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We ought to add that in our calculations we have not taken into account the Bhupendra Factory because the relevant material for working out the figures in regard to this factory is not adequate or satisfactory. However from such material as is available it appears that if the profits made by the said factory are included in the calculations and rehabilitation required by it is worked out, it would not materially affect the figure of rehabilitation amount determined by us.

The result is that there is no available surplus from which the respondents can claim any bonus for the relevant year. It is true that the appellant has already paid the respondents 20·65 lakhs as bonus for the relevant year, and it is likely that it may continue to do so in future; but that is a matter which is not governed by the formula.

In view of the fact that the working of the formula leaves no available surplus the appeal must be allowed and the award made by the tribunal set aside. Since the appellant had come to this Court for the decision of the larger and more important question about the revision of the formula, we would direct that there should be no order as to costs.

Appeal allowed.

IN RE THE KERALA EDUCATION BILL, 1957. REFERENCE UNDER ARTICLE 143(1) OF THE CONSTITUTION OF INDIA.

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May 22.

(S. R. DAS C. J., BHAGWATI, VENKATARAMA AIYAR, B. P. SINHA, JAFER IMAM, S. K. DAS and J. L. KAPUR JJ.)

President's Reference—Kerala Education Bill, 1957—Constitutional validity—Advisory jurisdiction of the Supreme Court, scope of —Cultural and educational rights of minorities—Constitution of India, Arts. 143(1), 14, 29, 30 and 226.

This was a reference under Art. 143(1) of the Constitution made by the President of India for obtaining the opinion of the

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Court upon certain questions relating to the constitutional validity of some of the provisions of the Kerala Education Bill, 1957, which had been passed by the Kerala Legislative Assembly but was reserved by the Governor for the consideration of the President. The Bill, as its title and preamble indicated, had for its object the better organisation and development of the educational service throughout the State, presumably, in implementation of the provisions of Art. 45 of the Constitution and conferred wide powers of control on the State Government in respect of both aided and recognised institutions. Of the four questions referred to this Court, the first and third impugned cl. 3(5) read with cl. 36 and cl. 15 of the Bill as being discriminatory under Art. 14, the second impugned cls. 3(5), 8(3) and cls. 9 to 13 of the Bill as being violative of minority rights guaranteed by Art. 30(1) and the fourth, cl. 33 of the Bill, as offending Art. 226 of the Constitution. Clause 3(5) of the Bill made the recognition of new schools subject to the other provisions of the Bill and the rules framed by the Government under cl. (36), cl. (15) authorised the Government to acquire any category of schools, cl. 8(3) made it obligatory on all aided schools to hand over the fees to the Government, cls. 9 to 13 made provisions for the regulation and management of the schools, payment of salary to the teachers and the terms and conditions of their appointment and cl. (33) forbade the granting of temporary injunctions and interim orders in restraint of proceedings under the Act. This Court took the view that since cl. 3(5) attracted the other provisions of the Bill, in case anyone of them was found to be unconstitutional, cl. 3(5) itself could not escape censure.

Held (*per* Das C. J., Bhagwati, B. P. Sinha, Jafer Imam, S. K. Das and J. L. Kapur JJ.), that although Art. 143(1) of the Constitution, which virtually reproduced the provisions of s. 213(1) of the Government of India Act, 1935, gave this Court the discretion, where it thought fit, to decline to express any opinion on the questions referred to it, the objection that such questions related, not to a statute brought into force but, to the validity of a Bill that was yet to be enacted, could be no ground for declining to entertain the reference.

Article 143(1) of the Constitution had for its object the removal of the doubts of the President and was in no way concerned with any doubts that a party might entertain and no reference could be incomplete or incompetent on the ground that it did not include other questions that could have been included in it and it was not for this Court to go beyond the reference and discuss them.

The Advisory Jurisdiction conferred by Art. 143(1) was different from that conferred by Art. 143(2) of the Constitution in that the latter made it obligatory on this Court to answer the reference.

In re Levy of Estate Duty, [1944] F.C.R. 317, relied on.

Attorney-General for Ontario v. *Hamilton Street Railway*, [1903] A. C. 524, *Attorney-General for British Columbia* v. *Attorney-General for Canada*, [1914] A. C. 153, *In re The Regulation and Control of Aeronautics In Canada*, [1932] A. C. 54, *In re Allocation of Lands and Buildings*, [1943] F. C. R. 20 and *In re Delhi Laws Act, 1912*, [1951] S.C.R. 747, considered.

A directive principle of State policy could not override a fundamental right and must subserve it, but no Court should in determining the ambit of a fundamental right, entirely ignore a directive principle but should try to give as much effect to both as possible by adopting the principle of harmonious construction.

State of Madras v. *Smt. Champakam Dorairajan*, [1951] S.C.R. 525 and *Mohd. Hanif Quareshi* v. *The State of Bihar*, [1959] S.C.R. 629, referred to.

In answering the questions under reference, the merits or otherwise of the policy of the Government sponsoring the Bill could be no concern of this Court and its sole duty was to pronounce its opinion on the constitutional validity of such provisions of the Bill as were covered by the questions.

Judged in the light of the principles laid down by a series of decisions of this Court explaining Art. 14 of the Constitution, the clauses of the Bill that came within questions 1 and 3 could not be said to be violative of that Article.

The restriction imposed by cl. 3(5) read with cl. 26 of the Bill, which made it obligatory on the guardians to send their wards to a Government or a private school in an area of complusion and thus made it impossible for a new school in such area, seeking neither aid nor recognition, to function, could not be said to be discriminatory since the State knew best the needs of its people, and such discrimination was quite permissible, based, as it was, on geographical classification.

Mohd. Hanif Quareshi v. *The State of Bihar*, [1959] S. C. R. 629, *Chiranjit Lal Chowdhury* v. *The Union of India*, [1950] S.C.R. 1045, *Ramkrishna Dalmia* v. *Sri Justice S. R. Tendolkar*, [1959] S.C.R. 279, referred to.

No statute could be discriminatory unless its provisions discriminated, and since the provisions of the Bill did not do so, it could not be said to have violated equal protection of law by its uniform application to all educational institutions although not similarly situate.

Cumberland Coal Co. v. *Board of Revision*, (1931) 284 U. S. 23; 76 L. Ed. 146, held inapplicable.

The policy and purpose of a statute could be deduced from its long title and the preamble. The impugned Bill laid down its policy in the long title and the preamble and reinforced it by

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more definite statements in the different clauses and, consequently, such discretion as it left to the Government had to be exercised in implementing that policy. The use of the word 'may' in cl. 3(3) could make no difference, for once the purpose was established and the conditions of the exercise of the discretion were fulfilled, it was incumbent on the Government to exercise it in furtherance of that purpose. If it failed to do so, the failure, and not the Bill, must be censured.

Biswambar Singh v. *The State of Orissa*, [1954] S.C.R. 842 and *Julius* v. *Lord Bishop of Oxford*, (1880) 5 App. Cas. 214, referred to.

Discretionary power was not necessarily discriminatory, and abuse of power by the Government could not be lightly assumed. Apart from laying down the policy, the State Legislature provided for effective control by itself by cl. 37 and the proviso to cl. 15 of the Bill. It could not, therefore, be said that the Bill conferred unguided or uncontrolled powers on the Government.

Article 30(1) of the Constitution, which was a necessary concomitant to Art. 29(1) and gave the minorities the right to establish and administer their institutions, did not define the word 'minority', nor was it defined anywhere else by the Constitution, but it was absurd to suggest that a minority or section envisaged by Art. 30(1) and Art. 29(1) could mean only such persons as constituted a numerical minority in the particular region where the educational institution was situated or resided under a local authority. Article 350-A of the Constitution, properly construed, could lend no support to such a proposition. As the impugned Bill extended to the entire State, minorities in the State must be determined on the basis of its entire population, and thus the Christians, the Muslims and the Anglo-Indians would be its minority communities.

Article 30(1) of the Constitution made no distinction between minority institutions existing from before the Constitution or established thereafter and protected both. It did not require that a minority institution should be confined to the members of the community to which it belonged and a minority institution could not cease to be so by admitting a non-member to it.

Nor did Art. 30(1) in any way limit the subjects to be taught in a minority institution, and its crucial words "of their own choice", clearly indicated that the ambit of the rights it conferred was determinable by the nature of the institutions that the minority communities chose to establish and the three categories into which such institutions could thus be classified were (1) those that sought neither aid nor recognition from the State, (2) those that sought aid, and (3) those that sought recognition but not aid. The impugned Bill was concerned only with institutions of the second and third categories.

The word 'aid' used by Arts. 29(2) and 30(2) included 'grant' under Art. 337 of the Constitution and that word occurring in the Bill must have the same meaning. Consequently, such clauses of the Bill mentioned in question No. 2 as imposed fresh and stringent conditions precedent to such grant over and above those to which it was subject under Arts. 337 and 29(2), violated not only Art. 337 but also, in substance and effect, Art. 30(1) of the Constitution and were to that extent void.

Rashid Ahmad v. *Municipal Board, Kairana,* [1950] S.C.R. 566, *Mohd. Yasin* v. *The Town Area Committee, Jalalabad,* [1952] S.C.R. 572 and *The State of Bombay* v. *Bombay Education Society,* [1955] 1 S.C.R. 568, referred to.

Although there was no constitutional right to the grant of aid except for Anglo-Indian educational institutions under Art. 337 of the Constitution, State aid was indispensable to educational institutions and Arts. 28(2), 29(2) and 30(2) clearly contemplated the grant of such aid and Arts. 41 and 46 charged the State with the duty of aiding educational institutions and promoting such interests of the minorities.

But the right of the minorities to administer their educational institutions under Art. 30(1), was not inconsistent with the right of the State to insist on proper safeguards against maladministration by imposing reasonable regulations as conditions precedent to the grant of aid. That did not, however, mean that the State Legislature could, in the exercise of its powers of legislation under Arts. 245 and 246 of the Constitution, override the fundamental rights by employing indirect methods, for what it had no power to do directly, it could not do indirectly.

So judged, cl. 3(5) of the Bill by bringing into operation and imposing cls. 14 and 15 as conditions precedent to the grant of aid, violated Art. 30(1) of the Constitution.

Similar considerations applied to the grant of State recognition as well. No minority institution could fulfil its real object or effectively exercise its rights under Art. 30(1) without State recognition, as otherwise it would not be open to its scholars under the Education Code to avail of the opportunities for higher education in the University or enter the public services. While it was undoubtedly true that there could be no fundamental right to State recognition, denial of recognition except on such terms as virtually amounted to a surrender of the right to administer the institution, must, in substance and effect infringe Art. 30(1) of the Constitution.

Clause 3(5), read with cl. 20 of the Bill, in forbidding the charging of tuition fees in the primary classes, deprived the minority institutions of a fruitful source of income without compensation, as was provided by cl. (9) for aided schools, and thus imposed a condition precedent to State recognition which was in

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effect violative of Art. 30(1) and was, therefore, void to that extent. No rules, when framed under the Act, could cure such invalidity.

Article 45 of the Constitution did not require the State Government to provide free and compulsory education to the detriment of minority rights guaranteed by the Constitution,—if the Government so chose it could do so through the Government and aided schools, and this Court was in duty bound to uphold such fundamental rights as the Constitution had thought fit to confer on the minority communities.

The wide powers and jurisdiction conferred on the High Courts by Art. 226 of the Constitution could not be affected by a provision such as cl. (33) of the Bill, which forbade Courts to issue temporary injunctions or interim orders in restraint of any proceedings thereunder, and it must be read as subject to the overriding provisions of Art. 226 of the Constitution.

Venkatarama Aiyar J.—It was obvious that Art. 30(1) of the Constitution did not in terms confer a right on the minority institutions to State recognition, nor, properly construed, could it do so by implication, for such an implication, if raised, would be contrary to the express provisions of Art. 45 of the Constitution. Article 30(1) was primarily intended to protect such minority institutions as imparted purely religious education and to hold that the State was bound thereunder to recognise them would be not only to render Art. 45 wholly infructuous but also to nullify the basic concept of the Constitution itself, namely, its secular character.

There was no conflict here between a fundamental right and a directive principle of State policy that must yield, and the principle of Art. 45 must have full play. Clause (20) of the Bill was designed to enforce that principle and cl. 3(5) of the Bill in making it a condition precedent to State recognition could not violate Art. 30(1) of the Constitution.

Nor could a consideration of the policy behind Art. 30(1) lead to a different conclusion, assuming that the question of policy could be gone into apart from the language, since that policy was no other than that the majority community of the State should not have the power to destroy or impair the religious or linguistic rights of the minority communities.

The only two obligations, one a positive and the other a negative, that Art. 30(1) read with Arts. 25, 26, 29 and 30(2) of the Constitution imposed on the State were (1) to extend equal treatment as regards aid or recognition to all educational institutions, including those of the minorities, religious or linguistic, and (2) not to prohibit the establishment of minority institutions or to interfere with their administration.

To hold that the State Government was further bound under Art. 30(1) to accord recognition to minority institutions would be

to put the minorities in a more favoured position than the majority community, which the Constitution never contemplated.

City Winnipeg v. *Barrett : City of Winnipeg* v. *Logan*, [1892] A.C. 445, referred to.

ADVISORY JURISDICTION: Special Reference No. 1 of 1958.

Reference by the President of India under Article 143(1) of the Constitution of India on the Kerala Education Bill, 1957.

The circumstances which led to this Reference by the President and the questions referred appear from the full text of the Reference dated March 15, 1958, which is reproduced below :—

WHEREAS the Legislative Assembly of the State of Kerala has passed a Bill to provide for the better organisation and development of educational institutions in the State of Kerala (hereinafter referred to as the Kerala Educational Bill);

AND WHEREAS the said Bill, a copy whereof is annexed hereto, has been reserved by the Governor of Kerala, under article 200 of the Constitution, for my consideration;

AND WHEREAS sub-clause 3 of clause (3) of the said Bill enables the Government of Kerala, *inter alia*, to recognise any school established and maintained by any person or body of persons for the purpose of providing the facilities set out in sub-clause (2) of the said clause to wit, facilities for general education, special education and for the training of teachers;

AND WHEREAS sub-clause (5) of clause 3 of the said Bill provides, *inter alia*, that any new school established or any higher class opened in any private school, after the Bill has become an Act and the Act has come into force, otherwise than in accordance with the provisions of the Act and the rules made under section 36 thereof, shall not be entitled to be recognised by the Government of Kerala;

AND WHEREAS a doubt has arisen whether the provisions of the said sub-clause (5) of clause 3 of the said Bill confer upon the Government an unguided

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power in regard to the recognition of new schools and the opening of higher classes in any private school which is capable of being exercised in an arbitrary and discriminatory manner;

AND WHEREAS a doubt has further arisen whether such power of recognition of new schools and of higher classes in private schools is not capable of being exercised in a manner affecting the right of the minorities guaranteed by clause (1) of article 30 of the Constitution to establish and administer educational institutions of their choice;

AND WHEREAS sub-clause (3) of clause 8 of the said Bill requires all fees and other dues, other than special fees, collected from the students in an aided school to be made over to the Government of Kerala in such manner as may be prescribed, notwithstanding anything contained in any agreement, scheme or arrangement;

AND WHEREAS a doubt has arisen whether such requirement would not affect the right of the minorities guaranteed by clause (1) of article 30 of the Constitution to administer educational institutions established by them;

AND WHEREAS clauses 9 to 13 confer upon the Government certain powers in regard to the administration of aided schools;

AND WHEREAS a doubt has arisen whether the exercise of such powers in regard to educational institutions established by the minorities would not affect the right to administer them guaranteed by clause (1) of article 30 of the Constitution;

AND WHEREAS clause 15 of the said Bill empowers the Government of Kerala to take over, by notification in the Gazette, any category of aided schools in any specified area or areas, if they are satisfied that for standardising general education in the State of Kerala or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control it is necessary to do so in the public interest, on

payment of compensation on the basis of market value of the schools so taken over after deducting therefrom the amounts of aids or grants given by that Government for requisition, construction or improvement of the property of the schools;

AND WHEREAS a doubt has arisen whether such power is not capable of being exercised in any arbitrary and discriminatory manner;

AND WHEREAS clause 33 of the said Bill provides that, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, no courts can grant any temporary injunction or make any interim order restraining any proceedings which is being or about to be taken under the Act;

AND WHEREAS a doubt has arisen whether the provisions of the said clause 33, in so far as they relate to the jurisdiction of the High Courts, would offend article 226 of the Constitution;

AND WHEREAS there is likelihood of the constitutional validity of the provisions of the Bill hereinbefore referred to being questioned in courts of law, involving considerable litigation;

AND WHEREAS, in view of what has been hereinbefore stated, it appears to me that the questions of law hereinafter set out have arisen and are of such nature and of such importance that it is expedient that the opinion of the Supreme Court of India should be obtained thereon;

NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of article 143 of the Constitution, I, Rajendra Prasad, President of India, hereby refer the following questions to the Supreme Court of India for consideration and report thereon, namely :—

"(1) Does sub-clause (5) of clause 3 of the Kerala Education Bill, read with clause 36 thereof, or any of the provisions of the said sub-clause, offend article 14 of the Constitution in any particulars or to any extent?

