
REALIZING THE IMPORTANCE OF 'THIRD LANGUAGE' AS MEDIUM OF INSTRUCTION

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ABSTRACT

India did not initially emerge as a nation-state, neither in the pre-independence era nor in the post-independence era. Presently, the ongoing issues revolve around the language debate in the country, where Hindi is ostensibly 'being promoted,' which essentially translates to being coercively enforced. The imposition of a specific language across the entire expanse of India would amount to a new form of imperialism. In essence, promoting Hindi under the guise of national integration and designating it as an 'official language' is seen as the initial step toward declaring it the 'national language.' Considering the diverse linguistic backgrounds, distinct dialects, and scripts of the people in India, such governmental actions are perceived as arbitrary and potentially divisive.

The educational experts have expressed their opinion that children should begin their schooling through the medium of their mother tongue. The reason being the mother tongue of the child is most suitable medium for cognition and comprehension in the early years of the child, but if the tender minds, of the children are subjected to a foreign medium the learning process becomes unnatural.

The issues relating specifically to the rights of minority to impart education to their children in language of their choice and the claim of the State to impose its wisdom on minority educational institutions have been the vital area of discussion. Therefore, the extent of the regulation of the power of the State to impose the medium of instruction upon the educational institutions and its impact upon the fundamental rights under the Indian Constitution.

Keywords: Medium of Instructions. National Education Policy, national language, three language formula, fundamental rights

Introduction

The sphere of language politics has been a complex one due to country's rich and immense linguistic diversity. This complexity has highlighted the issues involved with 'medium of instruction' used in the schools in India. The issues relating to the medium of instruction has been discussed in several educational policies such as the three National Education Policies as well as mandated by the several provisions of the Indian Constitution as well. Despite such recommendations, yet India is lagging behind in the primary aim of education i.e. learning. According to the National Policy on Education 1986 laid emphasis on equity and social justice in education to promote the country's unique socio-cultural identity and to contribute the national cohesion, promoting tolerance, scientific temper and concerns enshrined in the Constitution.¹

The Education should aim at multifaceted development of a human being, his intellectual, physical and cultural development. For multifaceted development of human personality, diversified education, educational institution and medium of instruction is most significant tool. All educational experts have expressed their opinion that pupils should begin their schooling through the medium of their mother tongue. The reason being the mother tongue of the child is most suitable medium for cognition and comprehension in the early years of the child, but if the tender minds, of the children are subjected to a foreign medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Beside it, the educational process becomes artificial and torturous. The introduction of a foreign language tends to threaten and atrophy the development of mother tongue.²

Moreover, the Indian Constitution mandates under the Article 350-A that the "State shall endeavour to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to the minority groups." Similarly, several other efforts were undertaken in promoting the use of mother tongue as the medium of instruction for instance, the three language formula endorsed by the National education policies

¹ S.B. Chavan Committee Report submitted in Parliament on February 1999 highlighting "Value Based Education", *Ramaswamy, K.R. @ Traffic Ramaswamy v. State of Tamil Nadu* 2007 (5) CTC 113 at 128.

² *English Medium Students Parents Association v. State of Karnataka and Others* (1994) 1SCC 550 at 560.

of 1968 and 1986 recommended that the medium of instruction should be in the mother tongue at the elementary level of education.

As a matter of fact, as per the QS rankings, the topmost institutes in India are not even in top 100 positions, for instance, the IIT Bombay stands at 149th position, followed by IIT Delhi at 197th position and Indian Institute of Science at 225th position.³

According to the New Education Policy 2020, the status of learning has been reflected as very poor. India is facing foundational learning crisis, if the children fall behind on foundational literacy and numeracy then the learning curves will be flat for years and they would not be able to catch up with the pace. Therefore, it recommended including local and regional language at least till grade V, preferably till grade VIII.⁴ The above statement clearly reflects that Education is a process of man making. It has to be directed to development of child's personality talent and ability. Basic literacy and numeracy are the basic skill that is needed for learning at all stages and ages.⁵

In this backdrop, an attempt has been made to highlight several conflicts which have come up between rights of minority to impart education to their children in language of their choice and the claim of the State to impose its wisdom on minority educational institutions. Therefore, this paper has been divided into the following sub headings for the convenience of understanding, the following issues have arisen:

Firstly, whether the State has power to prescribe compulsory or exclusive medium of instruction on minority educational institutions?

Secondly, Whether the State has power to impose restriction on the choice of medium of instruction in the name of national integration or equality of opportunity and if yes then what are the limitation on these power?

³ The rankings of higher education institutions are decided by the following international academic community. three main rankings are:

- (1) the Quacquarelli Symonds (QS) World University Rankings;
- (2) The Times Higher Education (THE) World University Rankings;
- (3) The Academic Ranking of World Universities (ARWU) by the consultancy firm Shanghai Rankings and popularly known as the "Shanghai Ranking".

⁴ Shivakumar Jolad and Isha Doshi, "Colonial Legacy of language politics and Medium of Instruction Policy in India", 2020

⁵ *Ramaswamy, K.R. @ Traffic Ramaswamy v. State of Tamil Nadu* 2007 (5) CTC 113 at 128

Thirdly, what is the meaning of the term “mother tongue” and whether a student or parent has right to choose the medium of instruction?

