutely necessary.

d) There are certain annexures to the report. One annexure is to the effect that one Joint Director (Education Department) Tamil Nadu met eleven

high officials of the Education Department of Andhra Pradesh at Hyderabad on a single day i.e. on 27.5.1999, discussed the matter with them and

obtained information from them with regard to the administration and functioning of all the Schools.

... We do not understand why the Joint Director should have acted in such a hasty manner....

e) When there is a change of policy, which had been there for over a period of half a century, it should have in all fairness called upon the Board of

Matriculation Schools, the Managements" Association and the Parents" Association by sending individual communications to them to appear

before the committee on a particular day to express their views. This is because of three reasons:

(1) The Government gave recognition to the Schools without any condition and at every stage since 1950 it has been clearly understood that

English shall be the medium and in fact it has been so;

(2) Parents opted these schools instead of Anglo Indian or C B. S. E., Schools;

(3) While constituting the committee the Government ignored G.O. Ms. No. 1720 (School Education C2 Department), dated 25.7.1977 in which

the Government clearly laid down that the Matriculation Board shall advise the Director of School Education which consists of representatives

from the Management/Head of the School/public.

f) One has to remember that education policy cannot be changed every now and then. It should be precise and complete. It must be a long term

policy.

g) The State cannot be heard to say that it will face the situation as and when they come and take remedial measures, particularly when the

committee and the State Government have not even applied their mind or taken pains to find out the problems that may arise.

h) Even on the date of hearing the State could not place materials before us to demonstrate that there are sufficient number of schools with different

mediums in all places and that the G.O. can be implemented without any difficulty. The committee/Government should have conducted a detailed

study of each School/area etc., before taking any decision.

i) On a careful examination of the entire matter, we are of the clear view that Government also failed to consider the relevant materials/factors and

took into consideration irrelevant materials/factors. In view of this, G.O. has to be quashed as irrational.

j) It may be pointed out that in the cases with which we are concerned there was only a Government Order and the change in the policy is not by

any legislation ...the Matriculation Schools have been teaching in English medium for over fifty years. They have been permitted to continue ever

since the date of recognition of all the Schools and that recognition has been granted without any condition.... In the circumstances, we are of the

considered opinion that the managements are perfectly justified in claiming that on the principles of legitimate expectation the impugned order is

liable to be quashed which order, we have already found to be irrational, arbitrary and unreasonable.

k) Referring to the Convention on The Rights of the child and several Supreme Court decisions, the Full Bench held that, it is almost an accepted

proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in

the domestic law. "Equally well established is the rule of construction that if there be a conflict between the municipal law on one side and the

international law or the provisions of any treaty obligations on the other, the Courts would give effect to municipal law. If, however, two

constructions of the municipal law are permissible, the Courts should lean in favour of adopting such construction as would make the provisions of

the municipal law to be in harmony with the international law or treaty obligations.

1) As to the question whether the right to education will include the right to choose the medium of instruction and whether the parents can exercise

such a right on behalf of the child the Full bench held that a parent is entitled to direct and education of his son in the manner he considers best

suited and to guide thereby his future prospects. The State has no concern and we hope no right to direct him to do so in a particular manner.

m) From the above discussions we sum up as under:

...Under Article 21 of the Constitution, a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child

bearing and education among other matters - People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, .

- Children must be given opportunities and facilities to develop in a healthy manner to improve the conditions of freedom and dignity-Article 39(f)

of Constitution of India;

- Court must interpret the constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure - Sakal

Papers (P) Ltd. and Others Vs. The Union of India (UOI), .

A true democracy is one where education is universal, where people understand what is good for them- Unni Krishnan, J.P. and others Vs. State

of Andhra Pradesh and others etc. etc., .

Parent has the right coupled with the high duty to recognise and prepare the child for additional obligations. The parental right in the matter of

education is very pivotal point of a democratic system- The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and

Another, .

n) The parents on behalf of the children can call upon the State to provide free education upto 14 years. Now the parents are not demanding the

State to provide education. They desire and only want to be left alone to decide. It is not as if, they want their children to learn something, which is

prohibited under law. All that they want is to educate their children all the subjects of their choice. Certainly, it cannot be said that the nation's

image and dignity will be affected, as the language English has already been accepted by this nation as an "associate language. No one can claim to

know better than the parents about the child, to decide, as to what the child requires in the sphere of education and such a decision they take

keeping their duty in mind to shape the career and destiny of their child. With the nation touching a population of 100 crores and the State of Tamil

Nadu with more than 6 crores, may not be able to do much in view of the limitations and constraints on them. First, the State has to endeavour to

provide food and shelter to every one and education comes only thereafter. It can safely be said that the only logical conclusion that flows from the

various decisions referred to supra and the discussions made above, is that the right to education is a fundamental right, which also includes the

right to choose the medium of instruction and it can be exercised by the parents on behalf of their children.

o) The stand of the parents is that they have a pivotal/prior right to decide what kind of education their children require and this they have to decide

keeping in mind various factors. The greatest anxiety of the parents is that when in today's world the Darwin's theory of "Survival of the fittest" is

found to be more and more true, they have to prepare the children in such a way to meet the future challenges so that they will lead their life with

dignity in future.

36. *Susan Epperson v. State of Arkansas* (1968) 21 L. Ed.2d 228 was a case before the United States Supreme Court, which dealt with State of

Arkansas law prohibiting teachers in the State Schools from teaching the Darwinian Theory of Evolution. The U.S. Supreme Court held that the

statute was contrary in violation of the 14th Amendment as conflicting with the constitutional prohibition of State laws respecting an establishment

of religion or prohibiting the free exercise thereof. In the celebrated *Scopes* case, viz. *Scopes v. State of Tennessee* 154 Term 105, the statute was

held to be unconstitutional because it,

tends to hinder the quest for knowledge, restrict the freedom to learn and restrict the freedom to teach and therefore, was an unconstitutional and

void restraint upon the freedom of speech guaranteed by the Constitution".

The antecedents of today's decision are many and unmistakable. They are rooted in the foundation soil of our Nation. They are fundamental to

freedom. Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine and practice. It may not be

hostile to any religion or to the advocacy of no-religion.

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. Our courts, however,

have not failed to apply the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom

of speech and inquiry and of belief. By and large, public education in our Nation is committed to the control of state and local authorities. Courts

do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply

implicate basic constitutional values. On the other hand, "the vigilant protection of constitutional freedoms is nowhere more vital than in the

community of American schools" - *Shelton v. Tucker* 364 US 479. As this Court said in *Keyishian v. Board of Regents* 385 US 589, the First

Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom".³⁷ As early as 1923, in *Meyer v. Nebraska* 262 U.S.

290, the United States Supreme Court has held as unconstitutional an Act which made it a crime to teach any subject in any language other than

English to pupils who had not passed the Eighth Grade. The Court, while recognising that the purpose was to promote civic cohesiveness and

while acknowledging the State's power to prescribe the school curriculum, held that "these were not adequate to support the restriction upon the

liberty of teacher and pupil. In the separate opinion of Justice Stewart, J., who agreed with the result, he observed, "The States are most assuredly

free to choose the curriculums for their own schools. It is one thing for a State to determine that the subject of higher mathematics or astronomy or

biology shall or shall not be included in the public school curriculum. It is quite another thing for a State to make it a criminal offence for a public

school teacher so much as to mention the very existence of an entire system of respected human thought." Justice Stewart felt that such kind of

criminal law definitely impinge upon the guarantees of free speech. In *West Virginia Board of Education v. Barnette* 319 U.S. 624, Justice Jackson

observed as follows:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach

of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free

speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome

of no elections.

38. In South Africa, the State brought in reforms in the educational policy there had been a history of racial injustice. A law was enacted to remedy

the results of the racially discriminatory laws and practices of the past. It was to give effect to the constitutional right to education, it specifically

upholds "the rights of learners, parents and educators". In *Head of Department: Mpumalanga Department of Education and Anr. v. Hoerskool*

Ermelo and Anr. 2010 (2) S.A. 415 (CC), the Court held as follows:

...A just and equitable order may be made even in instances where the outcome of a constitutional dispute does not hinge on constitutional

invalidity of legislation or conduct. This ample and flexible remedial jurisdiction in constitutional disputes permits a court to forge an order that

would place substance above mere form by identifying the actual underlying dispute between the parties and by requiring the parties to take steps

directed at resolving the dispute in a manner consistent with constitutional requirements. In several cases, this Court has found it fair to fashion

orders to facilitate a substantive resolution of the underlying dispute between the parties. Sometimes orders of this class have taken the form of

structural interdicts or supervisory orders. This approach is valuable and advances constitutional justice particularly by ensuring that the parties

themselves become part of the solution.

In *Christian Education South Africa v. Minister of Education* 2000 (4) SA 757, the Constitutional Court of South Africa observed as follows:

In essence, the Court must engage in a balancing exercise and arrive at a global judgment on proportionality and not adhere mechanically to a

sequential check-list. As a general rule, the more serious the impact of the measure on the right, the more persuasive or compelling the justification

must be. Ultimately, the question is one of degree to be assessed in the concrete legislative and social setting of the measure, paying due regard to

the means which are realistically available in our country at this stage, but without losing sight of the ultimate values to be protected....