(2) Do sub-clause (5) of clause 3, sub-clause (3) of

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clause 8 and clauses 9 to 13 of Kerala Education Bill, or any provisions thereof, offend clause (1) of article 30 of the Constitution in any particulars or to any extent?

(3) Does clause 15 of the Kerala Education Bill, or any provisions thereof, offend article 14 of the Constitution in any particulars or to any extent?

(4) Does clause 33 of the Kerala Education Bill, or any provisions thereof, offend article 226 of the Constitution in any particulars or to any extent?"

1958. April 29, 30. May 1, 2, 5, 6, 7, 8, 9 and 12. *M. C. Setalvad, Attorney-General for India, C. K. Daphtary, Solicitor-General of India, H. N. Sanyal, Additional Solicitor-General of India, G. N. Joshi* and *R. H. Dhebar*, for the President of India. The preamble to the Constitution of India lays emphasis on liberty of thought, expression, belief, faith and worship and assures the dignity of the individual. To give effect to these ideals the Constitution provides fundamental rights for the individuals in Arts. 19, 25 and 28 and for groups in Arts. 26, 29 and 30. The fundamental rights in Arts. 29 and 30 are absolute and no restrictions can be placed on them, though restrictions can be placed on other fundamental rights. These rights may be compared with the rights under Art. 44 (2) of the Irish Constitution and s. 93 of the British North America Act. The freedoms conferred by Arts. 26, 29 and 30 were considered by this Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, ([1954] S.C.R. 1005 at 1028-1029) and *The State of Bombay* v. *Bombay Education Society*, ([1955] 1 S.C.R. 568 at 578, 580, 586). Article 30 (1) gives absolute right to the minorities to establish and administer educational institutions of their choice. The Constitution having ensured religious freedom under Art. 26 and cultural freedom in Art. 29, left the means to promote and conserve these freedoms to the minorities themselves to work out under Art. 30 (1).

Clause 3 (5) of the Kerala Education Bill which provides that the establishment of new schools and opening of higher classes shall be according to the Rules to

be framed under cl. 36 to entitle them to be recognised by the Government, confers upon the executive unguided and uncontrolled powers and offends Art. 14. The legislature does not lay down any policy, but leaves it to the executive under the rule-making powers. *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti*, ([1955] 2 S.C.R. 1196 at 1239, 1241); *The State of West Bengal* v. *Anwar Ali Sarkar*, ([1952] S.C.R. 284 at 345, 346).

It is incorrect to say that Christians and Muslims are not minorities in Kerala. When the Constitution speaks of minorities it speaks on an all India basis. The fact that a certain community formed a very high percentage of the population in a particular State did not detract from its status as a minority. The provisions of the Bill make illusory the rights granted by Art. 30(1) to minorities. By using the instrument of Government aid the Bill seeks to deprive the minorities of their right to administer their own schools. *Shirur Mutt Case*, ([1954] S.C.R. 1005 at 1028, 1029). The right of the minorities under Art. 30(1) to establish and administer their institutions is an absolute and unfettered right and is consistent with their getting aid from the Government. Article 337 makes special provision for educational grants for the benefit of the Anglo-Indian community. Article 30 (1) is infringed whether the schools go in for aid or not. Clause 8 (3) of the Bill under which in all aided schools all fees, etc., collected from the students will have to be made over to the Government deprives the management of the right of administration. *Pierce* v. *Society of Holy Sisters Names*, (69 L. Ed. 1070 at 1077); *Maher* v. *Nebraska*, (67 L. Ed. 1042 at 1044).

Clause 15 of the Bill empowers the Government to acquire any category of aided schools in any specified area. This clause is wholly subversive of Art. 30 (1). It also offends Art. 14 as it empowers the Government to pick and choose any schools, by suitably selecting the category and area, for acquisition, no criteria having been laid down for making the choice.

Clause 33 of the Bill prohibits all Courts from

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granting any temporary injunction or interim order regarding any proceedings taken under the Act. To the extent that this clause infringes Art. 226 or Art. 32, it is void. Interim orders are also passed under Arts. 226 and 32 as ancillary to the main relief. *The State of Orissa* v. *Madan Gopal Rungta*, ([1952] S.C.R. 28 at 34). Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 110, para. 204.

Kaslival, Advocate-General of Rajasthan, R.H. Dhebar and *T. M. Sen*, for the State of Rajasthan adopted the arguments of the Attorney-General for India.

G. S. Pathak, with *M. R. Krishna Pillai* for the Kerala Christian Education Action Committee, with *J. B. Dadachanji* for the Kerala School Managers' Association and with *V. O. Abraham* and *J. B. Dadachanji* for the Aided School Managers' Association in Badogara and Quilandy, Catholic Union of India and Catholic Association of Bombay. The preamble to the Constitution speaks of securing to the citizens of India fraternity assuring the dignity of the individual and the unity of the Nation. Articles 25 to 30 have been framed to secure this unity. Art. 30 is in absolute terms and does not permit regulation or restriction of the rights conferred by it. "Their choice" in Art. 30 cannot be controlled by the State. It has been the normal method of running the minority institutions with aid and recognition. Implict in Art. 30(1) is the right of a parent or guardian to impart such education to his children as he likes. *Bombay Education Society* v. *The State of Bombay*, (56 Bom. L. R. 643 at 653). It is the right of every person of the minority community to educate his children in school administered by that community. *The State of Bombay* v. *Bombay Education Society*, ([1955] 1 S. C. R. 568 at 586). The word "administer" should be interpreted as in 69 L. Ed. 1070 at 1076, 67 L. Ed. 1042 at 1045 and 71 L. Ed. 646 at 647. The ordinary dictionary meaning of administer is 'to manage' or 'carry on'. The legislature cannot even indirectly infringe the fundamental rights. *Dwarkadas Shrinivas* v. *The Sholapur Spinning and Weaving Co. Ltd.*, ([1954] S.C.R. 674 at 683);

Punjab Province v. *Daulat Singh*, (73 I. A. 59) ; *The State of Bombay* v. *Bombay Education Society*, ([1955] 1 S. C. R. 568 at 583). American Jurisprudence, Vol. 11, p. 724, Sec. 95. The whole scheme of the Bill is to secularise education and, thus it infringes the fundamental rights guaranteed under Art. 30. Clause 3 of the Bill which requires permission to be obtained to establish a school, cl. 10 which empowers the Government to prescribe qualifications of teachers in minority community schools and cl. 26 which makes it obligatory on parents to send their children to Government or aided schools where compulsory education is in force, all offend Art. 30. Similarly cls. 6, 7, 8, 11, 12, 14, 15 and 28 are destructive of this fundamental right.

Frank Anthony and *P. C. Aggarwala*, for the All India Anglo-Indian Association and for the Apostolic Carmel Education Society and Roman Catholic Diocese. .Under Art. 143 this Court has the discretion to refuse to answer the reference. *In Re Allocation of Lands and Buildings*, ([1943] F. C. R. 20 at 22). The present reference is most incomplete and wholly unsatisfactory and the Court should, following Zafrullah Khan J. in *In re Levy of Estate Duty*, ([1944] F.C.R. 317 at 334, 335), decline to answer it. The reference is incomplete as this Court has been asked to examine whether certain provisions of the Bill offend certain specified fundamental rights though actually those provisions offend other fundamental rights also. There are several important provisions in the Bill, which have not specifically been referred, which also offend fundamental rights. Such a reference is unfair to the Court and deadly to my clients. If this Court is in favour of giving its opinion on the reference, the scope thereof should be extended to include all objections to the validity of the provisions of the Bill, and this Court has inherent jurisdiction to do so.

Anglo-Indian schools occupy a special position. Article 30(1) gives to the Anglo-Indian community the fundamental right to establish educational institutions of their choice. These fundamental rights were not subject to any social control. The object of the

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Kerala Education Bill was to strike at the Christian Church, especially the Catholics, to eliminate their religion, to take away their property, to eliminate all education agencies other than those of the State so that the State may regiment education and indoctrinate children.

The Bill which sought to implement directive principles of State policy in Art. 45 by providing for free and compulsory education infringed Art. 30(1). Directive principles must yield to fundamental rights. *The State of Madras* v. *Sm. Champakam Dorairajan*, ([1951] S. C. R. 521 at 531). The State cannot compel minority educational institutions not to charge fees for primary classes. This compulsion coupled with the embargo imposed by the Bill on children going to schools not recognised by the Government would extinguish the choice of the minorities guaranteed by Art. 30. Recognition was part of the right of the minorities under Art. 30. Article 337 provides for special grants or aids to educational institutions run by Anglo-Indians and the State cannot take that away or place conditions or restrictions on it.

Clause 3(5) of the Bill infringes both Art. 30(1) and Art. 14. It discriminates between existing schools which could continue to charge fees and primary classes and new schools which cannot charge such fees if they want to be recognised. The conditions imposed on the opening of new schools by the minorities are such that they deprive them of the right under Art. 30(1).

Nur-ud-Din Ahmed, S. S. Shukla and *P. C. Aggarwala, for the All India Jamiat-ul-ulema-e-Hind.* The Bill seeks to achieve nationalisation of educational institutions and thus to deprive the minorities of their right to establish and administer schools of their own choice under Art. 30. This right includes the right of the minorities to receive aid and also get Government recognition of their schools without any restrictions. The provisions of the Bill gives powers to the State without laying down the basis and standards for the exercise of that power.

G. C. Mathur and *C. P. Lal* for the state of U. P. adopted the arguments of the Attorney-General for India.

B. K. B. Naidu, for the Kerala State Muslim League adopted the arguments of G. S. Pathak and Frank Anthony.

D. N. Pritt, Sardar Bahadur and *C. M. Kuruvilla,* for the State of Kerala. The questions referred to the Court by the President arose out of certain doubts entertained by the President in respect of certain provisions of the Bill. If the President did not entertain certain other doubts, the parties cannot insist that the President must have had those other doubts also. The Court has no power to go beyond those questions which are raised in the reference. The State of Kerala wants the Court to reply to all the four questions referred and it would abide by the view which the Court will express on these questions.

The Kerala Education Bill is a progressive piece of legislation which seeks to provide a better organisation and development of educational institutions in the State, and a varied and comprehensive educational service throughout the State. It seeks to provide employment to about 70,000 teachers and to give security to the teachers. The Bill also seeks to implement the directive principles of State policy in Art. 45 by providing for free and compulsory primary education for all.

The Bill lays down a clear principle and policy, as stated in its objects, to provide for the better organisation and development of education. This is further made clear by the preamble which seeks to provide for a varied and comprehensive educational service throughout the State. Nationalisation which could have been easily and lawfully achieved was not the policy adopted by the State. Its policy was to maintain the three different categories of schools, the Government run schools, the private aided schools and the private schools recognised by the Government. The Court could not get a complete picture until the rules were framed. The framing of the

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rules had necessarily to be left to the Government. Such 'delegated legislation' is an integral and inevitable part of a modern State power. Clause 3(5) of the Bill read with cl. 36 does not violate Art. 14. *Jadunandan Yadav* v. *R. P. Singh* (A. I. R. 1958 Pat. 43 at 47); *Biswambhar Singh* v. *The State of Orissa* ([1954] S. C. R. 842); *Pannalal Binjraj* v. *Union of India*, ([1957] S. C. R. 233 at 248, 256, 262); *Sardar Inder Singh* v. *The State of Rajasthan* ([1957] S. C. R. 605). The rules to be framed by the Government would go for scrutiny before the same legislature which passed the Bill and when passed by the legislature the rules will become part of the Act. This was not really delegated legislation but legislation in two stages.

In order to protect certain privileges of minorities the State cannot discard the glorious principles of free and compulsory education. The rights of minorities cannot destroy the rights of citizens to universal free education. If the minorities want Government aid and recognition for their schools, they could be granted on the general terms and conditions applicable to others. The words 'of their choice' cannot be interpreted to mean the establishment of schools with the aid of the tax payer's money and also with the assurance of enough pupils to attend those schools.

Christians and Muslims are not minorities in Kerala. Christians, forming the second largest community, constituted one fourth of the population, while Muslims, forming the third largest community, constituted one seventh of the total population. Minorities in the context of the educational rights guaranteed under the Constitution mean only those sections of the population in particular areas of a State who are in a minority, and not those who can be regarded as minorities in the country as a whole. The only minority community in Kerala which can claim the benefit of Art. 30(1) are the Jews, who do not choose to have their own educational institutions.

Schools run by minorities in Kerala were not strictly minority schools as envisaged by Art. 30(1) as they were not run mainly for the children of the

minority community. In most of these schools at least 75 per cent. of the students were from non-minorities. Article 30(1) contemplates schools for the education of members of the minority communities only. Right of the minority communities to establish and administer institutions of their choice does not include the right to receive aid and recognition on their own terms. Article 30(2) only prohibited the State from discriminating against any educational institution on the ground of religion or language.

In order to attract the operation of Art. 30(1) it should be established that there is a minority community, that it has established an educational institution and that the educational institution is run for the education of the members of that community. *Ramani Kanta Bose* v. *The Gauhati University* (I. L. R. [1951] Ass. 348 at 352). Not one of these conditions is fulfilled in any of the educational institutions in the State. The choice in Art. 30(1) lies in the establishment of a school and not in its management.

The provisions of the Bill relating to the establishment and recognition of schools, restrictions on alienation of school property, appointment of managers, selection of teachers by the State Public Service Commission and the taking over the management of the schools in public interest are all reasonable conditions imposed to ensure better organisation of education and security of service conditions to the teachers.

The category of schools in respect of which the power of acquisition can be exercised under cl. 15 of the Bill comes under a classification which differentiates it from those other categories which are excluded from classification being such as is calculated to further the purposes and the policy underlying the legislation. Clause 15 does not infringe Art. 14 at all.

In enacting cl. 33 of the Bill the State Legislature did not intend, and must be presumed not to have intended, to affect the operation of Art. 226 in any way.

S. Easwara Iyer and *K. R. Chaudhury*, for the Kerala Private Secondary School Office Staff

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Association and Kerala Private Teachers' Federation, adopted the arguments of D. N. Pritt.

Cur. adv. vult.

1958. May 22. The opinion of Das C. J., Bhagwati, B. P. Sinha, Jafer Imam, S. K. Das and J. L. Kapur, JJ. was delivered by Das C. J. Venkatarama Aiyar J. delivered a separate opinion.

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DAS C. J.—This reference has been made by the President under Art. 143 (1) of the Constitution of India for the opinion of this Court on certain questions of law of considerable public importance that have arisen out of or touching certain provisions of the Kerala Education Bill, 1957, hereinafter referred to as "the said Bill", which was passed by the Legislative Assembly of the State of Kerala on September 2, 1957, and was, under Art. 200, reserved by the Governor of Kerala for the consideration of the President. After reciting the fact of the passing of the said Bill by the Legislative Assembly of Kerala and of the reservation thereof by its Governor for the consideration of the President and after setting out some of the clauses of the said Bill and specifying the doubts that may be said to have arisen out of or touching the said clauses, the President has referred to this Court certain questions hereinafter mentioned for consideration and report. It is to be noted that the said Bill not having yet received the assent of the President the doubts, leading up to this reference, cannot obviously be said to have arisen out of the actual application of any specified section of an Act on the facts of any particular case and accordingly the questions that have been referred to this Court for its consideration are necessarily of an abstract or hypothetical nature and are not like specific issues raised in a particular case brought before a court by a party aggrieved by the operation of a particular law which he impugns. Further, this reference has been characterised as incomplete and unsatisfactory in that, according to learned counsel appearing for some of the institutions it does not clearly bring out all the constitutional

defects attaching to the provisions of the Bill and serious apprehension has been expressed by learned counsel before us that our opinion on these isolated abstract or hypothetical questions may very positively prejudice the interests, if not completely destroy the very existence, of the institutions they represent and, in the circumstances, we have been asked not to entertain this reference or give any advisory opinion on the questions put to us.