Lastly, whether the imposition of mother tongue in any way affects the fundamental rights under Articles 19, 29 and 30 of the Constitution?

1. Right of Minority to Determine the Medium of Instruction

The right of a minority to establish and administer educational institution of its choice also carries with it the right to impart instruction in their institutions to their children in their own language. Article 29(1) allows minority to conserve their distinct language or script, though it does not specify the means of such conservation. It cannot be disputed that establishment of educational institution is one of the most effective means of the conservation of language and script. The Court have thus read in the language of Article 29(1) an implied right to establish educational institution.⁶ Logically then the right to adopt the minority language as the medium of instruction is implicit in Article 29(1). Article 30(1) which in term allows minority to establish and administer educational institution leaves it to ‘their choice’ to determine the kind and character of educational institution. Their choice therefore necessarily includes a choice to determine the language of such instruction in such institutions.

In the case of *State of Bombay v. Bombay Education Society*,⁷ the Government of Bombay issued a circular aiming to regulate the use of English as a medium of instruction. The circular stipulated that schools using English as a medium should not admit students whose mother tongue is not English. However, Article 337 mandated that at least 40% of seats in Anglo-Indian Educational Institutions be reserved for students from other communities.

The State argued that the order in question did not deny admission based solely on religion, race, caste, language, or any of them. Instead, it asserted that these measures were implemented to promote Hindi as the national language.⁸ Conversely, the respondent argued that the primary, if not exclusive, objective of the order was to discriminate against and possibly suppress the language of the Anglo-Indian Community, disregarding constitutional

⁶ *In re-Kerala Education Bill 1957*, AIR 1958 SC 956.

⁷ AIR 1954, SC 561.

⁸ *Ibid* at 566.

constraints.⁹”

Furthermore, it was contended that establishing parallel classes in the same school with an Indian language as the medium of instruction, while English was used in other classes, would not contribute to preserving the distinct language, script, or culture guaranteed to the Anglo-Indian community under Article 29(1).¹⁰

The Supreme Court declared the order legally flawed. Interpreting Articles 29(1) and 30(1) liberally, the Court determined that these provisions encompassed the right of minorities to determine the medium of instruction for their institutions.

S.R. Das C.J. delivering the unanimous judgement of the Court observed as follows:

“A minority like the Anglo-Indian Community has the fundamental right to conserve its language, script or culture under Article 29(1) and has right to establish and administer educational institution of their choice under Article 30(1), surely then there must be implicit in such fundamental right, the right to impart instruction in their own institution to their children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their content.”¹¹

While discussing the scope of regulatory powers of the State over minority right to decide the medium of instruction, Chief Justice Das, remarked, the power of the state to regulate is not superior to the right enjoyed by the minorities under Articles 29(1) and 30(1)¹² and that “The police power of the state to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it.”¹³

2. No Power to Impose an Exclusive and Compulsory Medium of Instruction

In *Shri Krishna Rangrath Mudholksar v. Gujarat University*,¹⁴ the Gujarat High Court

⁹ *Id.* at 567.

¹⁰ *Id.*

¹¹ *Ibid* at 569.

¹² *Ibid.*

¹³ *Ibid* at 569.

¹⁴ AIR 1962 Guj. 88 (FB).

was asked to interpret certain provisions of the Gujarat University Act, 1949, by which Gujarati or Hindi or both were prescribed as sole medium of instruction.

In this instance, the petitioner's initial year in the Arts program at St. Xavier College, affiliated and supported by Gujarat University and the State of Gujarat, involved instruction in the English language. He both received instruction and underwent examinations in English. However, when he applied for admission to the Intermediate Arts Course with the intention of continuing his studies in English, his request was denied. This denial was based on the provisions outlined in Section 4(27)¹⁵ and Section 38 of the Gujarat University Act, 1949, as well as Statutes 207, 208, and 209¹⁶ established by the Senate of Gujarat University in 1954. These statutes were subsequently amended by the Senate in meetings held on March 9th, 10th, 30th, and 31st, 1961.

Before the 1961 Amendment, the proviso to Section 4(27) allowed English to be the medium of instruction and examination for a maximum of ten years. However, the Gujarat University (Amendment) Act 1961 introduced a new proviso to Section 4(27)¹⁷, and the Senate further amended the statute in 1961.

On June 5, 1961, the Registrar of Gujarat University issued a directive to the Principals of affiliated colleges, emphasizing the immediate compliance with the Statute, Ordinances, and

¹⁵ Section 4(27) of the Gujarat University Act, 1949 read as: "To promote the development of the study of Gujarati and Hindi in *Devnagari* script and the use of Gujarati or Hindi in *Devnagari* script or both as a medium of instruction and examination."

¹⁶ Statute 207, 208 and 209 as enacted by the Senate read as follows:

Statute 207; (1) *Gujarati* shall be medium of instruction and examination;

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

(3) Notwithstanding anything in Clause (1), non-Gujarati students and teachers will have option, the former for their examination and the latter for their teaching work, to use Hindi as a medium if they so desire; and
(4) Notwithstanding anything in Clause (1), (2) and (3), the medium of examination and instruction for modern Indian language may be their respective languages.