Each particular infringement of a right has different implications in an open and democratic society based on dignity, equality and freedom. There

can accordingly be no absolute standard for determining reasonableness.

39. *Bel Porto School Governing Body and Ors. v. Premier of the Western Cape Province and Anr.* 2002 (3) SA 265, is a case where the issues

raised are somewhat similar to this case. There the South African Government pursued a policy to give effect to the Constitutional imperative to

introduce equity into its educational system. Here the State declares that its object is to give effect to the Constitutional imperative of social justice

and education to children. In *Bel Porto*, the schools did not dispute the validity of the policy's goal, nor did they dispute the core aspects of that

policy. But they complained that the rationalisation programme imposes an unfair burden on them and they were neither informed adequately about

the programme nor were they consulted. Here too, the schools do not dispute the power of the State to legislate in this regard, nor do they

question the worth of the object, but they do question whether the object will be achieved by this Act. They complain that this uniform system, if

implemented, would impose an unfair restriction and as in the South African case, that they were neither informed adequately nor were they

consulted. In *Bel Porto*, the question was regarding the norm for determining the total number of staff and the service contracts and conditions for

me workers available from the Department and the disparity between the workers from other Education Departments and the Appellants schools.

Here my objection is to the imposition of norms regarding the syllabus and textbooks. So, the issues are different, but some of the observations

there throw light on the issue that is before us. The purpose of the scheme in Bel Porto was to promote equality and the purpose of the policy was

to equalise the "education system and to put all schools on the same level". That purpose is not very different from the purpose of this Act. The

following paragraphs in Bel Porto are relevant:

The approach now adopted by the courts of England to judicial review in public law cases, is that "the intensity of review. .. will depend upon the

subject matter in hand". Thus, action affecting rights protected under the Human Rights Act usually calls for heightened scrutiny and more intensive

review than action affecting other rights or interests. As we have heard no argument on whether under our law the intensity of review in cases

involving the infringement of particular rights may require a stricter standard than rationality, I prefer to express no opinion on that issue. The

present case is concerned with policy matters relating to attempts to introduce equity into an inherently unequal education system, with all the

difficulties attaching to that. The changed policy does not infringe any constitutional or other rights of the Appellants. It is a case in which courts

should tread warily.

I would add only this. Policy is not written in stone. It can be adapted from time to time to meet the exigencies of particular cases. If the Appellants

consider that their special needs call for some special consideration in relation to the re-deployment process, or the cost of retrenchment, it remains

open to them to continue to press their case for such relief. But it is the Department and not this Court that must decide this question.

In this case, the policy relates to the education of children. We have to tread warily. We must understand that the attempt to introduce equality in

the schools in question to achieve social justice is fraught with difficulties. The schools had been following different paths till X Std until they merged

under the State umbrella for XI and XII Stds The Policy allowed it. But as observed above "policy is not written in stone" so we should see if the

change of policy meets the constitutional requirements without offending any fundamental rights.

40. The existing procedure in the four streams of education for prescribing syllabus and text books by the State Government is tabulated

hereunder:

Class & Subject Matriculation Schools Anglo Indian Schools Oriental Schools State Boards

Class I to IX-All

subjects other than

Language Only Syllabus Only Syllabus Text book - power under Regulation

42, but not prescribed Common Text Syllabus and books

Class X - All Subjects other than language Separate syllabus and text books Separate syllabus and text books
Common Text Syllabus and books

Class XI & XII-

All Subjects other

than language Common Syllabus and Common Texts Streams Books for 4

Tamil Language Class I to X Syllabi & Text books Syllabi & Text books Syllabi & Text books Syllabi & Text books

Tamil Language Class XI and XII Common Syllabus and Text books for All 4 streams

Other Language Class I to IX Syllabus Syllabus Syllabus Syllabus and Text books

Other Language Class X Syllabus and Text Books Syllabus Syllabus Syllabus and Text Books

Other Language Class XI & XII Common language Syllabus and for all 4 streams Text books adopted for each

This is the position that has prevailed till now. So all the schools following different systems have followed the State prescribed syllabus. Perhaps till

now, it was more recommendatory in nature, but now the Act makes it mandatory. But all the schools have accepted the State's power to

prescribe syllabus. Of course, now the State also prescribes the textbooks. We will examine the legality of that in the latter part of this judgment.

41. There is no dispute that the syllabus is prepared by the State for Anglo-Indian Schools and for Matriculation Schools also. In fact, in the

revised syllabus for matriculation schools which was prepared by the High Level Committee under the Chairmanship of Dr. A. Gnanam, the

objective did not seem to be very different from the objectives that the State intends to introduce by the "Samacheer Kalvi Thittam". And, it is

clear from the preface that the syllabus that is prepared intends to include a curriculum to facilitate a smooth, seamless transition when the

Matriculation students move to the State or Central Board Curriculums in Standards XI and XII. There is no dispute that in Standards XI and XII,

all the four streams merge into one. Therefore, students belonging to any of the four streams that are included in the Act will either join the State

Board Curriculum for Standards XI and XII or the Central Board Curriculum for Standards XI and XII, depending on the students' choice or the

parents' choice. Therefore, ultimately the road leads to the same goal post. The matriculation schools who are the Petitioners herein have accepted

the Revised syllabus for Matriculation schools without any protest. Their case is that this syllabus is recommendatory and it is not a strait-jacket

formula. The State has professed that one of the objectives in introducing "Samacheer Ka-livi Thittam" is to reduce the load on the students. A

chorus of objection is raised by the Petitioners stating that reduction of learning load equates to reduction in quality. According to them, any

syllabus prepared by the State will be inferior to the syllabus that the matriculation schools have followed since the State's object is to reduce the

learning load. We do not think we can sustain this objection since in the preface to the revised syllabus for Matriculation Schools brought into force

from 2005-2008, it is stated that ""there has been a conscious effort to reduce the learning load of the students ... any substantial reform in this

aspect should be done only with the joint effort of other Boards"". The preface also indicates that this reduction has been made without lowering the

competitiveness of the system and the parents' attitude and aspirations. The State's stand is that this Act has also reduced the load without diluting

the quality.

42. We have already seen that the Petitioners had not really challenged the power of the State to legislate. The Petitioner-schools and the two

other streams, viz. Oriental and Anglo-Indian Schools, have already subjected themselves to State's regulation for Classes XI and XII. The

Tabular column above also shows that even upto Class X, the Oriental Schools follow only the State Board syllabus and textbooks and the change

that is effected by the introduction of the Act cannot be attacked as unreasonable. In the Tamil Nadu Code of Regulations for Matriculation

Schools, Regulation 7 provides that the schools will continue to be fee based, that the schools can use English as medium of instruction and they

will continue to be free to innovate with regard to curriculum except for the last one year. For Anglo-Indian Schools, the Government reserves

under Regulation 42, both the right to forbid and the right to prescribe the use of books.

43. We have already noted that the Petitioners contended that the State has the power to legislate in this subject of Education. It is clear from the

scheme of the Central Act that the National Curriculum policy must be implemented by the State through either the academic authority or the State

Council. So we have to see if both the Acts can coexist. We have condensed the law laid down in the various decisions., and we find that the

Supreme court has clearly held that the State can lay down the syllabus and also prescribe the tex-books. The recommendation of the various

committees and the National groups also recommend that in the interest of social justice a common pattern can be evolved, while leaving the space

for independence and improvisation of the schools intact.

44. The Act aims to bring social justice and quality education. The Petitioners are very sceptical about this. According to them, social justice will

not be achieved by this process, and on the other hand, what is likely to happen is, levelling down of the excellent to the mediocre. According to

them, the textbooks prescribed by the Government will not be adequate to equip the students to meet the global challenge.

45. As early as in 1964-66, the Education Commission had recommended that a common school system of education would bring together

different social classes and would promote equality and integration among people. The Commission was of the opinion that, ""education itself is

tending to increase social segregation and to perpetuate and widen class distinctions... this is bad not only for the children of the poor, but also for

the children of the rich and the privileged classes"" and that, ""by segregating their children, such privileged parents prevent them from sharing the life

and experiences of the children of the poor and coming into contact with the realities of life also render the education of their own children

anemic and incomplete"".

46. According to the Commission, if these evils of division and disparity are to be eliminated and if education system is to become a powerful

instrument of social and national integration, then we must move towards a common school system of public education. For example, the affluent

child will know that there is life beyond an air-conditioned room. Even from her early age, she will also learn that there are some of his classmates

who may come from homes which are smaller than a single room in her house and she will learn that the divisions are only on the surface, but really

they are one. In the same way, the child who hails from a lower income household will perhaps perceive that by education and effort (hard work),

the vistas of his world will be widened. According to the State, this is their object, viz. to promote social justice and to remove the divisions.

According to the State, the object of the Act is to remove the elitist attitude of children of urban schools, since all the schools would be following a

common syllabus as laid down by the State.

47. The great poet Bharati described this in the following words:

There are kittens of different colours - Grey, Black, Brown and White, but they are the same. Can we say one is superior and the other is inferior

because of the difference in their colour?

According to the State, the new system would also facilitate movement of children easily from one stream of education to the other in view of the

common syllabus.

Considering all the factors, we cannot describe that the Object of the Act is unreasonable or arbitrary.