It may be of advantage to advert, at the outset, to the ambit and scope of the jurisdiction to be exercised by this Court under Art. 143 of the Constitution. There is no provision similar to this in the Constitution of the United States of America or in the Commonwealth of Australia Constitution Act, 1900 (63 and 64 Vic. Ch. 12) and, accordingly, the American Supreme Court as well as the High Court of Australia, holding that the jurisdiction and powers of the court extend only to the decision of concrete cases coming before it, have declined to give advisory opinions to the executive or legislative branches of the State. Under s. 60 of the Canadian Supreme Court Act, 1906, the Governor-General-in-Council may refer important questions of law concerning certain matters to the Supreme Court and the Supreme Court appears to have been held bound to entertain the reference and answer the questions put to it. Nevertheless, the Privy Council has pointed out the dangers of such advisory opinion and has, upon general principles deprecated such references. Said the Earl of Halsbury L. C. in *Attorney General for Ontario* v. *Hamilton Street Railway* (1):—

"They would be worthless as being speculative opinions on hypothetical questions. It would be contrary to principle, inconvenient, and inexpedient that opinions should be given up on such questions at all. When they arise, they must arise in concrete cases, involving private rights; and it would be extremely unwise for any judicial Tribunal to attempt beforehand to exhaust all possible cases and facts

(1) [1903] A. C. 524, 529.

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which might occur to qualify, cut down, and override the operation of the particular words when the concrete case is not before it."

To the like effect are the observations of Lord Haldane in *Attorney General for British Columbia* v. *Attorney General for Canada* (1):—

".....Under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the question of future litigants be prejudiced by the court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied."

Reference may, with advantage, be also made to the following observations of Lord Sankey L. C. in *In Re The Regulation and Control of Aeronautics In Canada* (2):—

" .....It is undesirable that the Court should be called upon to express opinions which may affect the rights of persons not represented before it or touching matters of such a nature that its answers must be wholly ineffectual with regard to parties who are not and who cannot be brought before it—for example, foreign Government."

Section 4 of the Judicial Committee Act, 1833 (3 and 4 William IV, Ch. 41) provides that "It shall be lawful for His Majesty to refer to the said Judicial Committee for hearing and consideration any such other matters whatsoever as His Majesty shall think fit and such Committee shall thereupon hear and consider the same and shall advise His Majesty thereon in manner aforesaid." It is to be noted that it is made obligatory for the Judicial Committee to hear and consider the matter and advise His Majesty thereon. The Government of India Act, 1935, by s. 213(1), authorised the Governor-General to consult the Federal Court, if at any time it appeared to the Governor-General that there had arisen or was likely to arise a question of

(1) [1914] A. C. 153, 162. (2) [1932] A. C. 54, 66.

law which was of such a nature and of such public importance that it was expedient to obtain the opinion of the Federal Court upon it and empowered that court, after such hearing as they thought fit, to report to the Governor-General thereon. This provision has since been reproduced word for word, except as to the name of the court, in cl. (1) of Art 143 of our Constitution. That Article has a new clause, being cl. (2) which empowers the President, notwithstanding anything in the proviso to Art. 131, to refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon. It is worthy of note that, while under cl. (2) it is obligatory on this Court to entertain a reference and to report to the President its opinion thereon, this Court has, under cl. (1), a discretion in the matter and may in a proper case and for good reasons decline to express any opinion on the questions submitted to it. In view of the language used in s. 213(1), on which Art. 143(1) of our Constitution is based, and having regard to the difference in the language employed in cls. (1) and (2) of our Art. 143 just alluded to, the scope of a reference made under Art. 143(1) is obviously different from that of a reference under s. 4 of the Judicial Committee Act, 1833 and s. 60 of the Canadian Supreme Court Act, 1906, and this Court, under Art. 143(1), has a discretion in the matter and consequently the observations of their Lordships of the Privy Council quoted above are quite apposite and have to be borne in mind.

There have been all told four references by the Governor-General under s. 213(1) of the Government of India Act, 1935, and in two of them some of the Judges of the Federal Court have made observations on the ambit and scope of such a reference. Thus in *In re Allocation of Lands and Buildings* (1), Gwyer C. J. said :—

"On considering the papers submitted with the case, we felt some doubt whether any useful purpose

(1) [1943] F. C. R. 20, 22.

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would be served by the giving of an opinion under s. 213 of the Act. The terms of that section do not impose an obligation on the Court, though we should always be unwilling to decline to accept a Reference, except for good reason; and two difficulties presented themselves. First, it seemed that questions of title might sooner or later be involved, if the Government whose contentions found favour with the Court desired, as the papers show might be the case, to dispose of some of the lands in question to private individuals, and plainly no advisory Opinion under s. 213 would furnish a good root of title such as might spring from a declaration of this Court in proceedings taken under s. 204(1) of the Act by one Government against the other."

In *In re Levy of Estate Duty* (1) Spens C. J. said at p. 320 of the authorised report :—

"It may be stated at the outset that when Parliament has thought fit to enact s. 213 of the Constitution Act it is not in our judgment for the Court to insist on the inexpediency (according to a certain school of thought) of the advisory jurisdiction. Nor does it assist to say that the opinions expressed by the Court on the questions referred "will have no more effect than the opinions of the law officers": *Attorney-General for Ontario* v. *Attorney-General for Canada* (2). That is the necessary result of the jurisdiction being advisory."

Referring to the objection that the questions related to contemplated legislation and not to the validity or operation of a measure already passed, the learned Chief Justice observed at p. 321 :—

"The fact that the questions referred relate to future legislation cannot by itself be regarded as a valid objection. Section 213 empowers the Governor-General to make a reference when questions of law are "likely to arise".....
In this class of cases, the reference should, in the very nature of things, be made before the legislation has been

(1) [1944] F. C. R. 317, 320, 321, 350.

(2) [1912] A. C. 571, 589.

introduced and the objection based upon the hypothetical character of the questions can have no force. We may, however, add that instances were brought to our notice in which references had been made under the corresponding provision in the Canadian Supreme Court Act when the matter was at the stage of a Bill."

Zafrulla Khan J. declined to entertain the reference and to answer the questions on high authority quoted and discussed elaborately in his separate opinion. The learned Judge, after pointing out in the earlier part of his opinion that it was "a jurisdiction the exercise of which on all occasions must be a matter of delicacy and caution", concluded his opinion with the following observations at page 350 :—

"In the state of the material made available to us I do not think any useful purpose would be served by my attempting to frame answers to the questions referred. Indeed, I apprehend, that any such attempt might result in the opinion delivered being made the foundation of endless litigation hereafter, apart altogether from any question relating to the vires of the proposed law, and operating to the serious prejudice of persons whom it might be attempted to bring within the mischief of that law. It is bound to raise ghosts far more troublesome than any that it might serve to lay. For these reasons I am compelled respectfully to decline to express any opinion on the questions referred."

The present reference is the second of its kind under Art. 143(1) of the Constitution, the first one being concerned with the *In Re Delhi Laws Act, 1912* (1). The nature and scope of the reference under Art. 143(1) was not discussed in the *In Re Delhi Laws Act case* (1), but, we conceive, that the principles laid down by the Judicial Committee and the Federal Court quoted above will serve as a valuable guide indicating the line of approach to be adopted by this Court in dealing with and disposing of the reference now before us. The principles established by judicial

(1) [1951] S.C.R. 747.

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decisions clearly indicate that the complaint that the questions referred to us relate to the validity, not of a statute brought into force but, of a Bill which has yet to be passed into law by being accorded the assent of the President is not a good ground for not entertaining the reference for, as said by Spens C. J. Art. 143(1) does contemplate the reference of a question of law that is "likely to arise". It is contended that several other constitutional objections also arise out of some of the provisions of the Bill considered in the light of other provisions of the Constitution, e.g., Art. 19(1)(g) and Art. 337 and that as those objections have not been included in the reference this Court should not entertain an incomplete reference, for answers given to the questions put may be misleading in the absence of answers to other questions that arise. In the first place it is for the President to determine what questions should be referred and if he does not entertain any serious doubt on the other provisions it is not for any party to say that doubts arise also out of them and we cannot go beyond the reference and discuss those problems. The circumstance that the President has not thought fit to refer other questions as to the constitutional validity of some of the clauses of the said Bill on the ground that they infringe other provisions of the Constitution cannot be a good or cogent reason for declining to entertain this reference and answer the questions touching matters over or in respect of which the President does entertain some doubt.

In order to appreciate the true meaning, import and implications of the provisions of the Bill which are said to have given rise to doubts, it will be necessary to refer first to certain provisions of the Constitution which may have a bearing upon the questions under consideration and then to the actual provisions of the Bill. The inspiring and nobly expressed preamble to our Constitution records the solemn resolve of the people of India to constitute India into a *SOVEREIGN DEMOCRATIC REPUBLIC* and, amongst other things, to secure to all its citizens *JUSTICE*, *LIBERTY*, and *EQUALITY* and to promote among

them all *FRATERNITY* assuring the dignity of the individual and the unity of the Nation. One of the most cherished objects of our Constitution is, thus, to secure to all its citizens the liberty of thought, expression, belief, faith and worship. Nothing provokes and stimulates thought and expression in people more than education. It is education that clarifies our belief and faith and helps to strengthen our spirit of worship. To implement and fortify these supreme purposes set forth in the preamble, Part III of our Constitution has provided for us certain fundamental rights. Article 14, which is one of the articles referred to in two of the questions, guarantees to every person, citizen or otherwise, equal protection of the laws within the territory of India. Article 16 ensures equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In order to avail themselves of the benefit of this Article all citizens will presumably have to have equal opportunity for acquiring the qualifications, educational or otherwise, necessary for such employment or appointment. Article 19(1) guarantees to citizens the right, amongst others, to freedom of speech and expression (sub-cl. (a)) and to practise any profession, or to carry on any occupation, trade or business (sub-cl. (g)). These rights are, however, subject to social control permitted by cls. (2) and (6) of Art. 19. Under Art. 25 all persons are equally entitled, subject to public order, morality and health and to the other provisions of Part III, to freedom of conscience and the right freely to profess, practise and propagate religion. Article 26 confers the fundamental right to every religious denomination or any section thereof, subject to public order, morality and health, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to acquire property and to administer such property in accordance with law. The ideal being to constitute India into a secular State, no religious instruction is, under Art. 28(1), to be provided in any educational institution wholly maintained out of State funds and under cl. (3) of the

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same Article no person attending any educational institution recognised by the State or receiving aid out of State funds is to be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Article 29(1) confers on any section of the citizens having a distinct language, script or culture of its own to have the right of conserving the same. Clause (2) of that Article provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 30, cl. (1) of which is the subject-matter of question 2 of this reference, runs as follows:—

"30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

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

While our fundamental rights are guaranteed by Part III of the Constitution, Part IV of it, on the other hand, lays down certain directive principles of State policy. The provisions contained in that Part are not enforceable by any court, but the principles therein laid down are, nevertheless, fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 39 enjoins the State to direct its policy towards securing, amongst other things, that the citizens, men and women, equally, have the right to an adequate means of livelihood. Article 41 requires the State, within the limits of its economic capacity and development, to make effective provision for securing the right, inter alia, to education. Under Art. 45 the State

must endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Article 46 requires the State to promote with special care the education and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation.

Part XVI of our Constitution also makes certain special provisions relating to certain classes. Thus Art. 330 provides for the reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Article 331 provides for the representation of the Anglo-Indian community in the House of the People. Reservations are made, by Arts. 332 and 333, for the representation for the Scheduled Castes and Scheduled Tribes and the Anglo-Indians in the Legislative Assembly of every State for ten years after which, according to Art. 334, these special provisions are to cease. Special provision is also made by Art. 336 for the Anglo-Indian community in the matter of appointment to certain services. Article 337 has an important bearing on the question before us. It provides that during the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty first day of March, 1948 and that during every succeeding period of three years this grant may be less by ten per cent. than those for the immediately preceding period of three years, provided that at the end of ten years from the commencement of the Constitution such grants, to the extent to which they are a special concession, shall cease. The second proviso to that Article, however, provides that no educational institution shall be entitled to receive any grant under this Article unless at least forty per cent. of the annual admissions therein are made available to members of communities other than the Anglo-Indian community. This is

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clearly a condition imposed by the Constitution itself on the right of the Anglo-Indian community to receive the grant provided under this Article. Article 366(2) defines an "Anglo-Indian".

Presumably to implement the directive principles alluded to above the Kerala Legislative Assembly has passed the said Bill in exercise of the legislative power conferred upon it by Arts. 245 and 246 of the Constitution read with entry 11 of List II in the Seventh Schedule to the Constitution. This legislative power is, however, to be exercised under Art. 245 "subject to the provisons of this Constitution". Therefore, although this legislation may have been undertaken by the State of Kerala in discharge of the obligation imposed on it by the directive principles enshrined in Part IV of the Constitution, it must, nevertheless, subserve and not over-ride the fundamental rights conferred by the provisions of the Articles contained in Part III of the Constitution and referred to above. As explained by this Court in the *State of Madras* v. *Smt. Champakam Dorairajan* (1) and reiterated recently in *Mohd. Hanif Quareshi* v. *The State of Bihar* (2) "The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights". Nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principles of State policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible. Keeping in view the principles of construction above referred to we now proceed to examine the provisions of the said Bill in order to get a clear conspectus of it.

The long title of the said Bill describes it as "A Bill to provide for the better organisation and development of educational institutions in the State." Its preamble recites thus: "Whereas it is deemed necessary to pro-

(1) [1951] S.C.R. 525, 531.
(2) [1959] S.C.R. 629.

vide for the better organisation and development of educational institutions in the State providing a varied and comprehensive educational service throughout the State." We must, therefore, approach the substantive provisions of the said Bill in the light of the policy and purpose deducible from the terms of the aforesaid long title and the preamble and so construe the clauses of the said Bill as will subserve the said policy and purpose. Sub-clause (3) of cl. 1 provides that the Bill shall come into force on such date as the Government may, by notification in the Gazette, appoint and different dates may be appointed for different provisions of this Bill—a fact which is said to indicate that Government will study the situation and bring into force such of the provisions of the said Bill which will best subserve the real needs of its people. Clause 2 contains definitions of certain terms used in the said Bill of which the following sub-clauses may be noted:—

"(1) "aided school" means a private school which is recognised by and is receiving aid from the Government;

.....

(3) "existing school" means any aided, recognised or Government school established before the commencement of this Act and continuing as such at such commencement;

.....

(6) "private school" means an aided or recognised school;

(7) "recognised" means a private school recognised by the Government under this Act".

Clause 3 deals with "Establishment and recognition of schools." Sub-clause (1) empowers the Government to "regulate the primary and other stages of education and courses of instructions in Government and private schools." Sub-clause (2) requires the Government to "take, from time to time, such steps as they may consider necessary or expedient, for the purpose of providing facilities for general education, special education

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and for the training of teachers." Sub-clause (3) provides that "the Government may, for the purpose of providing such facilities:—(a) establish and maintain schools; or (b) permit any person or body of persons to establish and maintain aided schools; or (c) to recognise any school established and maintained by any person or body of persons." All existing schools, which by the definition mean any aided, recognised or Government schools established before and continuing at the commencement of the Bill are, by sub-cl. (4) to be deemed to have been established in accordance with this Bill. The proviso to sub-clause (4) gives an option to the educational agency of an aided school existing at the commencement of that clause, at any time within one month of such commencement after giving notice to the Government of its intention so to do, to opt to run the school as a recognised school subject to certain conditions therein mentioned. Sub-clause (5) of cl. 3, which forms, in part, the subject matter of two of the questions referred to runs as follows:—

"3 (5) After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government."