Statute 208: "Provided that the medium of instruction and examination in all subjects from June 1955 in First Years Arts, First year science and First year commerce and in Inter-Arts, Inter-Science, Inter-Commerce and First year Science shall cease to English and shall be as laid down in Statute 207(1)."

Statute 209: Provided that "the medium of instruction and examination in all subjects in the examination enumerated therein shall cease to be English and shall be as laid down in statute 207(1) with effect from the years mentioned against the respective examinations. It was, however, provided that a student for the purpose of examination and teacher for the purpose of instruction would be permitted to use English up to November 1960 i.e. up to the academic year ending June 1961 if he felt that he could not use Gujarati or Hindi as well."

¹⁷ Proviso to Section 4(27) as it stood prior to Gujarat University (Amendment) Act, 1961: "Provided that English may continue to be medium of instruction and examination in such subjects and for such period not exceeding ten years from the date on which Section 3 comes into force as may from time to time be prescribed the statute."

Regulations established under the 1961 Act regarding the medium of instruction. Failure to comply would result in automatic disqualification under Section 38A for the respective affiliated college.

The Registrar of the University vide its circular dated June 22, 1961, informed to the Principal of the affiliated colleges, that, the Vice-Chancellor in exercise of power vested in him under Section 11(4)(a) of the Act was pleased to direct that:

- “(1) Only those students who have done their secondary education through the medium of English and who have further continued their studies in the first year Arts class in the year 1960 -61 through English, shall be permitted to continue to use English as the medium of their examination in the Intermediate Arts class for one year i.e. 1961-62; and
- (2) The College be permitted to make arrangement for giving instruction to students mentioned in Clause (1) above through the medium of English for only one year i.e. 1961-62; and
- (3) The Principal shall satisfy themselves that only such students as mentioned in (1) above are permitted to avail themselves of the concession mentioned therein.”¹⁸

The Full Bench of the Gujarat High Court, speaking through J.M. Shelat, J. issued writs directing Gujarat University not to enforce the provisions of Section 4(27) of the Gujarat University Act, 1949 as amended in 1961 and the Statutes. The Court further laid down the following proposition:

- (i) “Statute 207 and 209 seeks to impose Gujarat and / or Hindi in Devnagari script as media of instruction and examination in institution other than University maintained institution are null and void and university is not having power to lay down Gujarati or Hindi as a medium of instruction and examination or to forbid the use of English as a medium of instruction and examination:
- (ii) The University has the power to lay down Gujarati or Hindi as one of the media of instruction and examination and not as the only medium of instruction and

¹⁸ AIR 1963 SC 703 at 707 (Para 10).

examination to the exclusion of other languages;

- (iii) The proviso to Section 4(27) of the Gujarat University Act as amended by Act 4 of 1961 amounts to encroachment on Entry- 66 of List I of the Seventh Schedule and beyond the legislative competence of the Legislature;
- (iv) Thus, the University is authorized to prescribe a particular language or languages as medium of instruction and examination for affiliated colleges and to prohibit the use of English as medium of instruction and examination but the provisions authorising the imposition of exclusive media are void and infringe Articles 29(1) and 30(1) of the Constitution.”¹⁹

The decision of the High Court was challenged before the Supreme Court. The issue before the Supreme Court was as follows:

- (1) “Whether under the Gujarat University Act, 1949, it is open to the University to prescribe Gujarati or Hindi or both as an exclusive medium or media of instruction and examination in the affiliated college?
- (2) Whether such authorisation would infringe Entry-66 of List-I, of the Seventh Schedule to the Constitution”.

It was held by the Lordship of the Supreme Court that ‘Neither under the Gujarat University Act, 1949 as originally enacted nor as amended in 1961, the University is empowered to impose Gujarati or Hindi as the exclusive medium of instruction’.²⁰“The use of indefinite Article, “a” before the expression “medium of instruction”, while in proviso, the use of definite article, “The” in relation to “English as medium of instruction” clearly suggest that the power to impose Gujarati or Hindi as the medium of instruction and examination to the exclusion of other media was not entrusted to the University.”²¹ “The power of legislate in respect of the primary or secondary education is exclusively vested in State legislature under Entry-11 of List-II while power to legislate in respect of medium of instruction, is not a distinct legislative head, but must be deemed to vest in the Union, the

¹⁹ *Ibid* at 704.

²⁰ *Ibid* at 711.

²¹ *Ibid* at 709.

reason being that it has a direct bearing and impact upon the legislative head of coordination and determination of standard in institutions of higher education or research and Scientific and Technical institutions. Hence, it must be deemed to vest in the Union under Entry-66 of List-I of the Seventh Schedule of the Constitution.”²²

Justice Subbha Rao, in his dissenting opinion, however, expressed the view that if it can fix two media, it can equally prescribe a sole medium, if it thinks that for the proper instruction a particular language is the most suitable medium.”²³

Hence, it is evident that while the University has the authority to designate a specific language for instruction and examination, it cannot enforce a singular language as the exclusive medium for these purposes. The coordination and establishment of standards in higher education instruction fall within the jurisdiction of the Union Government, as outlined in Entry-66 of List-I in the Seventh Schedule of the Constitution.

In the case of *D.A.V. College, Bathinda v. The State of Punjab* ²⁴, the petitioner contested the constitutional validity of Section 4(2) and Section 5 of the Punjab University Act, 1961, along with the circular and notification issued under it, asserting that they were unconstitutional and void.