48. The Petitioners submitted that there is a huge difference between the concept of a common school system and uniform school system as

according to them, the uniform school system would allow no flexibility and it would not be decentralised, which is what the National Curriculum

Framework insists, and it will allow no flexibility to the teachers.

49. This submission may be right in that the perception of a common school system differs from the perception of a uniform school system. But

considering the main objects of bringing the Act, viz. social justice and quality education, we will understand uniform school system to mean a

common school system which will give a greater academic freedom and reflect the diversity of the country, moving from the present rigidity with

flexibility, textuality and plurality as the defining principles. In the United States of America, when there was a change in policy it was attacked as a

dumbing down"" of textbooks. This dumbing down is what is the main apprehension of the Petitioners. Petitioners submitted that there is a huge

difference between the concept of a common school system and uniform school system as according to them, the uniform school system would

allow no flexibility and it would not be decentralised, which is what the National Curriculum Framework seems to indicate, and it will allow no

flexibility to the teachers.

50. Materials were produced before us giving the names of the Draft Syllabus Committee constituted for "Samacheer Kalvi" and we found that

apart from Senior Lecturers of D.I.E.T. in various districts, Post-Graduate teachers from across the State from Matriculation Schools, Anglo-

Indian Schools and Higher Secondary Schools had been invited to suggest and to prepare the draft syllabus. A fairly broad based group of people

had been invited to prepare the syllabus. The fears of the Petitioners that the textbooks that are prescribed by the State would not match the

textbooks that they have been using appears to spring from their comparison of the existing State Board textbooks with the textbooks used by the

matriculation schools. The materials produced before us - and a sample textbook was also shown - clearly shows that the State wants to make a

clean break in designing the textbooks bearing in mind broadly the suggestions made by the various committees hitherto and also the suggestions of

the education experts whom they had on their team. Repeatedly, the learned Additional Advocate General submitted that the Petitioners shall not

base their conclusions on the students who study in the State Board Schools, but what the State has produced now is an effort to improve the

education standards and to give quality education.

Without equality in education, to all the children in the State, there will not be a real democracy. The children cannot live in water-tight

compartments based on class and social divisions. There should be free interaction and integration. The State has the right to introduce a legislation

with such an object in mind. We will also, in the later paragraphs of the judgment, consider whether they can use police power to enforce such a

system, whether they can lay the schools on ""Procrustean beds"" and cut them or stretch them to size. We can not ignore that the flower of

education can flourish only on the fertile soil of freedom of thought and expression.

51. The Petitioners contended that by reduction of exams, the quality of education will be reduced. We do not think so. It is clear from the

National Curriculum Framework that the State wants to move the children away from a marks-driven/exam-driven regime into a system where

learning becomes joyful and therefore, the statistics given regarding the number of papers that a matriculation student writes does not recommend

the case of the Petitioners to us. In the counter filed by the Respondents, they have refuted the averments that there is no proper infrastructure and

they have submitted certain details regarding the improvements done during the year 2006-2007 which relate to provision of computers to

Government Higher Secondary Schools, construction of classrooms under the "Sarva Shiksha Abhiyaan" Scheme, introduction of activity based

learning in all schools from Standards I to IV, release of NABARD Bank's assistance for building, drinking water facilities, toilets and furniture to

Government Higher Secondary Schools and imparting yoga training. It is also stated that the activity based learning methodology is submitted on

the Rishi Valley Experiment on children's learning. By this method of learning, the process of learning is structured and the child can move forward

through the ladder system on his own pace without omitting any of the competencies. According to the Respondents, this methodology addresses

the multigrade and multilevel teaching. This ABL methodology has been introduced in Chennai Corporation Schools in the year 2003. There are

certain great advantages of ABL methodology. Classroom becomes a comfortable zone for children; students' absenteeism is reduced; there is

self-examination; there is scope for peer teaching and peer learning; lessening of burden of homework; teacher-parent relationship gets

strengthened; teacher-child relationship becomes more meaningful etc. and the Respondents state that the children who study in ABL system

perform well in Tamil, Mathematics and Science.

52. One of the great international Tamil scholars, Professor Zvelebil has written,

If it is true that liberal education should liberate by demonstrating the cultural values and norms foreign to us by revealing the relativity of our own

values, then the discovery and enjoyment of Tamil literature and even its teaching ... should find its place in the systems of western training and

instruction in the humanities.

While this shows his opinion of the greatness of Tamil as a part of universal heritage, it also shows that education in the real sense should not have

strict compartments, but rather it should be a discovery of different values and different norms so that we assimilate the best from everywhere.

Therefore, we have to make sure that the Act is construed or understood as acknowledging the freedom of the parents to choose the mode of

education for their child rather than restricting it.

53. It was contended on behalf of the Petitioners that since the CPC and the Code of Criminal Procedure are in the Concurrent List, the bar of

suits in Section 14 and the penal provisions in Sections 11 and 12 of the present Act would amount to an encroachment into a field occupied by

the Centre unless the President's assent is obtained under Article 254(2) of the Constitution. On the other hand, the learned Additional Advocate

General submitted that there are very many Acts where there are such bars and penal provisions and where the Governor's assent alone has been

obtained. We do not think the submissions of the Petitioners in this regard can be accepted. There is no central enactment relating to school with

which these provisions collide. It is only then that these two sections will amount to an encroachment. The Act really is a legislation on the subject

covered by Entry 25 of List-III.

54. Even if we accept that by introducing a section relating to bar of suit the enactment would come under Entry 13 of List-III, which deals with

civil procedure including all matters included in the Code of Civil Procedure, the obligation to obtain Presidential assent will only be ""where the

legislations, though enacted with respect to matters in an allotted sphere, overlap and conflict"" - vide Govt. of A.P. and Another Vs. J.B.

Educational Society and Another etc., . In Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, ,

the Supreme Court held that, ""it is trite that the true nature and character of the legislation must be determined with reference to the question of the

power of the legislation. The consequence and effect of the legislation are not the same thing as the subject matter"". Following this, in Government

of Tamil Nadu v. K. Sevanthinatha Pandarasannathi 2009 (3) L.W. 773, this Court has held as follows:

The true nature and character of the section, is that the State intends that for the better and proper administration only a citizen shall be qualified to

be a trustee. So the State imposes a disqualification on non-citizens from holding the post. It cannot be said that it is an unreasonable classification

nor that it is totally disconnected to the object sought to be achieved. The State Legislature can enact laws in respect of a religious institution. If as

a consequence foreigners are disqualified from holding the post, then that cannot be a reason for holding that the Legislature has made an inroad

into the field covered by List I.

In this case, the writ Petitioners, concede that the State can enact this law as long as it is not in conflict with RTE Act. The mere fact that there is a

bar of suit with regard to the subjects covered by this Act will not be a reason to hold that, by that provision, the legislation has encroached into the

area occupied by the Parliament under Entry 13 of List-III. So, this objection is rejected.

The objection that this Act makes an invidious discrimination between the State Board schools and the Central Board schools cannot be

accepted. The Petitioners and the Anglo-Indian Schools and the Oriental Schools any way come under the State umbrella after X standard. This

Act only extends the umbrella right down to cover all children from Standard I.

Therefore, we find that the object of the Act is in tune with the Constitutional principles and the International Conventions. We do not think that the

Act fails for want of Presidential assent. We do not think that the Act fails for non-inclusion of other streams of education, e.g., C.B.S.E., I.C.S.E.,

etc. We will examine the validity of the specific sections hereinafter.

55. Validity of the Act tested section-wise:

I. Section 3

3. (1) Every school in the State shall follow the common syllabus and text books as may be specified by the Board for each subject,-

(a) in Standards I and VI, commencing from the academic year 2010-2011. (b) in Standards II to v. and Standards VII to X from the academic

year 2011-2012.

(2) Subject to the provisions of Sub-section (1), every school in the State shall,-

(a) follow the norms fixed by the Board for giving instruction in each subject;

(b) follow the norms for conducting examination as may be specified by the Board.

Section 3 of the Act, read as a whole, makes it mandatory for every school to follow the common syllabus and textbooks as may be specified by

the Board for each subject and it is also mandatory for the school to follow the norms fixed by the Board for giving instruction in each subject and

to follow the norms for conducting examination as may be specified by the Board. This pattern will commence from Academic Year 2010-2011

for Standards I and VI and for Standards II to v. and from VII to X, from the Academic Year 2011-2012.

(a) Date of Commencement of the Act:

The State has actually made ready the textbooks only for Standards I and VI. According to the Act, all schools shall follow these textbooks for

Standards I and VI commencing from the Academic Year 2010-2011 and for Standards II to v. and VII to X, from the Academic Year 2011-

2012. The reason for having two different dates for different classes is that the State has not made ready the books for the other classes. In Ram

Ragubir Prasad's case (supra), which we have already seen, the Supreme Court upset the Government's textbooks because the syllabi had not

been published prior to the prescription of the textbooks. In this case too, the Act has not prescribed the syllabi or the Act does not contain any

schedule which spells out the syllabi. Moreover, the common syllabus is only meant for the curricular subjects, which are the five subjects, i.e.,

Mathematics, Science, Social Science, English and Tamil. The norms have not been specified in the Act either as an annexure or in the schedule or

in the definition. The syllabus has not been laid down sufficiently early. We have already seen in the Full Bench decision that education policy for

children must be free from ambiguity and it should have clarity. We have already held in the paragraphs above that the State has the power to bring

in a system of education common to all. But no prejudice will be caused to anyone if we postpone the commencement of the Act for Standards I

and VI; on the other hand, there will be better clarity and certainty in the minds of the teachers, the schools and the children. The norms, the

syllabus and the textbooks shall be made known to all the stakeholders - the teachers, the students, the parents and the schools - before

introducing it in the academic year. This shall be done for all classes only from Academic Year 2011-2012 or whenever they are made ready and

known to the parties concerned.