Clause 4 of the Bill provides for the constitution of a State Education Advisory Board consisting of officials and non-officials as therein mentioned, their term of office and their duties. The purpose of the setting up of such a Board is that it should advise the Government on matters pertaining to educational policy and administration of the Department of Education. Clause 5 requires the manager of every aided school on the first day of April of each year to furnish to the authorised officer of the Government a list of properties, moveable and immoveable, of the school. A default in furnishing such list entails, under sub-cl. (2) of that clause, the withholding of the maintenance grant. Clause 6 imposes restrictions on the alienation of any

property of an aided school, except with the previous permission in writing of the authorised officer of the Government. An appeal is provided against the order of the authorised officer refusing or granting such permission under sub-cl. (1). Sub-clause (3) renders any transaction in contravention of sub-cl. (1) or sub-cl. (2) null and void and on such contravention the Government, under sub-cl. (4), is authorised to withhold any grant to the school. Clause 7 deals with managers of aided schools. Sub-clause (1) authorises any Education agency to appoint any person to be a manager of an aided school, subject to the approval of the authorised officer, all the existing managers of aided schools being deemed to have been appointed under the said Bill. The manager is made responsible for the conduct of the school in accordance with the provisions of this Bill and the rules thereunder. Sub-clause (4) makes it the duty of the manager to maintain such record and accounts of the school and in such manner as may be prescribed by the rules. The manager is, by sub-cl. (5), required to afford all necessary and reasonable assistance and facilities for the inspection of the school and its records and accounts by the authorised officer. Sub-clause (6) forbids the manager to close down any school without giving to the authorised officer one year's notice expiring with the 31st May of any year of his intention so to do. Sub-clause (7) provides that, in the event of the school being closed or discontinued or its recognition being withdrawn, the manager shall make over to the authorised officer all the records and accounts of the school. Sub-clause (8) provides for penalty for the contravention of the provisions of sub-cls. (6) and (7). Clause 8 provides for the recovery of amounts due from the manager of an aided school as an arrear of land revenue. Sub-clause (3) of cl. 8, which is also referred to in one of the questions, runs as follows:—

"8 (3) All fees and other dues, other than special fees, collected from the students in an aided school after the commencement of this section shall; notwithstanding anything contained in any agreement, scheme

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or arrangement, be made over to the Government in such manner as may be prescribed."

Clause 9 makes it obligatory on the Government to pay the salary of all teachers in aided schools direct or through the headmaster of the school and also to pay the salary of the non-teaching staff of the aided schools. It gives power to the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service. The Government is authorised, under sub-cl. (3), to pay to the manager a maintenance grant at such rates as may be prescribed and under sub-cl. (4) to make grants-in-aid for the purchase, improvement and repairs of any land, building or equipment of an aided school. Clause 10 requires Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government schools and in private schools which, by the definition, means aided or recognised schools. The State Public Service Commission is empowered to select candidates for appointment as teachers in Government and aided schools according to the procedure laid down in cl. 11. Shortly put, the procedure is that before the 31st May of each year the Public Service Commission shall select for each district separately candidates with due regard to the probable number of vacancies of teachers that may arise in the course of the year, that the list of candidates so selected shall be published in the Gazette and that the manager shall appoint teachers of aided schools only from the candidates so selected for the district in which the school is located subject to the proviso that the manager may, for sufficient reason, with the permission of the Commission, appoint teachers selected for any other district. Appointment of teachers in Government schools are also to be made from the list of candidates so published. In selecting candidates the Commission is to have regard to the provisions made by the Government under cl. (4) of Art. 16 of the Constitution, that is to say, give representation in the educational service to persons belonging to the Scheduled Castes or Tribes

—a provision which has been severely criticised by learned counsel appearing for the Anglo-Indian and Muslim communities. Clause 12 prescribes the conditions of service of the teachers of aided schools obviously intended to afford some security of tenure to the teachers of aided schools. It provides that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools whether appointed before or after the commencement of this clause. Rules applicable to the teachers of the Government schools are also to apply to certain teachers of aided schools as mentioned in sub-cl. (2). Sub-clause (4) provides that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the manager without the previous sanction of the authorised officer. Other conditions of service of the teacher of aided schools are to be as prescribed by rules. Clause 14 is of considerable importance in that it provides, by sub-clause (1), that the Government, whenever it appears to it that the manager of any aided school has neglected to perform any of the duties imposed by or under the Bill or the rules made thereunder, and that in the public interest it is necessary so to do, may, after giving a reasonable opportunity to the manager of the Educational agency for showing cause against the proposed action, take over the management for a period not exceeding five years. In cases of emergency the Government may, under sub-cl. (2), take over the management after the publication of notification to that effect in the Gazette without giving any notice to the Educational agency or the manager. Where any school is thus taken over without any notice the Educational agency or the manager may, within three months of the publication of the notification, apply to the Government for the restoration of the school showing the cause therefor. The Government is authorised to make orders which may be necessary or expedient in connection with the taking over of the management of an aided school. Under sub-cl. (5) the Government is to pay such rent as may be fixed by the Collector in respect of the properties taken possession of. On taking over any

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school the Government is authorised to run it affording any special educational facilities which the school was doing immediately before such taking over. Right of appeal to the District Court is provided against the order of the Collector fixing the rent. Sub-cl. (8) makes it lawful for the Government to acquire the school taken over under this clause if the Government is satisfied that it is necessary so to do in the public interest, in which case compensation shall be payable in accordance with the principles laid down in cl. 15 for payment of compensation. Clause 15 gives power to the Government to acquire any category of schools. This power can be exercised only if the Government is satisfied that for standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control and if in the public interest it is necessary so to do. No notification for taking over any school is to be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly. Provision is made for the assessment and apportionment of compensation and an appeal is provided to the District Court from the order passed by the Collector determining the amount of compensation and its apportionment amongst the persons entitled thereto. Thus the Bill contemplates and provides for two methods of acquisition of aided schools, namely, under sub-cl. (8) of cl. 14 the Government may acquire a school after having taken possession of it under the preceding sub-clauses or the Government may, under cl. 15, acquire any category of aided schools in any specified area for any of the several specific purposes mentioned in that clause. Clause 16 gives power to the Government to exempt immoveable properties from being taken over or acquired. Clause 17 provides for the establishment of Local Education Authorities, their constitution and term of office and clause 18 specifies the functions of the Local Education Authorities. Clauses 19 and 20 are important and read as follows:—

"19. Recognised schools :—The provisions of sub-sections (2), (4), (5), (6), (7), (8) and (9) of section 7 shall apply to recognised schools to the same extent and in the same manner as they apply to aided schools."

"20. No fee to be charged from pupils of primary classes :—No fee shall be payable by any pupil for any tuition in the primary classes in any Government or private school."

Part II of the Bill deals with the topic of compulsory education. That part applies to the areas specified in cl. 21. Clause 23 provides for free and compulsory education of children throughout the State within a period of ten years and is intended obviously to discharge the obligation laid on the State by Art. 45 of the directive principles of State policy. Clauses 24 and 25 deal with the constitution of Local Education Committees and the functions thereof. Clause 26, which has figured largely in the discussion before us runs as follows :

"26. Obligation on guardian to send children to school:—In any area of compulsion, the guardian of every child shall, if such guardian ordinarily resides in such area, cause such child to attend a Government, or private school and once a child has been so caused to attend school under this Act the child shall be compelled to complete the full course of primary education or the child shall be compelled to attend school till it reaches the age of fourteen."

We may skip over a few clauses, not material for our purpose, until we come to cl. 33 which is referred to in one of the questions we have to consider. That clause provides—

"33. Courts not to grant injunction—Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, no court shall grant any temporary injunction or make any interim order restraining any proceedings which is being or about to be taken under this Act."

Clause 36 confers power on the Government to make

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rules for the purpose of carrying into effect the provisions of the Bill and in particular for the purpose of the establishment and maintenance of schools, the giving of grants and aid to private schools, the grant of recognition to private schools, the levy and collection of fees in aided schools, regulating the rates of fees in recognised schools, the manner in which the accounts, registers and records shall be maintained, submission of returns, reports and accounts by managers, the standards of education and course of study and other matters specified in sub-cl. (2) of that clause. Clause 37 is as follows:—

"37. Rules to be laid before the Legislative Assembly:—All rules made under this Act shall be laid for not less than fourteen days before the Legislative Assembly as soon as possible after they are made and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid."

Under cl. 38 none of the provisions of the Bill applies to a school which is not a Government or a private school, i.e., aided or recognized school.

The above summary will, it is hoped, clearly bring out the purpose and scope of the provisions of the said Bill. It is intended to serve as showing that the said Bill contains many provisions imposing considerable State control over the management of the educational institutions in the State, aided or recognised. The provisions, in so far as they affect the aided institutions, are much more stringent than those which apply only to recognised institutions. The width of the power of control thus sought to be assumed by the State evidently appeared to the President to be calculated to raise doubts as to the constitutional validity of some of the clauses of the said Bill on the ground of apprehended infringement of some of the fundamental rights guaranteed to the minority communities by the Constitution, and accordingly in exercise of the powers vested in him by Art. 143(1) the President has referred to this Court, for consideration and report the following questions:

"(1) Does sub-clause (5) of clause 3 of the Kerala Education Bill, read with clause 36 thereof or any of the provisions of the said sub-clause, offend article 14 of the Constitution in any particulars or to any extent?

(2) Do sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of the Kerala Education Bill, or any provisions thereof, offend clause (1) of article 30 of the Constitution in any particulars or to any extent?

(3) Does clause 15 of the Kerala Education Bill, or any provisions thereof, offend article 14 of the Constitution in any particulars or to any extent?

(4) Does clause 33 of the Kerala Education Bill, or any provisions thereof, offend article 226 of the Constitution in any particulars or to any extent?"

On receipt of the reference this Court issued notices to persons and institutions who appeared to it to be interested in the matter calling upon them to file their respective statements of case concerning the above-mentioned questions. Three more institutions were subsequently, on their own applications, granted leave to appear at the hearing. The Union of India, the State of Kerala and all the said persons and institutions have filed their respective statements of case and have appeared before us by counsel and taken part in the debate. A body called the Crusaders' League has by post sent its views but has not appeared at the hearing. We have had the advantage of hearing very full arguments on the points arising out of the questions and we are deeply indebted to learned counsel appearing for the parties for the very great assistance they have rendered to us.

It will be necessary, at this stage, to clear the ground by disposing of a point as to the scope and ambit of questions 1 and 2. It will be noticed that both these questions challenge the constitutional validity, *inter alia*, of clause 3 (5) of the said Bill which has already been quoted in extenso. The argument advanced by the learned Attorney General and other learned counsel appearing for bodies or institutions challeng-

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ing the validity of the said Bill is that the provision of cl. 3(5), namely, that the establishment of a new school "shall be subject to the provisions of this Act and the rules made thereunder" attracts all other clauses of the said Bill as if they are set out seriatim in sub-cl. (5) itself. Therefore, when questions 1 and 2 challenge the constitutional validity of cl. 3(5) they, in effect, call in question the validity of all other clauses of the said Bill. Learned counsel appearing for the State of Kerala, however, opposes this line of argument on several grounds. In the first place, he contends that cl. 3(5) attracts only those provisions of this Bill which relate to the establishment of a new school. When asked to specify what provisions of the said Bill relate to the establishment of a new school which, according to him, are attracted by cl. 3(5), the only provision that he refers to is sub-cl. (3) of cl. 3. Learned counsel for the State of Kerala maintains that cl. 3(5) attracts only cl. 3(3) and the rules that may be made under cl. 36(2)(a) and no other clause of the said Bill and, therefore, no other clause is included within the scope of the questions unless, of course, they are specifically mentioned in the questions, as some of the clauses are, in fact, specifically mentioned in question 2. If the mention of cl. 3(5) in those questions, *ipso facto*, attracted all other clauses of the said Bill, why, asks learned counsel, were other clauses specifically mentioned in, say, question 2? Learned counsel also contends that after a school is established the other clauses will *proprio vigore* apply to that school and there was no necessity for an express provision that a newly established school would be subject to the other provisions of the Bill. As the other clauses of the Bill will apply to all schools established after the Bill becomes an Act without the aid of cl. 3(5), a reference to that clause in the questions cannot bring within their ambit any clause of the Bill which is not separately and specifically mentioned in the questions. Finally learned counsel contends that even if cl. 3(5) attracts the other provisions of the Bill, it does not necessarily follow that the other provisions also form the subject matter of the questions. In our judgment,

neither of the two extreme positions can be seriously maintained.

The contentions advanced by learned counsel for the State of Kerala appear to us to be open to several criticisms. If the intention of sub-cl. (5) of cl. 3 was to attract only those provisions of the Bill which related only to the establishment of a new school and if sub-cl. (3) of cl. 3 was the only provision in that behalf, apart from the rules to be framed under cl. 36(2)(a), then as a matter of intelligible drafting it would have been more appropriate to say, in sub-cl. (3) of cl. 3, that the establishment of new schools " shall be subject to the provisions of this clause and the rules to be made under cl. 36(2)(a) ". Clause 3(5) is quite clearly concerned with the establishment of new schools—Government, aided or recognised schools, and says that after the Bill becomes law all new schools will be subject to the other provisions of the Bill. So far as new Government schools are concerned, cl. 3(5) certainly attracts cl. 3(3)(a), for that provision authorises the Government to establish new schools; but to say that cl. 3(5) only attracts cl. 3(3) appears to be untenable, for that sub-clause does not in terms provide for the establishment of new aided or recognised schools. As already observed, cl. 3(3)(a) specifically provides for the establishment and maintenance of new schools by the Government only. Clause 3(3)(b) provides only for the giving of permission by the Government to a person or body of persons to establish and maintain aided schools. Likewise cl. 3(3)(c) authorises the Government only to recognise any school established and maintained by any person or body of persons. Clause 3(4) introduces a fiction whereby all existing schools, which mean all existing Government, aided or recognised schools, shall be deemed to have been established in accordance with this Bill. Then comes cl. 3(5) which is couched in very wide terms. It says, *inter alia*, that after the commencement of the operation of the said Bill the establishment of new schools should be subject to the other provisions of the Bill and the rules made thereunder. The rules to be framed under cl. 36(2)(a), (b) &

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(c) appear to be respectively correlated to cl. 3(3)(a), (b) & (c). Bearing in mind the provisions of cl. 38 which places all schools other than Government and private, i. e., aided or recognised schools, outside the purview of the Bill, the establishment of what sort of new schools, we ask, does sub-cl. (5) contemplate and authorise? Obviously aided or recognised schools established after the Bill becomes law. Clause 3(5), like cl. 3(3), has apparently been very inartistically drawn, but reading the clause as a whole and particularly the concluding part of it, namely, that any school established otherwise than in accordance with such provisions shall not be entitled to be recognised by the Government, there can be no doubt that cl. 3(5) itself contemplates and authorises the establishment of new schools as aided or recognised schools. The opening of new schools and the securing of aid or recognition from the Government constitute the establishment of new schools contemplated by cl. 3(5) read with cl. 3(3). Reading cl. 3(5) in the context of its setting, we have no doubt that its purpose is not merely to authorise the establishment of new schools but to subject the new schools to all the provisions of the said Bill and the rules made thereunder. To accept the restrictive argument that cl. 3(5) attracts only cl. 3(3) will be putting a too narrow construction on sub-cl. (5) not warranted by the wide language thereof or by the language of cl. 3(3). We do not think that there is much force in the argument that it was not necessary to expressly provide for the application of the other provisions to new schools to be established after the Bill became law and that the other clauses of the said Bill would by their own force and without the aid of sub-cl. (5) apply to such newly established schools, for having, in terms, expressly made the new schools subject to the other provisions it is not open to the State of Kerala now to say that sub-cl. (5) need not have made the other provisions of the said Bill applicable to new schools established after the said Bill comes into operation or that it does not attract the other clauses although it expressly purports to do or that it is not open to those who oppose the Bill to refer

to any other clause in support of their case. If cl. 3(5) did not expressly attract the other provisions, the President would perhaps have framed the questions differently.

If, therefore, it be held, as we are inclined to do, that cl. 3(5) makes the new schools subject to the other provisions of the said Bill, what will be the position? If, as submitted by the learned Attorney-General and other counsel supporting him, some of the clauses of the said Bill impinge upon the fundamental rights of the members of the minority community or educational institutions established or to be established by them and if cl. 3(5) makes those clauses applicable to the new schools they may establish after the Bill becomes law, then not only do those other clauses violate their rights but cl. 3(5) which openly and expressly makes those other clauses apply to such new schools must also encounter the challenge of unconstitutionality. In other words, the vice of unconstitutionality, if any, of those other clauses must attach to cl. 3(5) because it is the latter which in terms makes the new schools subject to those objectionable clauses. Therefore, in a discussion on the validity of cl. 3(5) it becomes germane to discuss the validity of the other clauses. *In short*, though the validity of the other clauses is not by itself and independently, the subject-matter of either of those questions, yet their validity or otherwise has to be taken into consideration in determining the constitutional validity of cl. 3(5) which makes those clauses applicable to the newly established schools. It is in this sense that, we think, a discussion of the validity of the other clauses comes within the purview of questions 1 and 2. We do not, in the circumstances, consider it right, in view of the language employed in this cl. 3(5), to exclude the consideration of the constitutional validity of the other clauses of the Bill from the discussion on questions 1 and 2 which challenge the constitutional validity of cl. 3(5) of the said Bill. Indeed, in the argument before us frequent references have been made to the other clauses of the said Bill in discussing questions 1 and 2 and we have heard the respective contentions of learned

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counsel on the validity or otherwise of those clauses in so far as they have a bearing on the questions put to us which we now proceed to consider and answer.