The University, through a contested circular dated June 15, 1970, disseminated to all Principals and affiliated colleges, announced that "Punjabi would be the exclusive medium for both instruction and examination in the pre-University, including the science group, starting from the Academic Session 1970-71." Subsequently, on July 1, 1970, a decision was made by the Sub-Committee of the Senate to amend the earlier directive. This revision permitted students who had completed their matriculation examination with English as the medium to receive instruction and take examinations in English at the pre-University level, as long as other universities and school bodies in Punjab had not adopted Punjabi as their medium.

A subsequent circular on October 7, 1970, prescribed that English be recognized as an alternative examination medium for all students in courses where the University had endorsed the regional language as the medium. However, it was stipulated that students opting for the

²² *Id.* at 713.

²³ *Id.* at 725.

²⁴ 1971 (2) SCC 261.

English medium must pass an elementary Punjabi paper unless they had not studied Punjabi exclusively or as an optional subject up to the middle standard.

It was further decided that “students availing themselves of the facilities given there under will have to pass a compulsory course in Punjabi of 50 marks of which a minimum of 25 marks will be required to pass that course.”

The Petitioner challenged the University circular on the following grounds:

- (1) “The circular issued by the University will have effect of lowering the educational standards as well as affect the students who have passed matriculation examination in Hindi and will be at disadvantage in seeking admission in professional colleges.
- (2) Section 4(2) of the Act, did not empower the University to make Punjabi the sole medium of instruction and that it was not within the legislative power of the State under Entry-11 of List – II to prescribe Punjabi language the sole medium of instruction.
- (3) The power to prescribe medium of instruction vested in the Union Parliament under Entry 66 of List I of the Seventh Schedule of the Constitution.
- (4) Further, the medium of Instruction in Punjabi with Gurmukhi as the script is sought to be imposed on the educational institution established by the Arya Samajis, a religious denomination, infringe their rights under Articles 26(1), 29(1) and 30(1) of the Constitution”.²⁵

The State seeks to justify the notification on the ground that it is the national policy of the Government of India, that the energetic development of Indian languages and literature is a sine qua non for educational and cultural development.²⁶

The Supreme Court's ruling conveyed the following key points:

1. The circular aimed to establish Punjabi as the exclusive medium for both instruction

²⁵ *Id.* at 263.

²⁶ *Ibid* at 265.

and examination. The use of the term "sole" in the circular indicated its intent for exclusivity. Regarding examinations, having Punjabi as the medium meant the exclusive use of the Gurmukhi script.

2. The directive mandating exclusive language and script use as a medium of instruction and examination had a direct impact on the petitioner college, recognized as a religious minority institution. This imposition directly violated their right to preserve their script and administer the institution.
3. Subsequent relaxations in the University's directives had limited impact. To opt for English as an alternative examination medium, a student had to pass the matriculation examination with English as the medium of instruction. Additionally, unless a student had studied Punjabi as an elective or optional subject up to the middle standard, qualifying in the elementary Punjabi language paper was mandatory. However, this concession did not benefit students with Devanagari as their script, as Punjabi medium remained obligatory in their pre-University courses.
4. If the argument held that teaching in the regional language, synonymous with the mother tongue, enhances educational and cultural development, and improves educational standards, this criterion applied equally to religious or linguistic minorities. Such minorities, having distinct language, script, and culture, are guaranteed the right to preserve and administer them under Articles 29(1) and 30(1) of the Constitution.
5. Additionally, no state possesses legislative competence to dictate a specific medium of instruction for higher education, research, or scientific and technical instructions. This is especially true if such directives interfere with the Parliament's authority under Entry 66 of List I to coordinate and determine standards in such institutions.²⁷

Jaganmohan Reddy, J. speaking on (behalf of himself and Sikri, C.J., Mitter, Hedge, Grover, J.J.) observed as follows:

“The right of the minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) with Article 29(1). But if the

²⁷ *Ibid* at 265 – 266.

University compulsorily affiliates such colleges and prescribes the medium of instruction and examination to be in a language which is not their mother tongue or requires examination to be taken in a script which is not their own, then it interfere with their fundamental rights. It is true that no linguistic minority can claim that the University shall conduct its examination in the language or script – which the minority institutions may adopt but not to compulsorily affiliate them and impose on them a medium of instruction and script not their own.”²⁸

Thus, State must therefore harmonize its power to prescribe the medium of instruction with the rights of the religious or linguistic minority or any section of the citizen to have the medium of instruction and script of their own choice, by either providing also for instruction in the media of these minorities or if there are other Universities which allow such colleges to be affiliated where the medium is that which is adopted by the minorities institutions, to allow them the choice to be affiliated to them.”²⁹

The State claim to provide medium of instruction was again considered by the Supreme Court in *D.A.V. College, Jalandhar v. State of Punjab*³⁰. In this case the petitioner challenged the constitutional validity of sub-section (2) and (3) of section 4 of the Guru Nanak University, Amritsar Act, 1969, which provides for the study and research on the life and teaching of Guru Nanak and their cultural and religious impact in the context of India and the World Civilization.”