(b) Norms for giving instructions: Section 3(2)(a) of the Act states that the schools shall follow the norms fixed by the Board for giving instruction in

each subject. The first step before Section 3(2) is translated into action is for the State to lay down the norms. The norms have to be specified with

clarity; it should allow flexibility and innovation. Until the State specifies the norms, no school can be expected to follow it. When we asked the

learned Additional Advocate General what was meant by "norms", he answered that it only means the "hours of teaching". The Act does not

explain what the word "norms" indicates. In fact, in the Yash Pal Committee Report, it was highlighted that one of the problems faced by the

curriculum board is the perception of teachers that the content of the textbook is a rigid boundary. So, if rigid boundaries are laid down for

teachers, the Yash Pal Committee says, boredom is the inevitable outcome. If the children are bored, then the laudable aim for which the Act has

been introduced will fail even at the starting point. The Yash Pal Committee also suggested that there should be greater autonomy to classroom

teachers to develop curricular materials best suited to the needs of the local environment. We saw in *Meyer v. Nebraska* (supra) that the State's

power to prescribe the school curriculum does not extend to restricting the liberty to teacher and pupil, and the United States Supreme Court also

declared that while it is one thing for a State to determine that a particular subject shall or shall not be included in the public school curriculum, it is

quite another thing to make it a criminal offence to mention the very existence of an entire accepted system of thought. The Schools Act of South

Africa upholds the rights of parents, learners and educators, which means teachers. A teacher constantly under the scanner as regards norms is

not likely to be an inspiring teacher, nor will she promote excellence.

ii. In NCF-2005, stress is laid on individual teachers exploring new avenues of transacting the curriculum. It is observed there that these efforts are

sometimes creative and ingenious, but largely remain unnoticed. It also underscores the importance of creating among teachers a sense of their own

agency, which in turn, will foster a sense of greater involvement and commitment to their work. A teacher who is always looking behind her

shoulder to see if the State is watching her will subliminally transmit that fear and apprehension to her students. This will not be in the best interest

of the child. Children who are taught by such teachers who are persistently worried about breaking the norms and incurring the State's wrath can

never meet the global challenges nor will their education be qualitatively excellent. The State can only indicate the broad syllabus pattern. It cannot

lay down the specifics for adherence, That would defeat the object of the Act. It would be an unreasonable restriction on the rights of the teacher.

It is also contrary to the National Curriculum Framework.

iii. The teacher plays an important role especially in the early years of the child. DCS-2009 states that "the teacher is a facilitator rather than the

central figure in such processes. She/he is not the only learning resource. Children learn individually, from each other and in large groups ...

Children learn to learn while learning". For the teacher to be an ideal facilitator, she has to have autonomy, independence and definitely "play in the

joints". iv. In order to achieve social justice, which is proclaimed as the ultimate object of the Act, a teacher will have to modulate the way she

transacts with a child who comes from an educated ambience and a child who is probably a first generation scholar. The State cannot lay down a

norm which is a "one size fits all". We are even doubtful whether the State can exactly specify the number of periods that a teacher shall teach a

particular subject. The school may decide that for a particular class, one more hour of say, Science or Maths, as the case may be, is necessary,

then the school should have the flexibility to make the necessary changes. Realistically speaking though, we have our own doubts whether the

majority of the schools in our State devote such thought to the students and adapt or adopt their strategies. At present the schools are fine tuned

only to the examination perspective and they are marks-driven and results-driven. But the materials placed before us by the State indicate that the

State wants to make a clean deviation from the past monotonous practice and to create schools and classrooms where children would find that

learning is joyful. If that is indeed the aim - and we earnestly hope it is - then, laying down strict, inviolable norms as regards instructions will defeat

its very purpose. Therefore, Section 3(2)(a) must be read thus:

Every school shall follow, as far as practicable, the norms fixed by the Board for giving instruction in each subject.

(c) Norms for conducting examination:

i. All the schools join the mainstream at the level of Standards XI and XII. For Standard X again, since that is the threshold at which the students

move to the XI and XII Standards, the Board's norms are required for conducting the examination. But, when Section 30(1) of the Central Act

lays down that no child shall be required to pass any Board examination till the completion of elementary education, we do not think the Board can

specify any norms for any examination at any level. We do not see how the State can run contrary to Section 30(1) of the Central Act and specify

any Board examination or lay down any norms for conducting examinations.

ii. Paragraph 5.3.3 of the National Curriculum Framework, 2005 reads that under no circumstances should Board or State Level Examinations be

conducted at other stages of schooling such as Classes V, VIII or IX. The NCF shows that for Classes I and II, the assessment must be purely

qualitative and judgments of children's activities based on observations through everyday interactions and that "on no account, they be made to

take any form of test, oral or written". From Classes III to VIII, it indicates that a variety of methods may be used, including oral and written tests

and that children should be aware that they are being assessed, but it should not be seen by them as a threat, but as part of the teaching process.

There could be children's own self-evaluation also as part of the report card from Class v. onwards. It suggests that instead of examination, there

could be short tests from time to time and term-wise examinations could be commenced from Class VII onwards "when children are more

psychologically ready to study large chunks of material". For Classes XI and XII alone, it speaks of assessment to be made based more on tests,

examinations and project reports for the knowledge based areas of the curriculum along with self-assessment.

iii. According to the Learned Counsel for Petitioners, it is not possible to segregate syllabus and curriculum into water tight: compartments and

when the Centre has prescribed the National Curriculum Framework which has to be laid down by an authority notified by the State Government

under that Act, any syllabus prescribed by a board notified under the State Act would run counter to the Central Act and to that extent, repugnant.

iv. From the above, it is clear that when the National Curriculum Framework-2005 clearly states that until completion of elementary education, no

child should be required to pass any Board examination and more importantly Section 30(1) of the Central Act also mandates that there can be no

board exam till the completion of elementary education. So Section 3(2)(b) of the present Act cannot stand.

Instead, the Board shall lay down assessment patterns as explained in NCF-2005 which are appropriate for different classes and the schools shall

as far as possible, follow them.

(d) Syllabus:

i. The State syllabus will be with regard to the curricular subjects, which are English and Tamil, Mathematics, Science and Social Science. This is

accepted by the learned Additional Advocate General. In the counter, it is stated that the school curriculum will consist of curricular and co-

curricular subjects, and out of 40 periods in a week, 32 periods are allotted for curricular subjects and eight periods are allotted for co-curricular

activities. We have already seen what the curricular subjects are. As co-curricular activities, they included, the State has mentioned in the counter,

(i) Physical Education and Health Education, (ii) Value Education / Moral Instruction, (iii) Computer Education, (iv) Arts and Crafts / Life Oriented

Education (Music/Drawing/ Tailoring/Agriculture etc.), (v) Library Activity and the school is at liberty to select the activity under Life Oriented

Education on the basis of area and the needs. The Board will also prescribe the syllabus and textbooks for these co-curricular subjects. The

schools may also have activities like Girl Guides, Junior Red Cross, National Service Scheme, National Cadet Corps, Eco Club etc. This should

be made clear in the Act itself or in a schedule thereto. The schools are afraid that by combining Physics, Chemistry and Biology in one paper, the

education of their children will suffer as those who want to specialise in either of these three branches of Science will not be able to cope up with it

and match other students when it comes to the Standard XII examinations. It is difficult for us to accept this submission, since in XI and XII

Standards, they are any way, in one single stream. We are informed that the C.B.S.E. students also write the same five papers at Class X as is

now proposed by the State.

ii. Therefore, if we give this flexibility to the schools, viz. to adhere to the syllabus as far as the curricular subjects are concerned, having a choice in

the textbooks if they so desire and introducing co-curricular subjects according to their choice, the individuality that they assert will be intact, while

the State's object of achieving social justice and quality education can also be attained. If all the schools adhere to the same syllabus

notwithstanding the fact that there are different textbooks, the movement from one school to another will be easier and a child in a rural school run

by the Government and a child in a private urban school would be studying in the same pace without sacrificing standards.

iii. The State shall make it clear that the word "syllabus" will mean and include only the five curricular subjects.