Re. Questions 1 and 3. Question 1 challenges the constitutional validity of sub-cl. (5) of cl. 3 of the said Bill read with cl. 36 thereof on the ground that the same violates the equal protection of the laws guaranteed to all persons by Art. 14 of the Constitution. Question 3 attacks cl. 15 of the said Bill on the same ground, namely, that it is violative of Art. 14 of the Constitution. As the ground of attack under both the questions is the same, it will be convenient to deal with them together.

The true meaning, scope and effect of Art. 14 of our Constitution have been the subject-matter of discussion and decision by this Court in a number of cases beginning with the case of *Chiranjit Lal Chowdhuri* v. *The Union of India and others* (1). In *Budhan Choudhry* v. *The State of Bihar* (2) a Constitution Bench of seven Judges of this Court explained the true meaning and scope of that Article. Recently in the case of *Ram Krishna Dalmia and others* v. *Sri Justice S. R. Tendolkar* (3), the position was reviewed at length by this Court by its judgment delivered on March 28, 1958, and the several principles firmly established by the decisions of this Court were set out seriatim in that judgment. The position was again summarised in the still more recent case of *Mohd. Hanif Quareshi* v. *The State of Bihar* (4) in the following words :—

" The meaning, scope and effect of Art. 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with *Chiranjit Lal Chowdhury* v. *The Union of India* (1) and ending with the recent case of *Ram Krishna Dalmia* v. *Sri Justice S. R. Tendolkar* (3). It is now well-established that while Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation

(1) [1950] S. C. R. 869.
(2) [1955] 1 S. C. R. 1045.
(3) [1959] S.C.R. 279.
(4) [1959] S.C.R. 629.

and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

In the judgment of this Court in *Ram Krishna Dalmia's case* (1) the statutes that came up for consideration before this Court were classified into five several categories as enumerated therein. No useful purpose will be served by re-opening the discussion and, indeed, no attempt has been made in, that behalf by learned counsel. We, therefore, proceed to examine the impugned provisions in the light of the aforesaid principles enunciated by this Court.

Coming now to the main argument founded on

(1) [1959] S.C.R. 279.

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Art. 14, the Bill, it is said, represents a deliberate attempt on the part of the party now in power in Kerala to strike at the Christian Church and especially that of the Catholic persuasion, to eliminate religion, to expropriate the minority communities of the properties of their schools established for the purpose of conserving their distinct language, script and culture, and in short, to eliminate all educational agencies other than the State so as to bring about a regimentation of education and by and through the educational institutions to propagate the tenets of their political philosophy and indoctrinate the impressionable minds of the rising generation. It is unfortunate that a certain amount of heat and passion was introduced in the discussion of what should be viewed as a purely legal and constitutional problem raised by the questions; but perhaps it is understandable in the context of the bitter agitation and excitement provoked by the said Bill in the minds of certain sections of the people of the State. We desire, however, to emphasise that this Court is not concerned with the merit or otherwise of the policy of the Government which has sponsored this measure and that all that we are called upon to do is to examine the constitutional questions referred to us and to pronounce our opinion on the validity or otherwise of those provisions of the Bill which may properly come within the purview of those questions.

The doubts which led to the formulation of question 1 are thus recited in the order of reference which had better be stated in its own terms:—

"AND WHEREAS sub-clause (3) of clause 3 of the said Bill enables the Government of Kerala, *inter alia*, to recognise any school established and maintained by any person or body of persons for the purpose of providing the facilities set out in sub-clause (2) of the said clause, to wit, facilities for general education, special education and for the training of teachers;

AND WHEREAS sub-clause (5) of clause 3 of the said Bill provides, *inter alia*, that any new school established or any higher class opened in any private

school, after the Bill has become an Act and the Act has come into force, otherwise than in accordance with the provisions of the Act and the rules made under section 36 thereof, shall not be entitled to be recognised by the Government of Kerala;

AND WHEREAS a doubt has arisen whether the provisions of the said sub-clause (5) of clause 3 of the said Bill confer upon the Government an unguided power in regard to the recognition of new schools and the opening of higher classes in any private school which is capable of being exercised in an arbitrary and discriminatory manner;

AND WHEREAS a doubt has further arisen whether such power of recognition of new schools and of higher classes in private schools is not capable of being exercised in a manner affecting the right of the minorities guaranteed by clause (1) of article 30 of the Constitution to establish and administer educational institutions of their choice; ".

Likewise the doubts concerning cl. 15 are formulated in the following recitals in the order of reference :—

" AND WHEREAS clause 15 of the said Bill empowers the Government of Kerala to take over, by notification in the Gazette, any category of aided schools in any specified area or areas, if they are satisfied that for standardising general education in the State of Kerala or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control it is necessary to do so in the public interest, on payment of compensation on the basis of market value of the schools so taken over after deducting therefrom the amounts of aids or grants given by that Government for requisition, construction or improvement of the property of the schools;

AND WHEREAS a doubt has arisen whether such power is not capable of being exercised in an arbitrary and discriminatory manner."

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The legal aspect of the matter arising out of the two questions is further elaborated thus by learned counsel appearing for the persons or institutions contesting the validity of the Bill: Clause 3 (5) makes all the provisions of the Bill applicable to new schools that may be established after the Bill becomes law. Clause 3 (5) gives the Government an unguided, uncontrolled and uncanalised power which is capable of being exercised "with an evil eye and an unequal hand" and the Government may, at its whim or pleasure, single out any person or institution and subject him or it to hostile and discriminatory treatment. The Bill does not lay down any policy or principle for the guidance of the Government in the matter of the exercise of the wide powers so conferred on it by the different clauses of the Bill. It is pointed out that cl. 3 does not lay down any policy or principle upon which the Government may or may not permit any person or body of persons to establish and maintain an aided school or grant recognition to a school established by any person. The Government may grant such permission or recognition to persons who support its policy but not to others who oppose the same. Clause 6 does not say in what circumstances the authorised officer of the Government may or may not give permission to the alienation of the property of an aided school. He may give permission in one case but arbitrarily withhold it in another similar case. Likewise the authorised officer may not, under cl. 7, approve of the appointment of a particular person as manager of an aided school for no better reason than the prejudice or dislike of his Government for that particular person's political views or affiliations. The Government may, under cl. 9, pay the maintenance grant to the manager of one aided school but not to that of another. Particular schools or categories of schools in particular areas may be singled out for discriminatory treatment under cls. 14 and 15 of the Bill. It is next pointed out that if cl. 3 (5) is read with cls. 21, 26 and 28 of the Bill the result will be palpably discriminatory because in an area which is not an area of compulsion a new school which may be established after the Bill

comes into operation and which may not seek recognition or aid can charge fees and yet attract scholars but a new school similarly established in an area of compulsion will be hit directly by cl. 26 and will have no scholars, for no guardian will be able lawfully to send his ward to a school which is neither a Government school nor a private school and such a new school will not be able to function at all, for it will have no scholar and the question of its charging fees in any class will not arise. There is no force in this last mentioned point, for the Legislature, it must be remembered, knows the needs of its people and is entitled to confine its restriction to those places where the needs are deemed to be the clearest and, therefore, the restrictions imposed in areas of compulsion are quite permissible on the ground of classification on geographical basis. Whatever other provisions of the Constitution, such restriction may or may not violate, which will be discussed later, it certainly does not infringe Art. 14.

A further possibility of discrimination is said to arise as a result of the application of the same provisions of the Bill to all schools which are not similarly situate. The argument is thus developed: The Constitution, it is pointed out, deals with the schools established by minority communities in a way different from the way it deals with other schools. Thus Anglo-Indian schools are given grants under Art. 337 of the Constitution and educational institutions started by all minority communities including the Anglo-Indians are protected by Arts. 29 and 30. The educational institutions of the minorities are thus different from the educational institutions established by the majority communities who require no special privilege or protection and yet the Bill purports to put in the same class all educational institutions although they have not the same characteristics and place equal burdens on unequals. This indiscriminate application of the same provisions to different institutions having different characteristics and being unequal brings about a serious discrimination violative of the equal protection clause of the Constitution. In

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support of this argument reliance is placed on the decision of the American Supreme Court in *Cumberland Coal Co.* v. *Board of Revision* (1). That decision, in our judgment, has no application to the facts of the case before us. There the taxing authorities assessed the owners of coal lands in the city of Cumberland by applying a flat rate of 50 per cent. not on the actual value of the properties but on an artificial valuation of $ 260 per acre arbitrarily assigned to all coal lands in the city irrespective of their location. It was not disputed that the value of properties which were near the river-banks or close to the railways was very much more than that of properties situate far away from the river-banks or the railways. The artificial valuation of $ 260 per acre was much below the actual value of the properties which were near the river-banks or the railways, whereas the value of the properties situate far away from the river-bank or the railways was about the same as the assigned value. The result of applying the equal rate of tax, namely, 50 per cent. on the assigned value was that the owners of more valuable properties had to pay much less than what they would have been liable to pay upon the real value of those properties. Therefore, the method of assessment worked out clearly to the disadvantage of the owners of properties situate in the remoter parts of the city and was obviously discriminatory. There the discrimination was an integral part of that mode of taxing. That is not the position here, for there is no discrimination in the provisions of the said Bill and consequently the principle of that decision can have no application to this case. This does not, however, conclude the matter and we have yet to deal with the main argument that the Bill does not lay down any policy or principle for the guidance of the Government in the exercise of the wide powers vested in it by the Bill.

Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised

(1) (1931) 284 U. S. 23; 76 L. Ed. 146, 150.

in many decisions of this Court and as and by way of ready reference we may mention our decision in *Biswambar Singh* v. *The State of Orissa* (1) as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the preamble is " to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State." Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, not correct to say that no policy or principle has at all been laid down by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill. The matter does not, however, rest there. The general policy deducible from the long title and preamble of the Bill is further reinforced by more definite statements of policy in different clauses thereof. Thus the power vested in the Government under cl. 3(2) can be exercised only " for the purpose of providing facilities for general education, special education and for the training of teachers ". It is " for the purpose of providing such facilities " that the three several powers under heads (a), (b) and (c) of that sub-clause have been conferred on the Government. The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose. It is true that the

(1) [1954] S. C. R. 842, 855.

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word "may" has been used in sub-cl. (3), but, according to the well known rule of construction of statutes, if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the Government will be under an obligation to exercise its discretion in furtherance of such purpose and no question of the arbitrary exercise of discretion can arise. [Compare *Julius* v. *Lord Bishop of Oxford* (1)]. If in actual fact any discrimination is made by the Government then such discrimination will be in violation of the policy and principle deducible from the said Bill itself and the court will then strike down not the provisions of the Bill but the discriminatory act of the Government. Passing on to cl. 14, we find that the power conferred thereby on the Government is to be exercised only if it appears to the Government that the manager of any aided school has neglected to perform the duties imposed on him and that the exercise of the power is necessary in public interest. Here again the principle is indicated and no arbitrary or unguided power has been delegated to the Government. Likewise the power, under cl. 15(1) can be exercised only if the Government is satisfied that it is necessary to exercise it for "standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing the education of any category under their direct control" and above all the exercise of the power is necessary "in the public interest". Whether the purposes are good or bad is a question of State policy with the merit of which we are not concerned in the present discussion. All that we are now endeavouring to point out is that the clause under consideration does lay down a policy for the guidance of the Government in the matter of the exercise of the very wide power conferred on it by that clause. The exercise of the power is also controlled by the proviso that no notification under that sub-clause shall be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly—a proviso

(1) (1880) 5 App. Cas. 214.

which clearly indicates that the power cannot be exercised by the Government at its whim or pleasure. Skipping over a few clauses, we come to cl. 36. The power given to the Government by cl. 36 to make rules is expressly stated to be exercised "for the purpose of carrying into effect the provisions of this Act". In other words, the rules to be framed must implement the policy and purpose laid down in its long title and the preamble and the provisions of the other clauses of the said Bill. Further, under cl. 37 the rules have to be laid for not less than 14 days before the Legislative Assembly as soon as possible after they are made and are to be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. After the rules are laid before the Legislative Assembly they may be altered or amended and it is then that the rules, as amended become effective. If no amendments are made the rules come into operation after the period of 14 days expires. Even in this latter event the rules owe their efficacy to the tacit assent of the Legislative Assembly itself. Learned counsel appearing for the State of Kerala submitted in picturesque language that here was what could be properly said to be legislation at two stages and the measure that will finally emerge consisting of the Bill and the rules with or without amendment will represent the voice of the Legislative Assembly itself and, therefore, it cannot be said that an unguided and uncontrolled power of legislation has been improperly delegated to the Government. Whether in approving the rules laid before it the Legislative Assembly acts as the Legislature of Kerala or acts as the delegatee of the Legislature which consists of the Legislative Assembly and the Governor is, in the absence of the standing orders and rules of business of the Kerala Legislative Assembly, more than we can determine. But all that we need say is that apart from laying down a policy for the guidance of the Government in the matter of the exercise of powers conferred on it under the different provisions of the Bill including cl. 36, the Kerala Legislature has, by cl. 15 and cl. 37 provided further safeguards. In this

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connection we must bear in mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed. For reasons stated above it appears to us that the charge of unconstitutionality of the several clauses which come within the two questions now under consideration founded on Art. 14 cannot be sustained. The position is made even clearer when we consider the question of the validity of cl. 15(1) for, apart from the policy and principle deducible from the long title and the preamble of the Bill and from that sub-clause itself, the proviso thereto clearly indicates that the Legislature has not abdicated its function and that while it has conferred on the Government a very wide power for the acquisition of categories of schools it has not only provided that such power can only be exercised for the specific purposes mentioned in the clause itself but has also kept a further and more effective control over the exercise of the power, by requiring that it is to be exercised only if a resolution is passed by the Legislative Assembly authorising the Government to do so. The Bill, in our opinion, comes not within category (iii) mentioned in *Ram Krishna Dalmia's case* (1) as contended by Shri G. S. Pathak but within category (iv) and if the Government applies the provisions in violation of the policy and principle laid down in the Bill the executive action will come under category (v) but not the Bill and that action will have to be struck down. The result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Art. 14 must stand repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative.

Re. Question 2: Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental

(1) [1959] S.C.R. 279.

rights on certain sections of the community which constitute minority communities. Under cl. (1) of Art. 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to cl. 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

As soon as we reach Art. 30 (1) learned counsel for the State of Kerala at once poses the question: what is a minority? That is a term which is not defined in the Constitution. It is easy to say that a minority community means a community which is numerically less than 50 per cent., but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 per cent. of what? Is it 50 per cent. of the entire population of India or 50 per cent. of the population of a State forming a part of the Union? The position taken up by the State of Kerala in its statement of case filed herein is as follows:—

"There is yet another aspect of the question that falls for consideration, namely, as to what is a minority under Art. 30 (1). The State contends that Christians, a certain section of whom is vociferous in its objection to the Bill on the allegation that it offends Art. 30(1), are not in a minority in the State. It is no doubt true that Christians are not a mathematical majority in the whole State. They constitute about one-fourth of the population; but it does not follow therefrom that they form a minority within the meaning of Art. 30 (1).

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The argument that they do, if pushed to its logical conclusion, would mean that any section of the people forming under fifty per cent. of the population should be classified as a minority and be dealt with as such.

Christians form the second largest community in Kerala State; they form, however, a majority community in certain area of the State. Muslims form the third largest community in the State, about one-seventh of the total population. They also, however, form the majority community in certain other areas of the State. (In I.L.R. (1951) 3 Assam 384, it was held that persons who are alleged to be a minority must be a minority in the particular region in which the institution involved is situated)."