The Petitioner’s contention was that the main purpose and object of the University is to propagate Sikh Religion and promote Punjabi language in *Gurmukhi* Scripts, and their compulsory affiliation, violates the rights of *Arya Samaj* Sect and their denomination under Articles 29(1) and 30(1) of the Constitution.³¹

It was held by the Lordship of the Supreme Court that:

- (1) “Clause (2) and (3) of Section 4 which provide for the study and research of life and teachings of Guru Nanak and Punjabi Language and literature do not offend the rights of minorities under Articles 29(1) and 30(1) of the Constitution.

²⁸ 1971 (2) SCC 261 at 265 – 266.

²⁹ *Ibid.* at 266.

³⁰ (1971) 2 SCC 269 at 273.

³¹ *Ibid.*

Nowhere, is there mandate for compelling colleges, affiliated to it either to study the religious teachings of Guru Nanak or to adopt the culture of Sikh.”³²

- (2) “To provide for academic study of life and teachings or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and World Civilization cannot be considered as making provisions for religious instructions.”³³
- (3) “State of Punjab is created as a unilingual state with Punjabi as its language and if provision is made for the study of Punjabi language that does not furnish a ground for discrimination, nor can the provision for the study of life and teachings of Guru Nanak be said to offer any cause for complaint on the grounds of violation of Article 14 of the Constitution.”³⁴

In the case of *General Secretary Linguistic Minorities Protection Committee v. State of Karnataka*³⁵, a Government of Karnataka order mandating the inclusion of Kannada as a compulsory subject for children belonging to linguistic minority groups from the first year of primary school was contested. The order required linguistic minority primary schools to introduce Kannada as a mandatory subject from the first year and compelled high school students to take Kannada as the exclusive first language. It also obligated high schools established by linguistic minorities to adopt Kannada as the sole language in secondary school.

The full bench of the Karnataka High Court concluded that the government order, imposing the compulsory study of Kannada on linguistic minority children from the outset of primary school and enforcing its introduction in primary schools, as well as compelling high school students to choose Kannada as their exclusive first language and imposing Kannada as the sole language in secondary schools, violated the principles of equality guaranteed by Articles 14, 29(1), and 30(1) of the Constitution.”³⁶

3. Parents Right to Choose Mother Tongue

One of the issues which has constantly agitated the minds of the Court as to whether

³² *Id.* at 278.

³³ *Id.* at 279.

³⁴ *Id.* at 280.

³⁵ AIR 1989 Kant. 226.

³⁶ (1994) 1SCC 550 at 555.

the State can impose on the mother tongue of linguistic minority as compulsory medium of instruction? What is the meaning of the term ‘mother tongue’? Who will have the right to decide about mother tongue of the children?

In *English Medium Parents Association v. State of Karnataka*³⁷ in this case, the Government of Karnataka on the basis of the recommendation of the expert committee took a policy decision and issued order prescribing as follows:

“From 1st standard to IV standard, where it is expected that normally mother tongue will be the medium of instruction, only one language from Appendix I³⁸ will be compulsory subject of study.”

The Division Bench of the Karnataka High Court held that from a reading of the Government order it is clear that elements of compulsion at the primary stage is no longer there because the Government Order is unequivocal when it says from 1st to 4th standard mother tongue will be medium of instruction, only one language from Appendix I will be compulsory subject of study. From 3rd standard onwards Kannada will be optional subject for non-Kannada speaking students. It is to be taught on a voluntary basis there being no examination at the end of the year in Kannada language.”³⁹

Thus, the Court upheld “the Government Order on the premises that there was no element of compulsion at the primary stage any longer as the medium of instruction from 1st to 4th standard would be in mother tongue. From this decision, it cannot be inferred that prescription of mother tongue in class 1st to 4th in the primary school can be compelled by the state as a regulatory measure for maintaining the standard of education.”⁴⁰

In *Associated Management of Primary and Secondary School in Karnataka v. State of Karnataka*.⁴¹ The constitutional bench of the Karnataka High Court considered the constitutional validity of language policy of the Government of Karnataka for primary and High Schools with effect from 1994–1995. The Order provided that the medium of instruction

³⁷ (1994) 1 SCC 550.

³⁸ Appendix I included subject such as : 1. Kannada, 2. Tamil, 3. Telgu, 4. Malayalam, 5. Marathi, 6. Hindi, 7. Urdu, 8. English.

³⁹ (2014) 9 SCC 485 at 513 – 14.

⁴⁰ *Ibid.*

⁴¹ ILR. 2008 Kar. 2895

should be mother tongue or Kannada with effect from academic year 1994–1995 in all government recognized schools in class 1st to 4th and the students can be permitted to change over to English or any other language as a medium of their choice from class 5th.

The order dated April, 29th 1994, however, clarified that permission can be granted to only those students whose mother tongue is English, to study English medium in classes II to IV in the existing recognized English medium school.⁴²

A Full Bench of the Karnataka High Court allowed writ petition which challenged the order and quashed some of the clauses of the order in their application to schools other than schools run or aided by the government but upheld the rest of the order.