(e) Textbooks:

i. The first part of Section 3 relates to syllabus and textbooks. The Draft Concept Paper on Pedagogy and Common Syllabus refers to multiple

divergent exposure and the National Curriculum Framework, 2005 clearly states that there should be plurality of textbooks, widening the teacher's

choice. In Ahmedabad St. Xaviers College case (supra), the Supreme Court has referred to the parental right as the touchstone of difference

between democratic education and cultural totalitarianism, and the tendency in a modern State which starts on the mission of educating its children

could be towards State monopoly. While the Supreme Court had also warned in P.M. Bhargava's case (supra) and other cases that Courts

should normally leave the decision of academic matters to experts, they have also held that the purpose of imparting education would be to allow

scope for making a study on very many subjects". The Full Bench had also referred to the parents' right with regard to education of their child in

the manner that they consider is best suited and that the State cannot direct the parent to do so in a particular manner. In *Scope v. Tennessee*

(supra), the Supreme Court of United States held that by and large, public education in the United States of America "is committed to the control

of State and local authorities, but that the First Amendment does not tolerate laws that cast a pall of orthodoxy over the classroom". In *State of*

Madhya Pradesh v. Ram Raghubir Prasad (supra), the Supreme Court held that the Government "has plenary power u/s 5 of the M.P. Act to

produce its own textbooks in tune with the syllabus prescribed u/s 3". In that case, the State Government had exercised its power u/s 5 of that Act

to prepare, print and distribute textbooks of its own compilation and they observed that certainly this is well within the powers of the Government

u/s 5. The Supreme Court held that the power given to the Government is a responsible power and it may decide either to choose some textbooks

available in the field or to compile textbooks on its own, and if the decision is the latter, the Government is perfectly free to undertake preparation,

printing and distribution and that while doing so, it must remember the vital constitutional values of our nation and that when prescription of syllabi

and textbooks falls within the Governmental function, then the operation of that power must respond to the values of our Constitution and this

requirement is also insisted upon in the Central Act. However, in that case, the Supreme Court gave certain directions and upset the Government

textbooks only because the syllabi had not been published prior to the prescription of the textbooks. The Court also referred to a problem that

may arise when they observed that to change horses midstream may be disastrous and to harass the young alumni by putting them through fresh

books ... is an avoidable infliction.

ii. The decisions referred to above clearly hold that the State has the power to define the syllabi and to recommend books, and if necessary, to

print the textbooks by itself. However, in addition to the decision in the Madhya Pradesh case, we now have the compilation of opinion of

education experts especially with regard to children's education in the National Curriculum Framework, which has been produced before us on

behalf of the State by the learned Additional Advocate General and this clearly talks of multiple textbooks.

iii. Some of the senior counsel who appeared for the Petitioners even indicated that if the State goes ahead with this programme, they will switch

over to C.B.S.E. System because they have this presumption that what the State produces will not match the standard of excellence. This

presumption may not be justified. The State has undertaken a fairly comprehensive task in designing the textbooks,

iv. From the affidavit filed by the Director of Matriculation Schools, we find that an extensive study was carried out by senior lecturers of the

Directorate of Teacher Education of the various textbooks available in the market. According to this counter, there is a huge disparity in such

textbooks. A comparative analysis has been made of the text books in the different subjects of various publishers for the different classes of

matriculation schools. These books have been assessed under various heads, including readability, sequence of content, scope of self-evaluation

etc. According to the State, this wide disparity in the quality of text books used by the different schools is not in the interest of the child and

introduction of quality text books devised by the Syllabus Committee will only be to the advantage of the child and it is the child's interest which is

of paramount importance. In Narain das" case (supra), the Supreme Court has upheld the State"s role in preventing poor quality text books from

finding their way into classrooms because of ""dubious financial arrangement"" with publishers. So, legal position in this regard is clear.

v. A sample textbook was shown to us and according to the learned Additional Advocate General, this has been prepared strictly in accordance

with the recommendations in the National Curriculum Framework. According to the State, this textbook will also be inexpensive and will place a

lighter load on the parents" pocket.

vi. The National Curriculum Framework lays greater stress on a holistic approach and active learning through experiential mode. In an earlier

paragraph, we have dealt with the difference in the stages of learning that a child goes through as it grows older. The NCF recommends that the

children shall not learn only from textbooks, but from other teaching materials. In fact, the NCF recommends the availability of multiple textbooks.

The NCF also recommends that the syllabi, textbooks and teaching/learning resources should be produced in a ""decentralised and participatory

manner involving teachers, experts from Universities, NG Os and teachers" organisations"". The NCF also casts a responsibility on the schools to

provide ""a flexible curriculum that is accessible to all students"" ,

vii. While dealing with the children"s knowledge, the NCF recommends that the child should learn from the community and the local environment

and that the printed word and picture are poor replicas of the natural world. As an example, the NCF visualises a teacher who takes a class on a

walk through a field near her school and on returning to the class, asks the child to name ten things she has observed. A child in Ma-habalipuram

may include in the list of things, sea-shells, pebbles and fish, while a child in Chhattisgarh would see nests, bee-hives etc. When the child learns

from the local environment, the child automatically learns the importance of environmental values,

viii. The learned senior counsel appearing for the Petitioners fear that the rigidity of the language of Section 3 makes them apprehensive that they

would be punished even if the schools take the children out for an excursion. While orally the learned Additional Advocate General said that

following the syllabus is a must, but in the extra hours, it is for the schools to use their imagination, in view of the language employed in the Act, we

must clarify the position.

ix. The children must get a holistic education. For instance, in Tamil Nadu, we have five kinds of terrains, viz. Kurinji, Mullai, Marutham, Neythal

and Paalai. The teachers can teach the children which terrain that particular district is in and ask them to discover places which have a different

terrain. This will link them with the past so that they see the entire experience as a one continuum.

x. Though the learned Additional Advocate General submitted that we cannot forget our own traditional method of education, and that the present

system is a colonial legacy, the fact is we can not shrug this system off totally. We have also gone through the textbooks. It appears that the

textbook's origin was sometime in the fifteenth century in Europe. We had palm leaf instructions, as we can see from what the Sage Tiruvalluvar is

depicted as holding in his hands. The educational instructions in Europe were traditionally under the ministries, so there was greater standardization

and uniformity of curriculum, but there was not much variety. Sometime in the later half of the last century, discipline-centred textbooks were

introduced in U.S.A. They were criticized for giving too much information and therefore incomprehensible to the learners. Then a counter-reaction

set in, in that country and there was, what was termed as "'a dumbing-down'" of textbooks. The National Commission on Excellence in Education in

its 1983 report recommended that textbooks be made more challenging. The opinion was that "'this dumbing-down'" was the consequence of

curriculum fundamentalism, back-to-basics retrenchment and censorship pressures -

Good textbooks codify and synthesize knowledge in ways appropriate to the cognitive, affective, and social growth of learners. The durability and

popularity of the textbook reside in its economy and flexibility. The fact that textbooks have served historically as prime targets for censorship of

ideas is testimony that textbooks are powerful media for emergent, and even divergent, learning. The textbook should not be seen as the syllabus

or complete course of study, but should be created as a vehicle for opening up avenues for further inquiry and the use of a range of print materials

and other media. Whether the school textbook is designed to meet the function of general education, exploratory education, enrichment education,

or even specialized education, to be successful it must be generative in ideas, concepts, and skills for meaningful applications in the life and growth

of the learner.

In a multicultural society, there will always be divided and special interests that will seek to impinge on the teacher's right to teach and the student's

right to learn. But an enlightened citizenry requires freedom of inquiry. Historically, those who would seek to curtail the free currency of ideas in the

teaching-learning process have focussed their efforts on print media, especially the school textbook.

-Textbooks: School Textbooks in the United States,

Education Encyclopaedia

The Petitioners apprehension is that by this Act, there will be a dumbing down of standards.

xi. Since multiple textbooks are recommended, while prescribing the Government textbooks, the State may consider approving certain other

textbooks that have been in vogue in Matriculation Schools / Oriental Schools / Anglo-Indian Schools. Then the State can ensure that only quality

books reach the children. The teachers of the schools may choose either the prescribed textbooks or the approved textbooks. If as is contended

by the learned Additional Advocate General, much thought and widespread discussion as well as consultation has gone into the preparation of the

textbooks, then quality needs no recommendation nor force, it recommends itself. Within a year, all the schools will opt to choose the Government

prescribed textbooks. The State need have no apprehension in this regard. But the State must allow flexibility. So, the word "shall" with regard to

textbooks in Section 3 of the present Act must be read as "may".

xii. Section 3(1) should be construed to mean that as far as the common syllabus is concerned, the schools shall follow it, and as far as textbooks

are concerned, the schools may follow either the prescribed textbooks or the approved textbooks.

xiii. While dealing with textbooks, we must take into account the apprehension of the minority institutions and their rights under Article 30 of the

Constitution.

xiv. As far as Moral Instruction and Value Based Instruction is concerned, some directions that we have given for textbooks, i.e., the State may

prescribe textbooks for Moral Instruction, but the schools must have the freedom to choose from prescribed textbooks or approved textbooks.