The State of Kerala, therefore, contends that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by Art. 29(1) and 30(1) persons must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situate. A little reflection will at once show that this is not a satisfactory test. Where is the line to be drawn and which is the unit which will have to be taken? Are we to take as our unit a district, or a sub-division or a taluk or a town or its suburbs or a municipality or its wards? It is well known that in many towns persons belonging to a particular community flock together in a suburb of the town or a ward of the municipality. Thus Anglo-Indians or Christians or Muslims may congregate in one particular suburb of a town or one particular ward of a municipality and they may be in a majority there. According to the argument of learned counsel for the State of Kerala the Anglo-Indians or Christians or Muslims of that locality, taken as a unit, will not be a "minority" within the meaning of the Articles under consideration and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo-Indian or Christian community happen to reside in another suburb of the same town or another ward of the same municipality

and their number be less than that of the members of other communities residing there, then those members of the Anglo-Indian or Christian community will be a minority within the meaning of Arts. 29 and 30 and will be entitled to establish and maintain educational institutions of their choice in that locality. Likewise the Tamilians residing in Karolbagh, if they happen to be larger in number than the members of other communities residing in Karolbagh, will not be entitled to establish and maintain a Tamilian school in Karolbagh, whereas the Tamilians residing in, say, Daryaganj where they may be less numerous than the members of other communities residing in Daryaganj will be a minority or section within the meaning of Arts. 29 and 30. Again Bihari labourers residing in the industrial areas in or near Calcutta where they may be the majority in that locality will not be entitled to have the minority rights and those Biharis will have no educational institution of their choice imparting education in Hindi, although they are numerically a minority if we take the entire city of Calcutta or the State of West Bengal as a unit. Likewise Bengalis residing in a particular ward in a town in Bihar where they may form the majority will not be entitled to conserve their language, script or culture by imparting education in Bengali. These are, no doubt, extreme illustrations, but they serve to bring out the fallacy inherent in the argument on this part of the case advanced by learned counsel for the State of Kerala. Reference has been made to Art. 350-A in support of the argument that a local authority may be taken as a unit. The illustrations given above will apply to that case also. Further such a construction will necessitate the addition of the words "within their jurisdiction" after the words "minority groups". The last sentence of that Article also appears to run counter to such argument. We need not, however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and

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entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the State basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo-Indians will certainly be minorities in the State of Kerala. It is admitted that out of the total population of 1,42,00,000 in Kerala there are only 34,00,000 Christians and 25,00,000 Muslims. The Anglo-Indians in the State of Travancore-Cochin before the re-organisation of the States numbered only 11,990 according to the 1951 Census. We may also emphasise that question 2 itself proceeds on the footing that there are minorities in Kerala who are entitled to the rights conferred by Art. 30 (1) and, strictly speaking, for answering question 2 we need not enquire as to what a minority community means or how it is to be ascertained.

We now pass on to the main point canvassed before us, namely, what are the scope and ambit of the right conferred by Art. 30(1). Before coming to grips with the main argument on this part of the case, we may deal with a minor point raised by learned counsel for the State of Kerala. He contends that there are three conditions which must be fulfilled before the protection and privileges of Art. 30 (1) may be claimed, namely, (1) there must be a minority community, (2) one or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and (3) the educational institution must be established for the members of his or their own community. We have already determined, according to the test referred to above, that the Anglo-Indians, Christians and Muslims are minority communities in the

State of Kerala. We do not think that the protection and privilege of Art. 30 (1) extend only to the educational institutions established after the date our Constitution came into operation or which may hereafter be established. On this hypothesis the educational institutions established by one or more members of any of these communities prior to the commencement of the Constitution would not be entitled to the benefits of Art. 30 (1). The fallacy of this argument becomes discernible as soon as we direct our attention to Art. 19(1)(g) which, clearly enough, applies alike to a business, occupation or profession already started and carried on as to those that may be started and carried on after the commencement of the Constitution. There is no reason why the benefit of Art. 30(1) should be limited only to educational institutions established after the commencement of the Constitution. The language employed in Art. 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions. It must not be overlooked that Art. 30(1) gives the minorities two rights, namely, (a) to establish, and (b) to administer, educational institutions of their choice. The second right clearly covers pre-Constitution schools just as Art. 26 covers the right to maintain pre-Constitution religious institutions. As to the third condition mentioned above, the argument carried to its logical conclusion comes to this that if a single member of any other community is admitted into a school established for the members of a particular minority community, then the educational institution ceases to be an educational institution established by the particular minority community. The argument is sought to be reinforced by a reference to Art. 29(2). It is said that an educational institution established by a minority community which does not seek any aid from the funds of the State need not admit a single scholar belonging to a community other than that for whose benefit it was established but that as soon as such an educational institution seeks and gets aid from the State coffers Art. 29(2) will preclude it from denying admission to members of the other communities on grounds only of religion, race, caste,

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language or any of them and consequently it will cease to be an educational institution of the choice of the minority community which established it. This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Art. 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution.

Having disposed of the minor point referred to above, we now take up the main argument advanced before us as to the content of Art. 30(1). The first point to note is that the Article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities

should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the Article under consideration are the words "of their own choice". It is said that the dominant word is "choice" and the content of that Article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Art. 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that Article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid.

As regards the institutions which come within the first category, they are, by cl. 38 of the Bill, outside

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the purview of the Bill and, according to learned counsel for the State of Kerala, nothing can be done for or against them under the Bill. They have their right under Art. 30(1) and they can, says learned counsel, exercise that right to their heart's content unhampered by the Bill. Learned counsel appearing for the institutions challenging the validity of the Bill, on the other hand, point to cl. 26 of the Bill to which reference has already been made. They say that if the educational institutions, present or future, which come within the first category happen to be located within an area of compulsion they will have to close down for want of scholars, for all guardians residing within such area are, by cl. 26, enjoined, on pain of penalty provided by cl. 28, to send their wards only to Government schools or private schools which, according to the definition, means aided or recognised schools. Clause 26, it is urged, abridges and indeed takes away the fundamental right conferred on the minorities by Art. 30(1) and is, therefore, unconstitutional. The educational institutions coming within the first category, not being aided or recognised are, by cl. 38, *prima facie* outside the purview of the Bill. None of the provisions of the Bill including those mentioned in the question apply to them and accordingly the point sought to be raised by them, namely, the infraction of their right under Art. 30(1) by cl. 26 of the Bill does not come within the scope of question 2 and we cannot, on the present reference, express any opinion on that point.

As regards the second category, we shall have to sub-divide it into two classes, namely, (a) those which are by the Constitution itself expressly made eligible for receiving grants, and (b) those which are not entitled to any grant by virtue of any express provision of the Constitution but, nevertheless, seek to get aid.

Anglo-Indian educational institutions come within sub-category (a). An Anglo-Indian is defined in Art. 366(2). The Anglo-Indian community is a well-known minority community in India based on religion as well as language and has been recognised

as such by this Court in *The State of Bombay* v. *Bombay Education Society* (1). According to the figures set out in the statement of case filed by the two Anglo-Indian institutions represented before us by Shri Frank Anthony, about which figures there is no dispute, there are 268 recognised Anglo-Indian schools in India out of which ten are in the State of Kerala. Anglo-Indian educational institutions established prior to 1948 used to receive grants from the Government of those days. Article 337, presumably in view of the special circumstances concerning the Anglo-Indian community and to allay their natural fears for their future well being, preserved this bounty for a period of ten years. According to that Article all Anglo-Indian educational institutions which were receiving grants up to the financial year ending on March 31, 1948, will continue to receive the same grant subject to triennial diminution of ten per cent. until the expiry of ten years when the grant, to the extent it is a special concession to the Anglo-Indian community, should cease. The second proviso imposes the condition that at least 40 per cent. of the annual admissions must be made available to the members of communities other than the Anglo-Indian community. Likewise Art. 29 (2) provides, *inter alia*, that no citizen shall be denied admission into any educational institution receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. These are the only constitutional limitations to the right of the Anglo-Indian educational institutions to receive aid. Learned counsel appearing for two Anglo-Indian schools contends that the State of Kerala is bound to implement the provisions of Art. 337. Indeed it is stated in the statement of case filed by the State of Kerala that all Christian schools are aided by that State and, therefore, the Anglo-Indian schools, being also Christian schools, have been so far getting from the State of Kerala the grant that they are entitled to under Art. 337. Their grievance is that by introducing.

(1) [1955] 1 S.C.R. 568, 583.

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this Bill the State of Kerala is now seeking to impose, besides the constitutional limitations mentioned in the second proviso to Art. 337 and Art. 29 (2), further and more onerous conditions on this grant to the Anglo-Indian educational institutions although their constitutional right to such grant still subsists. The State is expressly applying to them the stringent provisions of cls. 8 (3), and 9 to 13 besides other clauses attracted by cl. 3 (5) of the Bill curtailing and, according to them, completely taking away, their constitutional right to manage their own affairs as a price for the grant to which, under Art. 337, they are entitled unconditionally except to the extent mentioned in the second proviso to that article and in Art. 29 (2). Learned counsel for the State of Kerala does not seriously dispute, as indeed he cannot fairly do, that so far as the grant under Art. 337 is concerned the Anglo-Indian educational institutions are entitled to receive the same without any fresh strings being attached to such grant, although he faintly suggests that the grant received by the Anglo-Indian educational institutions under Art. 337 is not strictly speaking "aid" within the meaning of that word as used in the Bill. We are unable to accept that part of his argument as sound. The word "aid" has not been defined in the Bill. Accordingly we must give this simple English word its ordinary and natural meaning. It may, in passing, be noted that although the word "grant" is used in Art. 337 the word "aid" is used in Art. 29 (2) and Art. 30 (2), but there can be no question that the word "aid" in these two Articles will cover the "grant" under Art. 337. Before the passing of the said Bill the Anglo-Indian educational institutions were receiving the bounty formerly from the State of Madras or Travancore-Cochin and after its formation from the present new State of Kerala. In the circumstances, the amount received by the Anglo-Indian institutions as grant under Art. 337 must be construed as "aid" within the meaning of the said Bill and these Anglo-Indian educational institutions in receipt of this grant payable under Art. 337 must accordingly be regarded as "aided schools" within

the meaning of the definitions in cl. 2, sub-cls. (1) and (6). The imposition of stringent terms as fresh or additional conditions precedent to this grant to the Anglo-Indian educational institutions will, therefore, infringe their rights not only under Art. 337 but also under Art. 30 (1). If the Anglo-Indian educational institutions cannot get the grant to which they are entitled except upon terms laid down by the provisions of the Bill then, if they insist on the right of administration guaranteed to them by Art. 30 (1) they will have to exercise their option under the proviso to cl. 3 (4) and remain content with mere recognition, subject to certain terms therein mentioned which may also be an irksome and intolerable encroachment on their right of administration. But the real point is that no educational institution can in modern times, afford to subsist and efficiently function without some State aid and, therefore, to continue their institutions they will have to seek aid and will virtually have to surrender their constitutional right of administering educational institutions of their choice. In the premises, they may, in our opinion, legitimately complain that so far as the grants under Art. 337 are concerned, the provisions of the clauses of the Bill mentioned in question 2 do in substance and effect infringe their fundamental rights under Art. 30 (1) and are to that extent void. It is urged by learned counsel for the State of Kerala that this Court should decline to answer this question until rules are framed but if the provisions of the Bill are obnoxious on the face of them, no rule can cure that defect. Nor do we think that there is any substance in the argument advanced by learned counsel for Kerala that this Bill has not introduced anything new and the Anglo-Indian schools are not being subjected to anything beyond what they have been submitting to under the Education Acts and Codes of Travancore or Cochin or Madras. In 1945 or 1947 when those Acts and codes came into operation there were no fundamental rights and there can be no loss of fundamental right merely on the ground of non-exercise of it. There is no case of estoppel here, assuming that there can be an estoppel against the

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Constitution. There can be no question, therefore, that the Anglo-Indian educational institutions which are entitled to their grants under Art. 337 are being subjected to onerous conditions and the provisions of the said Bill which legitimately come within question 2 as construed by us infringe their rights not only under Art. 337 but also violate their rights under Art. 30 (1) in that they are prevented from effectively exercising those rights. It should be borne in mind that in determining the constitutional validity of a measure or a provision therein regard must be had to the real effect and impact thereof on the fundamental right. See the decisions of this Court in *Rashid Ahmad* v. *Municipal Board Kairana's* case (1), *Mohd. Yasin* v. *The Town Area Committee, Jalalabad's* case (2) and *The State of Bombay* v. *Bombay Education Society's* case (3).

Learned counsel for the State of Kerala next urges that each and every one of the Anglo-Indian educational institutions are getting much more than what they are entitled to under Art. 337 and that consequently, in so far as these Anglo-Indian educational institutions are getting more than what is due to them under Art. 337, they are, as regards the excess, in the same position as other Anglo-Indian educational institutions started after 1948 and the educational institutions established by other minorities who have no right to aid under any express provision of the Constitution but are in receipt of aid or seek to get it. This takes us to the consideration of the cases of the educational institutions which fall within sub-category (b) mentioned above, namely, the institutions which are not entitled to any grant of aid by virtue of any express provision of the Constitution but, nevertheless, seek to get aid from the State.

We have already seen that Art. 337 of the Constitution makes special provision for granting aid to Anglo-Indian educational institutions established prior to 1948. There is no constitutional provision for such grant of aid to educational institutions established by

(1) [1950] S.C.R. 566, 571. (2) [1952] S.C.R. 572, 577.
(3) [1955] 1 S.C.R. 568, 583.

the Anglo-Indian community after 1948 or to those established by other minority communities at any time. The other minority communities or even the Anglo-Indian community in respect of post-1948 educational institutions have no constitutional right, fundamental or otherwise, to receive any grant from the State. It is, however, well-known that in modern times the demands and necessities of modern educational institutions to be properly and efficiently run require considerable expense which cannot be met fully by fees collected from the scholars and private endowments which are not adequate and, therefore, no educational institution can be maintained in a state of efficiency and usefulness without substantial aid from the State. Articles 28(3), 29(2) and 30(2) postulate educational institutions receiving aid out of State funds. By the bill now under consideration the State of Kerala also contemplates the granting of aid to educational institutions. The said Bill, however, imposes stringent terms as conditions precedent to the grant of aid to educational institutions. The provisions of the Bill have already been summarised in detail in an earlier part of this opinion and need not be recapitulated. Suffice it to say that if the said Bill becomes law then, in order to obtain aid from State funds, an educational institution will have to submit to the conditions laid down in cls. 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 20. Clause 36 empowers the Government to make rules providing for the giving of aids to private schools. Learned counsel appearing for the educational institutions opposing the Bill complain that those clauses virtually deprive their clients of their rights under Art. 30(1).

Their grievances are thus stated: The gist of the right of administration of a school is the power of appointment, control and dismissal of teachers and other staff. But under the said Bill such power of management is practically taken away. Thus the manager must submit annual statements (cl. 5). The fixed assets of the aided schools are frozen and cannot be dealt with except with the permission of the authorised officer (cl. 6). No educational agency of an aided

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school can appoint a manager of its choice and the manager is completely under the control of the authorised officer, for he must keep accounts in the manner he is told to do and to give periodical inspection of them, and on the closure of the school the accounts must be made over to the authorised officer (cl. 7). All fees etc. collected will have to be made over to the Government (cl. 8 (3)). Government will take up the task of paying the teachers and the non-teaching staff (cl. 9). Government will prescribe the qualification of teachers (cl. 10). The school authorities cannot appoint a single teacher of their choice, but must appoint persons out of the panel settled by the Public Service Commission (cl. 11). The school authorities must provide amenities to teachers and cannot dismiss, remove, reduce or even suspend a teacher without the previous sanction of the authorised officer (cl. 12). Government may take over the management on being satisfied as to certain matters and can then acquire it outright (cl. 14) and it can also acquire the aided school, again on its satisfaction as to certain matters on which it is easily possible to entertain different views (cl. 15). Clause 20 peremptorily prevents a private school, which means an aided or recognised school, from charging any fees for tuition in the primary classes where the number of scholars are the highest. Accordingly they contend that those provisions do offend the fundamental rights conferred on them by Art. 30(1).