The Court laid down the following proposition of wider Constitutional significance:

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

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

⁴² The relevant clause of the order read:

1. The medium of instruction should be mother tongue Kannada, with effect from academic year 1994 – 95 in all government recognized schools in class I to IV.
2. The student admitted in 1st standard with effect from the academic year 1994 – 95, should be taught in mother tongue or Kannada medium.
3. However, permission can be granted to the school to continue to teach in the pre-existing medium to students of standard II to IV during the academic year 1994 – 1995.
4. The students are permitted to change over to English or any other language as medium at their choice from 5TH standard.
5. Permission can be granted to only students whose mother tongue is English, to study in English medium in classes I to IV in the existing recognized English medium school.
6. The Govt. will consider regularisation of the existing unrecognized schools as per policy indicated in Para 1 to 6 mentioned above. Request of schools who have complied with the provisions of the code of education and present policy of the Government will be considered on the basis of the report of the Zila Panchayat routed through Commissioner for public instructions.
7. It is directed that all unauthorized schools which do not comply with the above conditions will be closed down.

- (3) Imparting education is an occupation and, therefore, the right to carry on any occupation under Article 19(1) (g) includes the right to establish and administer an educational institution of one's choice. "One's Choice" includes the choice of medium of instruction.
- (4) Under Article 26 of the Constitution of India every religious denomination has a right to establish and maintain an institution for charitable purpose which includes an educational institution. This right is available to majority and minority religious denominations.
- (5) Every section of the society which has a distinct language, script or culture of its own has the fundamental right to conserve the same. This is the right which is conferred on both majority and minority, under Article 29(1) of the Constitution.
- (6) All minorities, religious or linguistic have a right to establish and administer educational institutions of their choice under Article 30(1) of the Constitution.
- (7) Thus, every citizen, every religious denomination, and every linguistic and religious minority, has a right to establish, administer and maintain an educational institution of his / its choice under Articles 19(1) (g), 26 and 30(1) of the Constitution of India which includes the right to choose the medium of instruction.
- (8) No citizen shall be denied admission to an educational institution only on the ground of language as stated in Article 29(2) of the Constitution.
- (9) The Government Policy in introducing Kannada as the first languages to the children whose mother tongue is Kannada is valid. The Policy that all children, whose mother tongue is not Kannada, the official language of the state shall study Kannada language as one of the subject is valid. The Government Policy to have mother tongue or regional language as the medium of instruction at the primary level is valid and legal, in case of schools run or aided by the state.
- (10) But, the government policy compelling children studying in other government recognized schools to have primary education only in the mother tongue or

regional language is violative of Articles 19(1) (g), 26 and 30(1) of the Constitution of India.

Aggrieved by the decision of the Full Bench of the Karnataka High Court, when the Court have quashed clause (2), (3), (6) and (8) of the Government Order dated 29.04.1994 in their application to schools other than run or aided by the Government but upheld the rest of the order, the state filed an appeal before the Supreme Court. The matter was heard by the division bench and considering the question of wider ramifications referred the matter to be heard by the Constitution Bench.

In State of Karnataka v. Associated Management of English Medium Primary and Secondary Schools and others ⁴³

The issue before the Supreme Court were as follows:

- “(1) What does mother tongue mean? If it referred to the language in which the child is comfortable with, then who will decide the same?
- (2) Whether a student or parent or a citizen has a right to choose the medium of instruction at primary stage?
- (3) Does the imposition of mother tongue in any way affect the fundamental rights under Articles 14, 19, 29 and 30 of the Constitution?
- (4) Whether government recognized school are inclusive of both government aided schools and private unaided schools?
- (5) Whether the state can by virtue of Article 350A of the Constitution compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary schools?”⁴⁴

The matter was considered by the Constitution Bench of the Supreme Court comprising of K.M. Lodha, C.J. and A.K. Patnaik, Sudhansu Jyoti Mukhopadhyaya, Dipak Mishra and F.M.

⁴³ (2014) 9 SCC 485.

⁴⁴ *Ibid* at 486.

Ibrahim Kalifulla, JJ.

A.K. Patnaik, J. speaking on behalf of the Court laid down the following proposition:

- (1) In response to the first question, it was held that “Mother tongue in the context of the Constitution would, therefore, mean the language of the ‘linguistic minority’ in a state and it is the parent or the guardian of the child who will decide what the mother tongue of child is.
- (2) The Constitution nowhere provides that mother tongue is the language which the child is comfortable with, and while this meaning of “mother tongue” may be a possible meaning of the “expression”, this is not the meaning of mother tongue in Article 350A of the Constitution or in any other provision of the Constitution and hence we cannot either expand the power of the State or restrict a fundamental right by saying that mother tongue is the language which the child is comfortable with.”⁴⁵
- (3) While deciding this issue the Court relied upon the resolution adopted at the Provincial Education Ministers Conference held in August, 1949 and recommendation of the State Reorganization Commission, 1955, where it was provided that the “Children of the Linguistic Minority which had language different from the language of the State were to be imparted education at the primary stage in their mother tongue” and “mother tongue will be the language declared by the parent or the guardian to be mother tongue.”⁴⁶
- (4) In response to the second question, the Court held that, ‘a child and on his behalf his parent or guardian, has the right to choose the medium of instruction at the primary school stage under Article 19(1) (a) and not under Article 21 or Article 21A of the Constitution’.⁴⁷
- (5) The reason being that Article 21A of the Constitution provides that the State shall provide free and compulsory education to all children from the age of six

⁴⁵ *Id.* at 504 (Para 33)

⁴⁶ *Id.* at 503 (Para 30).