To insist that the religious minority schools should use only the State prescribed textbooks for Moral Instruction would violate their minority rights

under Article 30 of the Constitution.

xv. In *Ms. Aruna Roy v. Union of India* (2002) 7 S.C.C. 368, which dealt with the obligation of the schools to impart secular value, the Supreme

Court had occasion to consider the validity of the NCF published by the NCERT and it held thus:

30. Undisputedly, the aforesaid S.B. Chavan Committee's Report was placed before Parliament for discussion. None can also dispute that the

past five decades have witnessed a constant erosion of the essential social, moral and spiritual values and increase in cynicism at all levels. We are

heading for a materialistic society disregarding the entire value-based social system. None can also dispute that in a secular society, moral values

are of utmost importance. A society where there are no moral values, there would neither be social order nor secularism. Bereft of moral values

secular society or democracy may not survive. As observed by the Committee, values are virtues in an individual and if these values deteriorate, it

will hasten or accelerate the breakdown of the family, society and the nation as a whole. In a society where there is constant evaporation of social

and moral values for getting property, power or post, -- is it not advisable to have a solid social foundation from the base level so that a grown-up

person would fight against all kinds of fanaticism, ill will, violence, dishonesty, corruption and exploitation? The answer would obviously be --

yes"".

80. The scrutiny of the textbooks to find out whether they conform to the secular thought of the country is also to be undertaken by the experts,

academicians and educationists. The members of NCERT should be open to any such dialogue with the academicians and educationists. On the

basis of general consensus, suitable curriculum, which accords with secularism as understood in a wide and benevolent sense, has to be evolved.

xvi. In *Edward v. Aguillard* 482 U.S. 578 (1987), the Supreme Court of United States held that the Louisiana law requiring that Creation Science

should be taught in public schools along with evolution was unconstitutional, because the law was specifically intended to advance a particular

religion. In a 7: 2 majority opinion, they ruled that the Act infringed the Establishment Clause of the First Amendment based on the Lemon Test

which is, (a) The Government's action must have a legitimate secular purpose; (b) the Government's action must not have the primary effect of

either advancing or inhibiting religion; and (c) the Government's action must not result in an ""excessive entanglement"" of the Government and

Religion. Our Supreme Court's protection of the minority rights is not far different. Why we have referred to this decision is that by invoking the

power of prescribing textbooks even for value based education and making it mandatory, the State shall not exercise its power either to advance

or inhibit religion and therefore, the greater the necessity to give the schools the choice to choose between the prescribed textbook and the

approved textbook.

xvii. In the context of the present case, we would also like to quote from the article written by Mir Muzaffar Ali, a film maker and painter, in his

article ""Conquest of Love"", (The Deccan Chronicle dated 26th April, 2010). His father had gone to meet a neighbouring Raja, a friend of his

father, who happened to be a Hindu. It was the mourning period of Muharram. The Raja was sleeping on the floor. His father expressed his

surprise at this, to which the"" Raja rebuked his father in chaste Awadhi, saying ""Turn murkh ho. Raja ka koi dharm hota hai; jo unki praja ka

dharam, wahi unhika dharm"". (You are an idiot. Does a King have any religion? Whatever is the religion of his subjects, is the King's religion). This

man was not seeking votes. It was his own conviction. This was the Awadh of Nawab Wajid Ali, a great Krishna lover, for whom, when he was

made to leave his beloved city Lucknow, the common folk wept and wailed as they bid farewell to their beloved ruler, ""Hajrat jaa rahen hain

Landan. Inpe kripa karo Raghunandan"" (King is leaving for London, Bless him Our Lord). And it was this emotion and the disgust against the

communal divide and rule policy of the British that on the soil of Lucknow that the bloodiest war for Independence took place in 1857"". This was

the glory that was India. It is imperative that our children learn to identify those factors which integrate society and ""differentiate those which

divide"". This is the secularism to which we committed ourselves when we gave unto ourselves the Constitution, and the Central Act insists that the

National Curriculum Framework shall adhere to the values of the Constitution. Therefore the textbooks prescribed by the State must be in

conformity with the Constitutional values and the secular principles.

xviii. Therefore, as far as Section 3 is concerned, the adoption of the syllabus and the textbooks will commence for all standards from the

Academic Year 2011-2012 or later depending upon when the State sets down the norms, makes known the syllabus and the textbooks to be

followed; the schools shall follow the common syllabus which will only be with regard to the five curricular subjects; the State shall prescribe the

Government textbooks - curricular and co-curricular - and approve other textbooks so that there is a choice of multiple textbooks. The Board

shall first fix the norms and the schools shall as far as practicable follow the norms, there cannot be any examinations and the schools shall follow

the assessment patterns as described in NCF-2005 as appropriate for different classes as specified by the Board.

II. Section 4

4. All the subjects, other than languages, may be taught in Tamil or English or in any other language as may be decided by a school with the

approval of the competent authority.

(a) It was contended by the Petitioners that even for teaching in Tamil or English, the Act requires approval of the competent authority and that

would be an unreasonable restriction. In any event, according to the Petitioners, this restriction on choosing the medium of instruction was contrary

to the decision of the Full Bench. The learned senior counsel submitted that the averments in the counter regarding this were exactly the same

submissions which were rejected by the Full Bench. The learned Additional Advocate General submitted that it was only approval and it did not

mean prior permission.

(b) The Section provides that all the subjects may be taught either in Tamil or in English. But if the school decides to teach the subjects in any other

language, it will be with the approval of the competent authority. The competent authority as defined in Section 2(d) of the Act is the authority,

office or person who is specified in the notification. The learned Additional Advocate General submitted that the approval is required because

State has to be prepared with textbooks in the language which is used as the medium of instruction and this is the only reason why the approval is

insisted upon.

(c) We have already extracted in detail the reasonings and the conclusions of the Full Bench. The Full Bench has also clearly held that the right to

education includes the right to choose the medium of instruction and it can be exercised by the parents on behalf of their children. Therefore, the

role of the competent authority with regard to the schools' decision on the medium of instruction is restricted to the following extent:

The schools shall inform the competent authority the language of their choice for adopting as medium of instruction and the competent authority

shall accord its approval, since the decision of the Full Bench indicates that the right to choose the medium of instruction is with the parents and by

the parents on behalf of the child. Therefore, there is no scope for discretion of the competent authority to decide whether it should approve or not

approve of the decision of the school. The intimation of the language of their choice is only to facilitate the State to provide the required textbooks.

III. Section 5

5. (1) The Government shall, by notification, constitute a Board to be called as the State Common Board of School Education for the purpose of

implementing the policy of the Government to provide uniform school education in the State. The Board shall exercise the powers conferred, and

perform the functions assigned to it, under this Act.

(a) We were informed by the counsel for the Petitioners that though Section 5(2) lists the persons who will form the Board, the decisions were

taken for framing the syllabus with only the ex officio members. The other members, who are representatives of the schools and who are

academicians, were appointed only after the framing of the syllabus. When this submission was made, there was no rebuttal from the learned

Additional Advocate General. However, we have seen that the State has invited teachers who are representatives of virtually all streams of school

systems in the State for preparing the syllabus. Ideally, there should have been consultation and a decision should have been arrived at only after

the other members"" as mentioned in Section 5(2) of the Act had also been appointed.

(b) The norms are yet to be specified. The norms shall be fixed by the Board, comprising of both the ex officio members and the other members

and it shall not be the decision of the ex officio members alone. We make it clear that in view of the Central Act providing for an academic

authority u/s 5 of the Act and a State Advisory Council u/s 34, the State must decide whether the Board formed u/s 5(2) will be the same as is

specified by the Government by notification to function as the academic authority under Central Act. The State must avoid overlapping of duties

which result in confusion and possible conflict with the Central Act. IV. Section 11

11. If any person wilfully contravenes the provision of this Act or any rules made thereunder, he shall be punishable with fine which may extend to

twenty-five thousand rupees and in the case of continuing contravention, with an additional fine which may extend to one thousand rupees for every

day during which such contravention continues after conviction for the first such contravention.

(a) We have already seen that the norms have not been fixed, and we have also held that norms cannot be rigid, but must be flexible, We have also

held that a teacher who is constantly fearing punishment for failing to adhere to the norms is not likely to be a confident teacher. It was contended

on behalf of the State that there are other Acts which contain penal provisions. It is true that even the Tamil Nadu Private Schools Regulation Act

contains a penal provision. But there, the penalty is imposed on schools which are run without recognition etc.

(b) As far as the present Act is concerned, the penalty is imposed for violating the norms. This leaves a room for exercise of subjectivity by the

authorities who can decide when a teacher has violated the law. It is possible that the State may introduce disincentives if they find that a child has

not been admitted in the school without reasonable cause or that a child has been discriminated from the other children. There, the violation or the

innocence may be easier to prove, but as far as this particular provision is concerned, it would be a very unreasonable provision since it will be

difficult for the teacher to establish that she has not violated the norms. For example, let us assume that the norms require the teacher to teach two

chapters in Chemistry in three hours. If the students have immediately grasped the concept, it is not necessary for her to keep on repeating the

same chapter merely because the State has imposed the norms. The alternative case would be, where the students find the concept difficult to

understand, then she may have to teach the same chapter for one more hour. These are all not matters where norms can be imposed with threat of

punishment. The fact that without sanction no proceedings will be initiated, is no protection. We will be making Alices of our teachers, with the

authorities playing Queen of Hearts as in Alice in Wonderland, crying "' Off with her head'" That will be so blatantly unreasonable. That would just

steal the spontaneity of the teacher and that would be a grave assault on the freedom of the schools and the freedom of the teachers to impart

education in the manner that they think is right and is suitable for the child.