Learned counsel appearing for the State of Kerala advances the extreme contention that Art. 30 (1) confers on the minorities the fundamental right to establish and administer educational institutions of their choice and nothing more. They are free to exercise such rights as much as they like and as long as they care to do so on their own resources. But this fundamental right goes no further and cannot possibly extend to their getting financial assistance from the coffers of the State. If they desire or seek to obtain aid from the State, they must submit to the terms on which the State offers aid to all other educational institutions established by other people just as a person

will have to pay 15 naye paise if he wants to buy a stamp for an inland letter. Learned counsel appearing for the two Anglo-Indian schools as well as learned counsel appearing for the Jamait-ul-ulema-i-Hind, on the other hand, insist in their turn, on an equally extreme proposition, namely, that their clients' fundamental rights under Art. 30(1) are, in terms, absolute and not only can it not be taken away but cannot even be abridged to any extent. They draw our attention first to Art. 19(1)(g) which confers on the citizens the fundamental right to carry on any business and then to cl. 6 of that article which permits reasonable restrictions being imposed on that fundamental right and they contend that, as there is no such provision in Art. 30(1) conferring on the State any police power authorising the imposition of social control, the fundamental rights under Art. 30(1) must be held to be absolute and cannot be subjected to any restriction whatever. They reinforce their arguments by relying on Arts. 28(3), 29(2) and 30(2) which, they rightly submit, do contemplate the grant of aid to educational institutions established by minority communities. Learned counsel also strongly rely on Arts. 41 and 46 of the Constitution which, as directive principles of State policy, make it the duty of the State to aid educational institutions and to promote the educational interests of the minorities and the weaker sections of the people. Granting of aid to educational institutions is, according to learned counsel, the normal function of the Government. The Constitution contemplates institutions wholly maintained by the State, as also institutions receiving aid from the State. If, therefore, the granting of aid is a governmental function, it must, they say, be discharged in a reasonable way and without infringing the fundamental rights of the minorities. There may be no fundamental right given to any person or body administering an educational institution to get aid from the State and indeed if the State has not sufficient funds it cannot distribute any. Nevertheless if the State does distribute aid it cannot, they contend, attach such conditions to it as will deprive the

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minorities of their fundamental rights under Art. 30(1). Attaching stringent conditions, such as those provided by the said Bill and summarised above, is violative of the rights guaranteed to the minorities by Art. 30(1). Surrender of fundamental rights cannot, they conclude, be exacted as the price of aid doled out by the State.

We are thus faced with a problem of considerable complexity apparently difficult of solution. There is, on the one hand the minority rights under Art. 30(1) to establish and administer educational institutions of their choice and the duty of the Government to promote education, there is, on the other side the obligation of the State under Art. 45 to endeavour to introduce free and compulsory education. We have to reconcile between these two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The directive principles cannot ignore or override the fundamental rights but must, as we have said, subserve the fundamental rights. We have already observed that Art. 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided. Learned Attorney-General concedes that reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition. There is no right in any minority, other than Anglo-Indians, to get aid, but, he contends, that if the State chooses to

grant aid then it must not say—"I have money and I shall distribute aid but I shall not give you any aid unless you surrender to me your right of administration." The State must not grant aid in such manner as will take away the fundamental right of the minority community under Art. 30(1). Shri G. S. Pathak appearing for some of the institutions opposing the Bill agrees that it is open to the State to lay down conditions for recognition, namely, that an institution must have a particular amount of funds or properties or number of students or standard of education and so forth and it is open to the State to make a law prescribing conditions for such recognition or aid provided, however, that such law is constitutional and does not infringe any fundamental right of the minorities. Recognition and grant of aid, says Shri G. S. Pathak, is the governmental function and, therefore, the State cannot impose terms as condition precedent to the grant of recognition or aid which will be violative of Art. 30(1). According to the statement of case filed by the State of Kerala, every Christian school in the State is aided by the State. Therefore, the conditions imposed by the said Bill on aided institutions established and administered by minority communities, like the Christians, including the Anglo-Indian community, will lead to the closing down of all these aided schools unless they are agreeable to surrender their fundamental right of management. No educational institutions can in actual practice be carried on without aid from the State and if they will not get it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Art. 30(1). The legislative powers conferred on the legislatures of the States by Arts. 245 and 246 are subject to the other provisions of the Constitution and certainly to the provisions of Part III which confers fundamental rights which are, therefore, binding on the State legislatures. The State legislatures cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the

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same result. Even the legislature cannot do indirectly what it certainly cannot do directly. Yet that will be the effect of the application of these provisions of the Bill and according to the decisions of this Court already referred to it is the real effect to which regard is to be had in determining the constitutional validity of any measure. Clauses 6, 7, 9, 10, 11, 12, 14, 15 and 20 relate to the management of aided schools. Some of these provisions, e.g., 7, 10, 11(1), 12(1)(2)(3) and (5) may easily be regarded as reasonable regulations or conditions for the grant of aid. Clauses 9, 11(2) and 12(4) are, however, objected to as going much beyond the permissible limit. It is said that by taking over the collections of fees, etc., and by undertaking to pay the salaries of the teachers and other staff the Government is in reality confiscating the school fund and taking away the prestige of the school, for none will care for the school authority. Likewise cl. 11 takes away an obvious item of management, for the manager cannot appoint any teacher at all except out of the panel to be prepared by the Public Service Commission, which, apart from the question of its power of taking up such duties, may not be qualified at all to select teachers who will be acceptable to religious denominations and in particular sub-cl. (2) of that clause is objectionable for it thrusts upon educational institutions of religious minorities teachers of Scheduled Castes who may have no knowledge of the tenets of their religion and may be otherwise weak educationally. Power of dismissal, removal, reduction in rank or suspension is an index of the right of management and that is taken away by cl. 12(4). These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right. But considering that those provisions are applicable to all educational institutions and that the impugned parts of cls. 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2) and 12(4) as permissible regulations which the

State may impose on the minorities as a condition for granting aid to their educational institutions. We, however, find it impossible to support cls. 14 and 15 of the said Bill as mere regulations. The provisions of those clauses may be totally destructive of the rights under Art. 30(1). It is true that the right to aid is not implicit in Art. 30(1) but the provisions of those clauses, if submitted to on account of their factual compulsion as condition of aid, may easily be violative of Art. 30(1) of the Constitution. Learned counsel for the State of Kerala recognises that cls. 14 and 15 of the Bill may annihilate the minority communities' right to manage educational institutions of their choice but submits that the validity of those clauses is not the subject matter of question 2. But, as already explained, all newly established schools seeking aid or recognition are, by cl. 3(5), made subject to all the provisions of the Act. Therefore, in a discussion as to the constitutional validity of cl. 3(5) a discussion of the validity of the other clauses of the Bill becomes relevant, not as and by way of a separate item but in determining the validity of the provisions of cl. 3(5). In our opinion, sub-cl. 3 of cl. 8 and cls. 9, 10, 11, 12 and 13 being merely regulatory do not offend Art. 30(1), but the provisions of sub-cl. (5) of cl. 3 by making the aided educational institutions subject to cls. 14 and 15 as conditions for the grant of aid do offend against Art. 30(1) of the Constitution.

We now come to the last category of educational institutions established and administered by minority communities which seek only recognition but not aid from the State. The extreme arguments advanced with regard to recognition by learned counsel for the State of Kerala and learned counsel for the two Anglo-Indian schools and learned counsel for the Muslim institutions proceed on the same lines as those advanced respectively by them on the question as to granting of aid, namely, that the State of Kerala maintains that the minority communities may exercise their fundamental right under Art. 30(1) by establishing educational institutions of their choice wherever they like and administer the same in their own way

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and need not seek recognition from the Government, but that if the minority communities desire to have State recognition they must submit to the terms imposed, as conditions precedent to recognition, on every educational institution. The claim of the educational institutions of the minority communities, on the other hand, is that their fundamental right under Art. 30(1) is absolute and cannot be subjected to any restriction whatever. Learned counsel for the two Anglo-Indian schools appearing on this reference, relying on some decisions of the American Supreme Court, maintains that a child is not the creature of the State and the parents have the right to get their child educated in educational institutions of their choice. Those American decisions proceed on the language of the due process clauses of the Fifth and the Fourteenth Amendments and have no application to a situation arising under our Constitution and we need not, therefore, discuss them in detail here. Adverting to the two conflicting views propounded before us we repeat that neither of the two extreme propositions can be sustained and we have to reconcile the two, if possible. Article 26 gives freedom to religious denominations or any section thereof, subject to public order, morality and health, to establish and maintain institutions for religious and charitable purposes. Article 29(1) gives protection to any section of citizens residing in the territory of India having a distinct language, script or culture of its own the right to conserve the same. As we have already stated, the distinct language, script or culture of a minority community can best be conserved by and through educational institutions, for it is by education that their culture can be inculcated into the impressionable minds of the children of their community. It is through educational institutions that the language and script of the minority community can be preserved, improved and strengthened. It is, therefore, that Art. 30(1) confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. The minorities, quite understandably, regard it as essential that the education

of their children should be in accordance with the teachings of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our Constitution makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to above. But the conservation of the distinct language, script or culture is not the only object of choice of the minority communities. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life. But according to the Education Code now in operation to which it is permissible to refer for ascertaining the effect of the impugned provisions on existing state of affairs, the scholars of unrecognised schools are not permitted to avail themselves of the opportunities for higher education in the University and are not eligible for entering the public services. Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Art. 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Art. 30(1). We repeat that the legislative power is subject to the

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fundamental rights and the legislature cannot indirectly take away or abridge the fundamental rights which it could not do directly and yet that will be the result if the said Bill containing any offending clause becomes law. According to the decisions of this Court referred to above, in judging the validity of any law regard must be had to its real intendment and effect on the rights of the aggrieved parties, rather than to its form. According to the Education Codes certain conditions are prescribed—whether as legislative or as executive measures we do not stop to enquire—as conditions for the grant of recognition and it is said, as it was said during the discussion on the question of aid, that the said Bill imposes no more burden than what these minority educational institutions along with those of other communities are already subjected to. As we have observed, there can be no question of the loss of a fundamental right merely by the non-exercise of it. There is no case here of any estoppel, assuming that there can be any estoppel against the Constitution. Therefore, the impugned provisions of the said Bill must be considered on its merits.

By cl. 19 the following clauses, namely, 7 (except sub-cls. 1 and 3 which apply only to aided schools), 10 and 20 were made applicable to recognised schools. We are prepared to accept the provisions of sub-cls. 2, 4 to 9 of cl. 7 and the provisions of cl. 10 as permissible regulations but it is difficult to treat cl. 20 as merely regulatory. That clause peremptorily requires that no fees should be charged for tuition in the primary classes. There is no dispute that the number of pupils in the primary classes is more than that in the other classes. The 1955-1956 figures of school-going children, as to which there is no dispute, show that of the age group of 6 to 11 cent per cent. of boys attend classes, while 91 per cent. of girls of that age group do the same. There is a drop in attendance when we come to age group 11 to 14. In that age group 36·2 per cent. of boys and 29 per cent. of girls go to school. It is clear, therefore, that although the rate of fees charged in primary classes is lower than those charged in higher classes, the total amount collected from scholars

attending primary classes is quite considerable and forms an appreciable part of the total income of the school. If this Bill becomes law, all these schools will have to forego this fruitful source of income. There is, however, no provision for counterbalancing the loss of fees which will be brought about by cl. 20 when it comes into force. There is no provision, such as there is in cl. 9 which applies to aided schools only, that the State should make good that loss. Therefore, the imposition of such restriction against the collection of fees from any pupil in the primary classes as a condition for recognition will in effect make it impossible for an educational institution established by a minority community being carried on. It is true that cl. 36(2)(c) empowers the Government to make rules providing for the grant of recognition to private schools and we are asked to suspend our opinion until the said Bill comes into force and rules are actually made. But no rule to be framed under cl. 36(2)(c) can nullify the constitutional infirmity of cl. 3(5) read with cl. 20 which is calculated to infringe the fundamental rights of minority communities in respect of recognised schools to be established after the commencement of the said Bill.

Learned counsel for the State of Kerala referred us to the directive principles contained in Art. 45 which requires the State to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years and with considerable warmth of feeling and indignation maintained that no minorities should be permitted to stand in the way of the implementation of the sacred duty cast upon the State of giving free and compulsory primary education to the children of the country so as to bring them up properly and to make them fit for discharging the duties and responsibilities of good citizens. To pamper to the selfish claims of these minorities is, according to learned counsel, to set back the hands of the clock of progress. Should these minorities, asks learned counsel, be permitted to perpetuate the sectarian fragmentation of the people

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and to keep them perpetually segregated in separate and isolated cultural enclaves and thereby retard the unity of the nation? Learned counsel for the minority institutions were equally eloquent as to the sacred obligation of the State towards the minority communities. It is not for this Court to question the wisdom of the supreme law of the land. We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must have been made to them for good and valid reasons. Article 45, no doubt, requires the State to provide for free and compulsory education for all children, but there is nothing to prevent the State from discharging that solemn obligation through Government and aided schools and Art. 45 does not require that obligation to be discharged at the expense of the minority communities. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races—Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals—have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:

> "None shall be turned away
> From the shore of this vast sea of humanity
> That is India"*.

Indeed India has sent out to the world her message of goodwill enshrined and proclaimed in our National Anthem:

* Poems by Rabindranath Tagore.

"Day and night, thy voice goes out from
land to land,
calling Hindus, Buddhists, Sikhs and Jains
round thy throne
and Parsees, Mussalmans and Christians.
Offerings are brought to thy shrine by
the East and the West
to be woven in a garland of love.
Thou bringest the hearts of all peoples
into the harmony of one life,
Thou Dispenser of India's destiny,
Victory, Victory, Victory to thee."*

It is thus that the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures. Our Constitution accordingly recognises our sacred obligations to the minorities. Looking at the rights guaranteed to the minorities by our Constitution from the angle of vision indicated above, we are of opinion that cl. 7 (except sub-cls. 1 and 3 which apply only to aided schools) and cl. 10 may well be regarded as permissible regulation which the State is entitled to impose as a condition for according its recognition to any educational institution but that cl. 20 which has been extended by cl. 3 (5) to newly established recognised schools, in so far as it affects educational institutions established and administered by minority communities, is violative of Art. 30 (1).

Re. Question 4: This question raises the constitutional validity of cl. 33 of the said Bill. That clause, which has hereinbefore been set out in full, provides that notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force no Court shall grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the provisions of the Bill when it becomes an Act. Article 226 of the Constitution confers extensive jurisdiction and power on the High Courts in the States. This jurisdiction and power extend throughout the territories in relation to which the High Court exercises

* Rabindranath Tagore.

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jurisdiction. It can issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs of the nature mentioned therein for the enforcement of the fundamental rights or for any other purpose. No enactment of a State Legislature can, as long as that Article stands, take away or abridge the jurisdiction and power conferred on the High Court by that Article. The question is whether cl. 33 does so. The doubts which have arisen with regard to cl. 33 are thus formulated in the order of reference :—

" AND WHEREAS clause 33 of the said Bill provides that, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, no courts can grant any temporary injunction or make any interim order restraining any proceedings which is being or about to be taken under the Act ;

AND WHEREAS a doubt has arisen whether the provisions of the said clause 33, in so far as they relate to the jurisdiction of the High Courts, would offend Article 226 of the Constitution ; ".

The State of Kerala in their statement of case disowns in the following words all intentions in that behalf :—

" 52. Kerala State asks this Honourable Court to answer the fourth question in the negative, on the ground that the power given to High Courts by Art. 226 remains unaffected by the said cl. 33.

53. Kerala State contends that the argument that cl. 33 affects Art. 226 is without foundation.

54. The Constitution is the paramount law of the land, and nothing short of a constitutional amendment as provided for under the Constitution can affect any of the provisions of the Constitution, including Art. 226. The power conferred upon High Courts under Art. 226 of the Constitution is an over-riding power entitling them, under certain conditions and circumstances, to issue writs, orders and directions to subordinate courts, tribunals and authorities notwithstanding any rule or law to the contrary."

Learned counsel for the State of Kerala submits that cl. 33 must be read subject to Arts. 226 and 32 of the

Constitution. He relies on the well known principle of construction that if a provision in a statute is capable of two interpretations then that interpretation should be adopted which will make the provision valid rather than the one which will make it invalid. He relies on the words "other law for the time being in force" as positively indicating that the clause has not the constitution in contemplation, for it will be inapt to speak of the Constitution as a "law for the time being in force". He relies on the meaning of the word "Law" appearing in Arts. 2, 4, 32 (3) and 367(1) of the Constitution where it must mean law enacted by a legislature. He also relies on the definition of "Indian Law" in s. 3(29) of the General Clauses Act and submits that the word "Law" in cl. 33 must mean a law of the same kind as the Civil Procedure Code of 1908, that is to say, a law made by an appropriate Legislature in exercise of its legislative function and cannot refer to the Constitution. We find ourselves in agreement with this contention of learned counsel for the State of Kerala. We are not aware of any difficulty—and none has been shown to us—in construing cl. 33 as a provision subject to the overriding provisions of Art. 226 of the Constitution and our answer to question No. 4 must be in the negative.

In accordance with the foregoing opinion we report on the questions as follows:—

Question No. 1: No.