⁴⁷ *Id.* at 508.

to fourteen year in such manner as the state may, by law, determine. The language of Article 21A clearly stipulate that such free education which a child can claim from the State will be in a manner as the State may, by law, determine. If, therefore, the State determines by law that in schools where free education is provided under Article 21A of the Constitution, the medium of instruction would be in the mother tongue or in any language, the child cannot claim as of right under Article 21 or Article 21A of the Constitution that he has a right to choose the medium of instruction in which the education should be imparted, by the State.⁴⁸

- (6) Hence, the High Court was not right in coming to the conclusion that the right to choose a medium of instruction is implicit in the right to education under Article 21 and 21A of the Constitution.⁴⁹
- (7) The Court further observed that: “Once we come to conclusion that freedom of speech and expression will include the right of a child to be educated in the medium of instruction of his choice, the only permissible limits of this right will be those covered under Article 19 (2) of the Constitution and we cannot exclude such right of a child from the right to freedom of speech and expression only for the reason that the State will have no power to impose reasonable restriction on this right of the child for purposes other than those mentioned in Article 19(2) of the Constitution.”⁵⁰
- (8) In response to the third question, “Does the imposition of mother tongue in anyway affect the Fundamental Right under Articles 14, 19, 29 and 30 of the Constitution, the Court relied on the finding of the Supreme Court in *D.A.V. College, Bathinda v. State of Punjab* ⁵¹, wherein it was already held by the Supreme Court that minorities have a right to establish and administer educational institutions of ‘their choice’ and therefore they have the choice of the medium of instruction in which education will be imparted in the institutions

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 507.

⁵¹ (1971) 2 SCC 261.

established and administered by them, held that imposition of mother tongue affects the fundamental rights under Articles 19, 29 and 30 of the Constitution.⁵²

- (9) The Court also negated the arguments of the State, to the effect that “if the States prescribe the medium of instruction to be other than the mother tongue of the child, which is the language of the minority community, there is no violation of the right of the linguistic minority under Article 30(1) of the Constitution by saying that the ‘choice’ of the minority community under Article 30(1) need to be limited to imparting education in the language of the minority community.”⁵³

The Court also held that the finding of Division Bench in *English Medium Parents Association v. State of Karnataka*⁵⁴ is not an authority for the proposition that prescription of mother tongue in class I to IV in the primary school can be compelled by the State as a regulatory measure for maintaining the standard of education.

A.K. Patnaik, speaking on behalf of the Court further observed that:

“Though the experts may be of a uniform in opinion that children studying in classes I to IV in the primary school can learn better if they are taught in their mother tongue, the State cannot stipulate as a conditions for recognition that the medium of instruction for children studying in classes I to IV in minority schools protected under Articles 29(1) and 30(1) of the Constitution and in private unaided schools enjoying the right to carry on any occupation under Article 19(1) (g) of the Constitution would be the mother tongue of the children as such stipulation (Sic) would violate the aforesaid Fundamental Rights.”⁵⁵

(10) In response to the fourth question, the Court said that, “all schools, whether they are established by the Government or whether they are aided by the Government or whether they are not aided by the Government, require recognition to be granted in accordance of the provisions of the appropriate act or government order. Accordingly, government recognized schools will not only include government aided schools but also unaided schools which have been granted recognition.

⁵² *Id.* at 514.

⁵³ *Id.*

⁵⁴ (1994) 1SCC 550.

⁵⁵ *Supra* note 207 at 514.

(11) In response to the fifth question as to whether the State can by virtue of Article 350-A of the Constitution compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary school? The Court said, “Linguistic minority under Article 30(1) of the Constitution has the right to choose the medium of instruction in which education will be imparted in the primary stages of the school which it has established. Article 350-A, therefore, cannot be interpreted to empower the state to compel a linguistic minority to choose its mother tongue only as medium of instruction in primary school established by it in violation of its Fundamental Right under Article 30(1).

Thus, the State has no power under Article 350-A of the Constitution to compel the linguistic minorities to choose their mother tongue only as a medium of instruction in primary schools.”⁵⁶

4. Imposition of Regional Language:

In the case of *Usha Mehta and others v. State of Maharashtra*⁵⁷, a legal challenge was mounted against the State of Maharashtra's policy decision, which mandated the inclusion of Marathi as a compulsory subject in all schools across the state. The English medium school, operated by the Gujarati linguistic minority, contested this decision, asserting that it infringed upon their Fundamental Rights as guaranteed under Articles 29(1), 30(1), 19(1)(a), 19(1)(e), and 21 of the Constitution. They further argued that the challenged educational policy hindered them from fulfilling their fundamental duties under Article 51-A of the Constitution, particularly in relation to clauses (c), (e), (f), (h), and (j). Additionally, the English medium school, run by the Gujarati linguistic minority, objected to being compelled to teach four languages, namely Hindi, English, Marathi, and their mother tongue Gujarati.

Chief Justice S. Rajendra Babu, speaking on behalf of himself and Justices Dr. A.R. Lakshmanan and G.P. Mathur, dismissed the petition, asserting that the contested policy decision did not violate the rights of linguistic minorities as guaranteed under Articles 29 and 30 or any other provisions of the Constitution.