(c) We have already seen in Meyer v. Nebraska that the State's police power with regard to education could not be permitted to override the

liberty provided by the 14th Amendment to the Federal Constitution.

i. Section 11 of the present Act is, therefore, unreasonable since we have already held that imposing strict and rigid norms cannot be right and

therefore, this Section is quashed.

ii. Consequent to the quashing of Section 11, we also strike down Section 12 of the Act.

V. Section 14

14. (1) The Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy, as the

Government may give in writing to it, from time to time.

(2) The decision of the Government as to whether a question is one of policy or not shall be final.

(a) Section 14 provides that the Board shall be bound by the directions of the Government in writing as regards policy and the decision of the

Government thereon shall be final. We are afraid, this is contrary not only to Section 9 as well as Section, but also to the Central Act, and it also

gives un-guided power to the Government. In Naraindas Indurkha Vs. The State of Madhya Pradesh and Others, , the Supreme Court has held

that the power to select and prescribe textbooks is not an unguided or unfettered power, leaving it to the caprice of the State Government; it is a

power which must be confined and embanked within limits by the object and purpose for which it is conferred. In that case, the Supreme Court

was dealing with the question as to whether the State Government could prescribe text books to the exclusion of other text books on the subject

for use in primary and middle school classes and held as follows:

21.... But we do not think Section 4, Sub-section (1) suffers from this lethal infirmity. It does not vest an arbitrary uncontrolled discretion in the

State Government to select and prescribe such test books as it likes irrespective of their merit and quality. The object or purpose for which the

power to select and prescribe text books is conferred on the State Government is to ensure uniformity of standard and excellence in instruction

which can be achieved only if standardised text books of high quality and merit are used in the schools. This object or purpose furnishes guidance

to the State Government in exercising its power of selecting and prescribing text books. The power to select and prescribe text books is thus not

an unguided and unfettered power which leaves it free to the State Government to select and prescribe such text books as it may want only or

capriciously please, but it is a power which is confined and embanked within limits by the object and purpose for which it is conferred. The State

Government cannot, therefore, act arbitrarily or capriciously in selecting or prescribing text books but it has to exercise this power in the light of the

policy or principle that the best possible text books, possessing the highest degree of merit and quality, should be made available to the students.

This standard or criterion, gatherable from the object and purpose of the Statute, controls and regulates the exercise of the power by the State

Government and it is by reference to this yard-stick that the exercise of the power by the State Government is canalised and kept within bounds. If

the State Government in selecting and prescribing text books does not follow this standard or criterion, the prescription of text books made by the

State Government, and not Section 4, Sub-section (1) would be liable to be condemned as invalid.

(b) It is, no doubt, clear that there can be only one policy and that is to impart quality education and to provide the best possible textbooks

possessing the highest degree of merit and quality. The Board has been given the power to advise the Government upon the action to be taken for

the purpose of implementing the system of uniform school education. If so, Section 14 which subjects the Board to the directions on questions of

policy, as the Government may give in writing to it from time to time, will an uncanalised and unfettered power. Viewed from another angle, it will

be redundant .since it is the Board which has to advice the State. The learned Additional Advocate General submitted that directions on questions

of policy will not be lightly given and in any event it will have to pass through the Cabinet approval. It is difficult for us to accept this submission.

We cannot expose our children to the risk of change in the policy by the Government, given in writing to the Board. In the Full Bench decision, it

has been held that education policy cannot be changed every now and then and it must be a long term policy. The Full Bench, after referring to

various Supreme Court judgments with regard to legitimate expectation, observed that in Madras City Wine Merchants" Association and Another

Vs. State of T.N. and Another, , the Supreme Court pointed out that as there was change in the policy by legislation, the principle of non-

arbitrariness was not invocable. The Full Bench observed that in the cases with which we are concerned, i.e. the Full Bench, there is only a

Government Order and the change in the policy is not by any legislation.

(c) The learned Additional Advocate General submitted that in that case, the Full Bench was dealing with a Government Order, whereas in the

present case, the change is brought by an Act. The distinction made by the learned Additional Advocate General is accepted, but that can only

underscore the position that the Government cannot change its policy unilaterally by writing to the Board. The children's right in this regard should

be protected. When the parents' right and the child's right with regard to the manner in which they should be educated has been upheld and it has

been reiterated again and again, and the parental right is raised to the level of it being a very pivotal point in a democratic system, the Government

cannot unilaterally change the education policy. Any change in this regard can only be done by consultation with the Board, schools, the teachers

and the parents. We are not saying that the State has no say in what the policy is. As representatives of the people, it does spell out what the policy

is and it is well settled that Courts do not interfere in matters of policy. But here, we are concerned with children and their rights. In Avinash

Mehrotra's case (supra), the Supreme Court held that the right to education that a child has, places a burden both on the parent and on the State

and it is a reciprocal agreement between the State and the family, and it places an affirmative burden on the participants in our civil society.

(d) The Right To Education Act, 2010 directs that the State Advisory Council shall advise the State Government to implement the provisions of the

Act in an effective manner. The learned Additional Advocate General submitted that the RTE Act operates on a larger space with regard to the

national curriculum and the State Act determines syllabus which is a smaller space. Accepting this, it would mean that it is the State Advisory

Council which will determine how the State Government shall implement the national policy regarding the curriculum. The curriculum would include

the syllabus. If so, Section 14 of the State Act would come directly in conflict with the provision of the RTE Act, since the RTE Act declares the

national policy and directs which body should advise the State. We have already in the earlier paragraphs given directions that the State must

specify who the academic authority is, and if the academic authority is the Board constituted under this Act, then it will be that academic authority

which will decide the policy. There are other reasons too why we cannot accept Section 14 as it stands.

(e) In State of Haryana Vs. State of Punjab and Another, , an interesting problem cropped up before the Supreme Court, when the State of

Haryana was carved out from the erstwhile State of Punjab, special provisions were made with regard to the rights and liabilities of the successor

States with regard to the waters from the Bhakra Nangal Project and the Beas Project. The State of Haryana filed a suit in the Supreme Court for

a direction to the State of Punjab for expeditious digging of the canal, while the Punjab Government filed a suit challenging the competence of the

Central Government to make any allocation u/s 78 of the Punjab Re-organisation Act. During the pendency of the two suits, the two Plaintiff-

States arrived at an agreement and an order was passed by the Supreme Court on 12.2.1982 recording their prayer for withdrawal. Then the

State of Punjab ran into great trouble leading to a series of law and order problems and in the year 1985, an accord was arrived at called the

Punjab Settlement. Since the construction of the canal was completely stopped by then, the State of Haryana filed the suit before the Supreme

Court. In that case, the question arose, whether the decision of one Government relating to governance of a State or in the matter of execution of a

decision taken by a previous government binds the succeeding government. The Supreme Court held that the decision taken at the Government

level should not be so easily nullified by a change of Government and by some other political party assuming power. Of course, in that case, they

held that so far as policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party ... but in the

matter of governance of a State or in the matter of a decision taken by the previous government, on the basis of a consensus arrived at, which does

not involve any political philosophy, the succeeding government must be held duty bound to continue and carry on the unfinished job rather than

putting a stop to the same.

(f) The Position Paper presented by the National Focus Group of the N.C.T.E. on Curriculum, Syllabus and Textbooks clearly speaks of -

Creating appropriate regulatory mechanisms, with a view to promote decentralised curriculum development, by establishing an independent body

at the State level with a federal national structure, to approve different curricular packages, which include textbooks, teacher training and

recruitment processes etc. and that the national structure may be answerable to the CABE. It is recommended that the regulatory mechanism must

be professionally worked out to carefully avoid the attendant distortions and problems that may arise out of bureaucratic and political pressures,

vested interests or even corrupt practices, within bodies established to approve the curricular packages.

(g) In the present case, it is not a matter of execution of a decision taken by an earlier Government as it was in the State of Haryana case (cited

supra). Nonetheless, it involves the education of children and therefore, it cannot be nullified by a change of mind of Government or a change of

Government or a change in policy borne out of expediency. Therefore, if by using the word "policy" in Section 14, the legislature means that the

Government can change the norms, the syllabus and the textbooks at will, then we cannot accept that. In *Adhiyaman's* case (*supra*), the Supreme

Court observed:

32.... But as has been aptly pointed out by Justice Rau while dealing with the meaning of repugnancy in *G.P. Stewart Vs. Brojendra Kishore Roy*

Chaudhury, , which is a decision approved by this Court in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, .

It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says ""do

and the other ""don't"", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set

forth presently, we think that this is too narrow a test; mere may well be cases of repugnancy where both laws say ""don't"" but in different ways.

For example, one law may say ""No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time"" and another law may say,

No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time."" Here, it is obviously possible to obey both laws, by

obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a

citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified. This was the type of repugnancy that arose for

consideration in (1896) AC 348"".

We cannot allow the schools, the teachers and above all the children to be tossed and buffeted by political vicissitudes. That is why we hold that

Section 14 of the State Act runs not only contrary to Sections 5 and 9 thereof, but also to the Central Act as such. It also fails the test laid down in

Adhiyaman's case (*supra*).

Section 14 of the present Act is, therefore, declared invalid.