Question No. 2: (i) Yes, so far as Anglo-Indian educational institutions entitled to grant under Art. 337 are concerned. (ii) As regards other minorities not entitled to grant as of right under any express provision of the Constitution, but are in receipt of aid or desire such aid and also as regards Anglo-Indian educational institutions in so far as they are receiving aid in excess of what are due to them under Art. 337, clauses 8(3), and 9 to 13 do not offend Art. 30(1) but clause 3(5) in so far as it makes such educational institutions subject to clauses 14 and 15 do offend Art. 30(1). (iii) Clause 7 (except sub-cls. (1) and (3) which applies only to aided schools), cl. 10 in

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so far as they apply to recognised schools to be established after the said Bill comes into force do not offend Art. 30(1) but cl. 3(5) in so far as it makes the new schools established after the commencement of the Bill subject to cl. 20 does offend Art. 30(1).

Question No. 3: No.

Question No. 4: No; clause 33 is subject to Art. 226 of the Constitution.

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VENKATARAMA AIYAR J.—I agree that the answer to Questions Nos 1, 3 and 4 should be as stated in the judgment of My Lord, the Chief Justice. But as regards Question No. 2, I am unable to concur in the view expressed therein that Cl. (20) of the Bill is, in its application to educational institutions of minorities, religious or linguistic, repugnant to Art. 30(1) of the Constitution, and is, in consequence, to that extent void.

Clause (20) provides that:

"No fee shall be payable by any pupil for any tuition in the primary classes in any Government or private school."

Now, the question is whether this Clause is violative of the right which Art. 30(1) confers on all minorities based on religion or language, to establish and administer educational institutions of their choice. *Ex facie*, Cl. (20) does not prohibit the establishment or administration of such institutions by the minorities; it only provides that in private schools no fee shall be payable by students in the primary classes. On the terms of this Clause, therefore, it is difficult to see how it offends Art. 30(1). But it is contended by learned counsel who appeared for the minorities that in practice no school could be run unless fees are collected from the students, that therefore Cl. (20) must, if operative, result in the extinction of the educational institutions of minorities, and that was a direct invasion of their right to establish and maintain those institutions. It is no doubt the law that in deciding on the constitutionality of an enactment, regard must be had not merely to its language but also to its effect on the rights of the parties, not merely to what it says but to what it does. Even so, it is difficult to see how

Cl. (20) can be said to infringe Art. 30(1). It applies only to Government and private schools, and a private school is defined in Cl. 2(6) as "meaning an aided or recognised school". Clause (38) provides that:

"Nothing in this Act shall apply to any school which is not a Government or a private school."

The result is that there is no prohibition against minorities, religious or linguistic, establishing their own educational institutions and charging fees, so long as they do not seek aid or recognition from the State. It is only when they make a demand on the State for aid or recognition that the provisions of the Bill will become applicable to them.

But it is argued that the right of the minorities to establish their own educational institutions will be rendered illusory, if the students who pass out of them cannot sit for public examinations held by the State or be eligible for recruitment to State services, and that, it is said, is the effect of the non-recognition of the institutions. It is accordingly contended that for the effective exercise of the rights under Art. 30(1), it is necessary to imply therein a right in the minorities to have those institutions recognised by the State. That is the crucial question that has to be determined. If there is no right in the minorities to have their institutions recognised by the State, then the question whether Cl. (20) is an invasion of that right would not arise for decision. It is only if we hold that such right is to be implied in Art. 30(1) that the further question will have to be considered whether Cl. (20) infringes that right. Now, whether minorities, religious or linguistic, have a right to get recognition for their institutions under Art. 30(1) must depend on the interpretation to be put on that Article. There is nothing in it about recognition by the State of educational institutions established by minorities, and if we are to accept the contention of learned counsel appearing for them, we must read into the statute words such as "and it shall be the duty of the State to recognise such institutions." It is a rule of construction well established that words are not to be

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added to a statute unless they are required to give effect to its intention otherwise manifest therein, and that rule must apply with all the greater force here, seeing that what we are interpreting is a Constitution. Now, a reference to the relevant provisions of the Constitution shows that such a right is not implicit in Art. 30(1). Article 28(1) provides that no religious instruction shall be provided in any educational institution maintained wholly out of State funds. Article 28(3) enacts that no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. Under Art. 29(2), no person is to be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. In Art. 30(2), there is express provision that in granting aid no discrimination should be made against any educational institution on the ground that it is under the management of a minority based on religion or language. It is clear from the above catena of provisions that the Constitution makes a clear distinction between State-maintained, State-aided and State-recognised educational institutions, and provides for different rights and obligations in relation to them. If it intended that the minorities mentioned in Art. 30(1) should have a fundamental right in the matter of the recognition of their educational institutions by the State, nothing would have been easier than to have said so. On the other hand, there is good reason to infer that it has deliberately abstained from imposing on the State such an obligation. The educational institutions protected by Art. 30(1) might impart purely religious instruction. Indeed, it seems likely that it is such institutions that are primarily intended to be protected by Art. 30(1). Now, to compel the State to recognise those institutions would conflict with the fundamental concept on which the Constitution is framed that the State should be secular in character. If institutions which give only religious education can have no right to compel recognition by the State

under Art. 30(1), how could educational institutions established by minorities and imparting secular education be held to possess that right? The contents of Art. 30(1) must be the same as regards all institutions falling within its ambit. Construing, therefore, Art. 30(1) on its language, it is difficult to support the conclusion that it implies any right in the minorities to have their educational institutions recognised by the State.

The matter does not rest there. There is in the Constitution a provision which seems clearly to negative the right, which is claimed on behalf of the minorities. Article 45 provides that:

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

It is precisely this obligation laid on the State by the Constitution that is sought to be carried out in cl. (20) of the Bill. Now, it should be clear that if the right of the minorities to establish and maintain educational institutions under Art. 30(1) carries with it an implied right to be recognised by the State, then no law of the State can compel them to admit students free and therefore Art. 45 can never become operative, since what it provides is free education for all children and not merely for children other than those who attend institutions falling within Art. 30(1). It is contended that the directive principles laid down in Part IV cannot override the fundamental rights guaranteed by the Constitution, and that Art. 45 cannot be applied so as to defeat the rights conferred on minorities under Art. 30(1). This is quite correct. But the question here is, not whether a directive principle can prevail over a fundamental right, but whether there is a fundamental right in the minorities to have their educational institutions recognised by the State, and when there is nothing express about it in Art. 30(1) and it is only by implication that such a right is sought to be raised, it is pertinent to ask, can we by implication infer a right which is inconsistent

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with the express provisions of the Constitution? Considering the question, therefore, both on the language of Art. 30(1) and on the principle laid down in Art. 45, I find myself unable to accept the contention that the right of the minorities is not merely to establish educational institutions of their choice but to have them recognised by the State. That must be sufficient to conclude this question.

But then, it was argued that the policy behind Art. 30(1) was to enable minorities to establish and maintain their own institutions, and that that policy would be defeated if the State is not laid under an obligation to accord recognition to them. Let us assume that the question of policy can be gone into, apart from the language of the enactment. But what is the policy behind Art. 30(1)? As I conceive it, it is that it should not be in the power of the majority in a State to destroy or to impair the rights of the minorities, religious or linguistic. That is a policy which permeates all modern Constitutions, and its purpose is to encourage individuals to preserve and develop their own distinct culture. It is well-known that during the Middle Ages the accepted notion was that Sovereigns were entitled to impose their own religion on their subjects, and those who did not conform to it could be dealt with as traitors. It was this notion that was responsible during the 16th and 17th Centuries for numerous wars between nations and for civil wars in the Continent of Europe, and it was only latterly that it came to be recognised that freedom of religion is not incompatible with good citizenship and loyalty to the State, and that all progressive societies must respect the religious beliefs of their minorities. It is this concept that is embodied in Arts. 25, 26, 29 and 30. Article 25 guarantees to persons the right to freely profess, practice and propagate religion. Article 26 recognises the right of religious denominations to establish and maintain religious and charitable institutions. Article 29(1) protects the rights of sections of citizens to have their own distinct language, script or culture. Article 30(1) belongs to the same category as Arts. 25, 26 and 29,

and confers on minorities, religious or linguistic, the right to establish and maintain their own educational institutions without any interference or hindrance from the State. In other words, the minorities should have the right to live, and should be allowed by the State to live, their own cultural life as regards religion or language. That is the true scope of the right conferred under Art. 30(1), and the obligation of the State in relation thereto is purely negative. It cannot prohibit the establishment of such institutions, and it should not interfere with the administration of such institutions by the minorities. That right is not, as I have already pointed out, infringed by Cl. (20). The right which the minorities now claim is something more. They want not merely freedom to manage their own affairs, but they demand that the State should actively intervene and give to their educational institutions the *imprimatur* of State recognition. That, in my opinion, is not within Art. 30(1). The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majorities to grant concessions. It should be noted in this connection that the Constitution has laid on the State various obligations in relation to the minorities apart from what is involved in Art. 30(1). Thus, Art. 30(2) provides that a State shall not, when it chooses to grant aid to educational institutions, discriminate against institutions of minorities based on language or religion. Likewise, if the State frames regulations for recognition of educational institutions, it has to treat all of them alike, without discriminating against any institution on the ground of language or religion. The result of the constitutional provisions bearing on the question may thus be summed up:

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

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(2) The State is under a negative obligation as regards those institutions, not to prohibit their establishment or to interfere with their administration. Clause (20) of the Bill violates neither of these two obligations. On the other hand, it is the contention of the minorities that must, if accepted, result in discrimination by the State. While recognised institutions of the majority communities will be subject to cl. (20), similar institutions of minority communities falling within Art. 30(1) will not be subject to it. The former cannot collect fees, while the latter can. This surely is discrimination. It may be stated that learned counsel for the minorities, when pressed with the question that on their contention Art. 45 must become a dead letter, answered that the situation could be met by the State paying compensation to the minority institutions to make up for the loss of fees. That serves clearly to reveal that what the minorities fight for is what has not been granted to them under Art. 30(2) of the Constitution, viz., aid to them on the ground of religion or language. In my opinion, there is no justification for putting on Art. 30(1) a construction which would put the minorities in a more favoured position than the majority communities.

I have so far discussed the scope of Art. 30(1) on its language and on the principle underlying it. Coming next to the authorities, cited before us, the observations in *City of Winnipeg* v. *Barrett: City of Winnipeg* v. *Logan* (1) would appear to support the contention of the State of Kerala that Cl. (20) does not offend Art. 30(1). That was a decision on s. 22 of the Manitoba Act, 1870, which is as follows:

"In and for the province, the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the Union."

Now, the facts are that there were in Manitoba denominational schools run by Roman Catholics which

(1) [1892] A.C. 445, 457

were maintained with fees paid by students and donations from the Church. In 1890, the Provincial Legislature passed the Public Schools Act, and it enacted that all Protestant and Roman Catholic school districts should be subject to the provisions of this Act, and that all public schools should be free schools. A portion of the legislative grant for education was to be allotted to public schools, and it was provided that any school not conducted according to all the provisions of the Act or the regulations of the Department of Education should not be deemed to be a public school within the meaning of the Act and was not to be entitled to participate in the grant. The validity of these provisions was challenged by the Roman Catholic institutions on the ground that they contravened s. 22 of the Manitoba Act, and infringed the rights and privileges guaranteed therein. The Supreme Court of Canada upheld this contention; but this judgment was reversed by the Privy Council, and it was held that the provisions of the Act did not offend s. 22 of the Manitoba Act. Lord Macnaghten delivering the judgment of the Board observed:

"Notwithstanding the Public Schools Act, 1890, Roman Catholics and members of every other religious body in Manitoba are free to establish schools throughout the province; they are free to maintain their schools by school fees or voluntary subscriptions; they are free to conduct their schools according to their own religious tenets without molestation or interference".

In the result, it was held that the Act did not infringe the rights of the denominational institutions under s. 22. These observations appear to be very apposite to the present contention. The position occupied by the minority institutions under Art. 30(1) is not dissimilar to that of the Roman Catholic schools of Manitoba under s. 22 of the Act of 1870, and the position created by Cl. (20) is precisely that which the 1890 Act created in that Province.

It remains to notice the contention advanced by Mr. Pritt that the basis on which the arguments of the counsel for the minorities proceeded that students

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who pass out of unrecognised institutions were at a disadvantage in the matter of eligibility to sit at public examinations or to be admitted in the services to the State, was itself without foundation, and that even if there was any substantial discrimination in treatment between students who pass out of unrecognised schools and those who pass out of Government or recognised schools, that was the result of provisions of the Education Codes in force in the State, that it might be that those provisions are bad as infringing Art. 30(1) of the Constitution, but that did not affect the validity of cl. (20) as that was inapplicable to unrecognised institutions by virtue of cl. (38), and that, in consequence, there was nothing in the Bill which could be said to offend Art. 30(1). The rules of the Education Code are not really before us, and they are not the subject-matter of the present reference. In my view, there is much to be said in favour of the contention that if Art. 30(1) is at all infringed, it is by the rules of the Education Code and not by cl. (20). But it is unnecessary to pursue this aspect further, as I consider that even otherwise, the vires of Cl. (20) is not open to question. In my view, that Clause does not offend Art. 30(1) and is *intra vires*.

I agree that Cls. (14) and (15) must be held to be bad, and the ground of my decision is this: It may be taken—and indeed it is not disputed—that if the State grants aid to an educational institution, it must have the power to see that the institution is properly and efficiently run, that the education imparted therein is of the right standard, that the teachers possess the requisite qualifications, that the funds are duly applied for the purpose of the institution and the like. In other words, the State must have large powers of regulation and of control over State-aided educational institutions. These powers must be liberally construed, and the decision of the Legislature as to what they should be is not to be lightly interfered with, as it is presumed to know best the needs of the State, the nature and extent of the evils rampant therein and the steps that should be taken to remedy them. But the power to regulate does not, in general, comprehend

the power to prohibit, and the right to control the affairs of an institution cannot be exercised so as to extinguish it. Now, Cls. (14) and (15) operate to put an end to the right of private agencies to establish and maintain educational institutions and cannot be upheld as within the power of the State to regulate or control. The State is undoubtedly free to stop aid or recognition to a school if it is mismanaged. It can, even as an interim measure, arrange in the interests of the students to run that school, pending its making other arrangements to provide other educational facilities. It can also resume properties which had been acquired by the institutions with the aid of State grant. But it cannot itself compulsorily take over the school and run it as its own, either on the terms set out in Cl. (14) or Cl. (15). That is not a power which springs directly from the grant of aid. To aid is not to destroy. Those clauses would, in my opinion, infringe the right to establish and maintain institutions, whether such right is to be founded on Art. 19(1)(g) or Art. 30(1).

I should add that in Question No. 2, the question of the validity of Cl. (20) or Cls. (14) and (15) is not expressly referred for our opinion. But it is said that the reference to Cl. 3(5) attracts all the provisions of the Bill, because the establishment of new institutions or schools is under that Clause subject to the provisions of the Bill and the rules made thereunder. I have grave doubts whether on the terms of the reference, we are called upon to express our opinion on the validity of all the provisions of the Bill. The reference is not generally on the vires of the provisions of the Bill. It is limited to the validity of specified provisions, Cls. 3(5), 8(3) and 9 to 13. There has been no satisfactory answer to the question as to why if it was intended that we should pronounce on the validity of all the provisions of the Bill, Cls. 8(3) and (9) to (13) should have been specifically mentioned. Moreover, the reference is preceded by detailed recitals as to the doubts which had been raised in the mind of the President as to the validity of certain provisions, and there is no hint therein that there was any doubt

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concerning the vires of provisions other than those expressly mentioned. If the maxim "*Expressum facit cessare tacitum*" can properly be invoked in the construction of instruments, it must *a fortiori* be so, in interpreting a document drawn up by the Union Government with great care and deliberation. And having regard to the nature of the advisory jurisdiction under Art. 143, the reference should be construed narrowly rather than broadly. But this discussion is academic, as there have been full arguments on the validity of all the provisions, and we are expressing our opinion thereon.

In the result, my answer to Question No. 2 is that, excepting Cls. (14) and (15), the other provisions of the Bill do not offend Art. 30(1) of the Constitution.

As regards schools of the Anglo-Indian Communities, Art. 337 provides for aid being given to them on the conditions and to the extent specified therein. That is outside Art. 30(1) and independent of it, and I agree with My Lord, the Chief Justice, that the provisions of the Bill are, to the extent they affect or interfere with the rights conferred by that Article, bad.

Reference answered accordingly.