As to the requirement of State to compulsorily learn the regional language the Court

⁵⁶ *Id.* at 515.

⁵⁷ (2004) 6 SCC 264

laid down the following postulates:

- “(1) The right of the minorities to establish and administer educational institution of “their choice” under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction.
- (2) Article 29 and 30 cannot be interpreted in such a fashion so as to contain the negative right to exclude the learning of regional language.
- (3) But this exercise of ‘choice’ of instructive language in schools by the linguistic minorities is subject to the reasonable regulation imposed by the State concerned. A particular State can validly take a policy decision to compulsorily teach its regional language.
- (4) While imposing regulations, the State shall be cautious not to destroy the minority character of the institutions.
- (5) In the instant case, the petitioner is not prevented from teaching Gujarati language but they are merely challenging the compulsory imposition of Marathi language for students and asking for right “not to learn” Marathi language for students and asking for right “not to learn” Marathi language, while living in state of Maharashtra. The impugned policy decision was taken by keeping in view the larger interest of the State because official and common businesses are carried on in that State in Marathi language. A proper understanding of Marathi language is necessary for easy carrying out of day-to-day affairs of the people living in Maharashtra. Hence, the regulation imposed by the State upon the linguistic minority to teach its regional language is only a reasonable one.”⁵⁸

The Court further remarked, “The resistance to learn the regional language will lead to alienation from the mainstream of life resulting in linguistic fragmentation within the State, which is an anathema to national integration. The learning of different languages will definitely bridge the cultural barrier and will positively contribute to the cultural integration of the

⁵⁸ *Ibid.* at 278

country. The impugned policy decision is in the paramount interest of students and also in the larger interest of the country.⁵⁹

In the case of *Ramaswamy, K.R. Traffic Ramaswamy v. State of Tamil Nadu*⁶⁰, the division bench of the Madras High Court affirmed the State of Tamil Nadu's policy decision to mandate Tamil as a compulsory subject from standard I onwards. The court deemed this regulation as reasonable, emphasizing the essential need for a proper understanding of the Tamil language in facilitating the smooth functioning of day-to-day activities for the people residing in the State, given that official and common business is conducted exclusively in Tamil.

From the preceding discussion, the following conclusions can be drawn:

1. The right of minorities to establish and administer educational institutions "of their choice" encompasses the right of minorities to determine the medium of instruction.
2. The expression of this choice is crucial, and it can be as extensive as the minority deems fit, allowing them to choose any language as the medium of instruction in their educational institutions.
3. While the minority's right to determine the medium of instruction is not absolute, it is subject to reasonable restrictions imposed by the State. However, the regulatory authority of the State is not superior to the rights enjoyed by minorities under Articles 29(1) and 30(1) of the Constitution. The State's police power to determine the medium of instruction must yield to fundamental rights to the extent necessary to preserve them.
4. Regarding State regulations mandating the compulsory study of the regional language, it is suggested that minority educational institutions should not be compelled to study the regional language, despite its desirability for day-to-day affairs. Just as the minority community cannot be forced to study its own mother tongue, minority institutions should not be compelled to study the regional language. These decisions should be left to the discretion of the concerned minority educational institutions.

⁵⁹ *Id.* 279.

⁶⁰ 2007 (5) SCC 113.

Furthermore, it is proposed that in cases where minority educational institutions are established to provide secular education following the syllabus prescribed by the State or University, the importance of the medium of instruction diminishes. The objective in such cases is not to preserve language or culture. A universal medium of instruction is highly desirable, particularly for higher and technical education, to ensure uniformity, maintain standards, and promote national integration.

Conclusion

One of the issues which has constantly agitated the minds of the Courts as to whether the State can impose on the mother tongue of linguistic minority as compulsory medium of instruction? What is the meaning of the term 'mother tongue'? Who will have the right to decide about mother tongue of the children? In *English Medium Parents Association case*, the Government of Karnataka on the basis of the recommendation of the expert committee issued order that, "from 1st standard to IV standard, where it is expected that normally mother tongue will be the medium of instruction, only one language from Appendix I will be compulsory subject of study." The division bench of the Karnataka High Court held that there can be no compulsion and even the government order is unequivocal. From 3rd standard onwards Kannada will be optional subject for non-Kannada speaking students. It is to be taught on a voluntary basis there being no examination at the end of the year in Kannada language.

In the *Gujarat University Case*, the Supreme Court unequivocally stated that a university has the authority to recommend a specific language as the medium of instruction and examination. However, it cannot mandate a particular language as the exclusive medium for instruction and coordination. The responsibility for setting standards in higher education instruction is entrusted to the Union Government. Despite this clear directive from the Supreme Court of India, the State attempted to explore the boundaries of minority rights in determining the medium of instruction in the *D.A.V. College Case*. In that instance, the Court reiterated that the State must reconcile its power to prescribe the medium of instruction with the rights of religious or linguistic minorities to have the medium of instruction in the languages associated with these minority groups.

This issue was taken up by Hunter Commission, it recommended that students should receive primary education in their native language. Subsequently, the National Education

Policy of 1968 tackled this issue, but regrettably, the situation persisted without change. Thereafter, the National Education Policy, 2020 revisited this matter and introduced the "three-language formula." But due to lack of coordination and collaboration between State authorities and the central government is hampering the successful execution of this policy.