56. The State drew a comparison of the present State Act, viz. the Tamil Nadu Uniform System of School Education Act, 2010 with the Delhi

School Education Act, 1973; the Karnataka Education Act, 1983; the Meghalaya School Education Act, 1981; and the Uttar Pradesh Primary

Education Act, 1919. We find that the Delhi Act has power to regulate education and to specify textbooks, syllabi and courses of study in line with

the constitutional values; the power is given to specify co-curricular and extra-curricular activities; there is also a Curriculum Committee. In the

Karnataka Act, the Government has the power to prescribe curricula, syllabi, duration of the course and medium of instruction; it lays down the

standard to be reached by the child at each class level. This chart has been given by the State just to show that other States also have similar

enactments.

57. In *State of Kerala Vs. Kumari T.P. Roshana and Another*, , the Supreme Court had to consider a transitory scheme of admission to medical

colleges in the State of Kerala which was evolved by the Government and which was invalidated by the High Court on the ground of discrimination

in the distribution of seats. The Supreme Court has laid down in this case, the course that should be adopted by the Court in such situations. The

Supreme Court observed that by striking down the interim project of the Government with no alternative methodology of selection would result in

chaos and throwing out a number of students already undergoing their course in a state of vacuum. So, the Supreme Court gave directions for

equitable distribution of the students amongst the four medical colleges in the State. Since the Supreme Court observed that after all, the court

system belongs to the people and must promote constructive justice. The Supreme Court held that the court cannot stop by merely declaring that

the Government's scheme is ultra vires and that in this context, "comes the play of processual realism in moulding the relief..." and gave certain

directions in the interest of justice. This is what we have also attempted to do in this case.

58. Under the Central Act, the appropriate Government which in relation to a school other than the school referred to in Sub-clause 2(a)(i)

established within the territory of a State is the State Government and Section 8 lays down the duties of the State Government and Section 9, the

duties of the local authority. u/s 9, the local authority is cast with the duty of functioning the schools within this jurisdiction and also to decide the

academic calendar. u/s 21, every school will constitute a School Management Committee consisting of the elected representatives of the local

authority, parents and guardians and their function is specified in Section 21(2), which includes preparation of a school development plan. The

curriculum and the evaluation procedure for elementary education shall be laid down by the academic authority to be specified by the appropriate

Government by notification.

59. No doubt, as contended by the learned Additional Advocate General, it is only the State Government that has the power to lay down the

curriculum and evaluation procedure, but the academic authority should be the academic authority specified by the State Government and since the

schools shall conform to this curriculum, the State should specify this academic authority by notification before it embarks on its plan of action as

per the Act. The State may decide that the Board constituted u/s 5 of the Act will also be the academic authority, but this shall be specified by

notification. That is clear from the Central Act. u/s 34, the State shall also constitute a State Advisory Council and the function of the State

Advisory Council is to advise the State Government on implementation of the provisions of the Act. Therefore, before the State decides to

implement the Act, which we have in the foregoing paragraphs, postponed to the next academic calendar, i.e. 2011-2012, or later it shall ensure

that all the requirements of the Central Act are complied with.

60. At the end of it all, we must look to the quality of teachers. We have already dealt with the flexibility that should be given to teachers so that

they fine tune their classes to suit the children. In a study conducted by researchers which has been published in the journal "Science", it showed

that effective teachers help the kids to read better, while poor teachers brought down all the children in a classroom to the same mediocre level and

also that poor teaching impedes the ability of children to reach their potential. We refer to the portrait of the teacher given by Gurudev Tagore. He

described his nineteen year old teacher Satish Chandra Roy in the following words:

With him boys never felt that they were confined in the limit of a teaching class; they seemed to have their access to everywhere. They would go

with him to the forest when in the spring the sal trees were in full blossom and he would recite to them his favourite poems, frenzied with

excitement... He never had the feeling of distrust for the boys' capacity of understanding... He knew that it was not at all necessary for the boys to

understand literally and accurately, but that their minds should be roused, and in this he was always successful. He was not like other teachers, a

mere vehicle of textbooks. He made his teaching personal, he himself was the source of it, and therefore, it was made of life stuff, easily assimilable

by the living human nature.

61. The ambitious effort undertaken on the part of the State to bring in social justice and to have quality education will all come to naught if the

selection of teachers is not made properly. The selection and appointment of teachers cannot be made just like selection and appointment of a

clerk. A teacher must love teaching, she must love children. We come across horrible news items of physical violence committed by teachers on

children. If the teacher imparts joy and inculcates confidence in the child, the child will willingly go to school. Therefore, definitely the State will

have to look at amendments to the rules relating to recruitment of teachers, if it seriously intends this Act to transform the lives of children across

the State, whether they are poor, disabled, living in tribal areas, whether they are girl children, or children from downtrodden sections of society, or

any child who does not have certain potential plus points whom the State wants to uplift, and in order to attain a quality of excellence, we hope,

therefore, the State will address its attention in this regard also. Recently we read in the newspapers that the findings of an NGO after a survey of

schools in the country that our State has a very high percentage of student enrolment, but the quality of teachers is low. This may be challenged as

inaccurate, but we insist that the State shall take steps to ensure that the teachers are of a high quality.

62. We would like to extract the following quote of Swami Ranganathananda from ""Eternal Values for a Changing Society"" under the Chapter

"Education and Traditional Values:

Education so defined should place before itself clear objectives, if it is to find expression in practical measures of implementation. In the light of all

that has been discussed above, we can discern six objectives for our education:

1. The training of our children to an appreciation of our nation's cultural heritage and to equip them with the desire and the capacity to enhance the

same and leave to posterity a richer legacy.

2. The training of our children in talents and capacities by which they become productive units of society and the source of its economic strength.

3. The equipment of our children with the qualities of courage and vision to protect our newly won national freedom, to preserve its democratic

structure, function, and liberties, and to carry the same to ever wider fields and ever higher levels.

4. The training of our children in virtues and graces that will make them emotionally stable individuals and enable them to live in peace, harmony,

and co-operation with their fellow citizens.

5. The training of our children in virtues and graces that will make them international in their outlook and sympathies, and enable them to live in

peace, harmony, and co-operation with the emerging world community.

6. The training of our children to an awareness of the spiritual and trans-social dimension of the human personality and to a converging life-

endeavour in the realization of this fact in and through life and action.

It is only thus that our education will become a fit discipline to help to continue the march of the Indian tradition from an impressive past to a

glorious future.

We hope that the State, while implementing the object of the Act, shall always remember the above principles, only then the dream of social justice

will become a reality.

63. To conclude -

- We have upheld the power of the State to bring in a school system common to all in the interest of social justice and quality education. As an

aside, we would like to point out that the phrase "Uniform School System" does not bring to the mind the same meaning that the words in Tamil

(rkr;rPh; fy;tp) do, which immediately indicates equity and quality in education.

- Implementation of the syllabus and textbooks is postponed till the Academic Year 2011-2012, or until the State makes known the norms and the

syllabus and prepares the textbooks in advance.

- In the mean time, the State will bring the provisions of the impugned Act in line with the Central Act, e.g., the State shall specify by notification,

the Academic Authority and the State Advisory Council.

- The Government shall also indicate what the approved textbooks are.

- The Government shall, by amending the section or by introducing a schedule to the Act, indicate that the syllabus is restricted to curricular

subjects.

- The schools are bound to follow the common syllabus only for the curricular subjects and not the co-curricular subjects.

- The schools may choose from multiple textbooks, viz., Government produced textbooks, which are the prescribed text books and the

Government approved textbooks, in all subjects - both curricular and co-curricular.

- The schools shall follow the norms as far as they are practicable.

- There can be no Board Examinations upto the level of elementary education, but assessment norms may be specified.

- The schools which teach all the subjects in a language other than Tamil or English shall inform the competent authority of the language of their

choice; in view of the Full Bench decision, the approval is automatic.

- The above intimation is only to facilitate the State to provide appropriate textbooks.

- Norms shall be fixed by the Board which will include both the ex officio members and the other members. The State may make it clear whether

this Board will also be the Academic Authority under the Central Act.

- Since we have held that there cannot be strict and rigid norms, Section 11 and Section 12 of the impugned Act are struck down.

- Section 14 of the impugned Act is also struck down.

64. All the writ petitions are disposed of accordingly. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions

are closed.

30..04..2010 /Writ Petition Nos. 3051 to 3056, 3386, 3387, 3398,3410, 3431, 3516, 3603 and 3982 of 2010

Order -- Prabha Sridlevan, J.

65. After the orders have been pronounced, the learned Additional Advocate General submitted that a great deal of industry and expenditure has

gone into the preparation of textbooks and to postpone the introduction of Section 3 of the Act by one year will cause huge loss to the State. The

learned Additional Advocate General has said that if some time is fixed in May, 2010, they would lay down the norms, would publish it in the

website and would also make it known to the general public.

66. We accept this statement of the learned Additional Advocate General. But, however, in our judgment, we have held that a school has to have

a choice of multiple textbooks. Therefore, we will allow the State to implement Section 3, as modified by us, from this year for Standard I and

Standard v. provided the Board fixes the norms before 15th May, 2010 and also gives the list of approved textbooks in every subject before that

date. 3. Unless they give a list of approved textbooks before 15th May, 2010 so that the schools have a choice, our direction regarding the

implementation of Section 3 of the Act from the next academic year will stand.