

CASE NO.:

Writ Petition (civil) 98 of 2002

PETITIONER:

Ms. Aruna Roy and others

Vs.

RESPONDENT:

Union of India and others

DATE OF JUDGMENT: 12/09/2002 BENCH:

M.B. SHAH

JUDGMENT:

J U D G M E N T

Shah, J.

In this public interest litigation filed under Article 32 of the Constitution of India, it has been mainly contended that the National Curriculum Framework for School Education (hereinafter referred to as the "NCFSE") published by National Council of Educational Research and Training (hereinafter referred to as "NCERT") is against the constitutional mandate, anti-secular, and without consultation with Central Advisory Board of Education (hereinafter referred to as "CABE") and, therefore, requires to be set aside. Admittedly, CABE is in existence since 1935 and it is submitted that upto now before framing the new NCFSE, the CABE was always consulted.

At the time of hearing of this matter, it was contended by Mr. C.S. Vaidyanathan, learned senior counsel for the petitioners that the issue involved is one of grave constitutional importance affecting the future of children and in substance contentions are as under :

1. The respondents have not sought the approval of the Central Advisory Board of to the National Curriculum Framework for School Education 2000 and without obtaining the approval of the CABE, the NCFSE cannot be implemented.

2. The NCFSE and the Syllabus framed thereunder are unconstitutional as the same are violative of the rubric of secularism which is part of the basic structure of our Constitution. The NCFSE and the Syllabus are also violative of the fundamental right to education, fundamental right to development, fundamental right to information (which have all been read into the right to life under Article 21) and also Articles 27 and 28 of the Constitution of India.

Non-Consultation with CABE

We would first deal with the contention that non-consultation with CABE before framing National Curriculum is unjustified and, therefore, it cannot be implemented. It is submitted that the CABE is a pivotal and the highest body in the matters pertaining to education and has always played an important role in evolving any national document/policy pertaining to education as it not only has the required expertise but also an effective mechanism for State-Centre coordination.

It is to be stated that CABE is not constituted under any Act or the Rules, hence not a statutory body. However, it is not disputed that the said body continuously functioned since 1935 to 1994 and, therefore, for finding out the functions of the CABE, we would refer to the Resolutions, which are produced on record, constituting the

CABE.

As per the Resolution dated 10th April, 1986 issued by the Ministry of Human Resource Development (Department of Education), Government of India, the functions of the CABE are as under :-

"1. The Central Advisory Board of Education was last constituted in April 1982 and its term expired in September, 1985. In view of the widespread demand throughout the country recently voiced in the context of the formulation of New Educational Policy for more effective role of the Central and State Governments and between State Governments and local bodies and non-governmental agencies; importance being given to human resource development; and the decision to formulate the New Education Policy, it has been felt necessary to redefine the functions of CABE.

2. The revised functions of CABE would be:

(a) to review the progress of education from time to time;

(b) to appraise the extent and manner in which the education policy has been implemented by the Central and State Governments, and other concerned agencies; and to give appropriate advice in the matter;

(c) to advise regarding coordination between the Central and State Governments/UT Administrations, State Governments, non-governmental agencies, for educational development in accordance with the education policy; and

(d) to advise, suo moto, or on a reference made to it by the Central Government or any State Government or by a Union Territory Administration on any educational question.

3. For the discharge of these functions, the Board may (i) call for information and comments from any Government institution, any other organisation or an individual; (ii) appoint committees or groups comprising members of CABE and/or others as may be necessary; and (iii) commission through Government or any other agency; studies, research or reports on any specific issue requiring attention of the Board or its committees or groups."

The composition of the Board is also provided therein.

As per the aforesaid Resolution, CABE consists of in all 104 Members. Out of them, 64 members are ex-officio members; 32 are nominated by the Government and 8 members are elected by Parliament. The quorum provided for the meeting of the Board is 2/3rd of the total membership of the Board. The Resolution also requires that Board will meet at least once a year and there shall not be a gap of more than two years between two consecutive meetings of the Board. The tenure of office of members of the Board other than Ex-officio members was three years effective from the date of notification. However, in the first sentence of the Preamble, it is

specifically noted that CAGE was constituted in April 1982 and its term expired in September 1985.

Subsequently, on 19th October, 1990, on the same line, the Government of India passed the Resolution reconstituting CAGE, which inter alia reads thus:

"The Central Advisory Board of Education (CAGE) is the highest advisory body to advise the Central and State Governments in the field of Education. In the past, important decisions have been taken on the advise of CAGE and it has provided a forum for arriving at a consensus on issues relating to educational and cultural development. CAGE has a particularly important role to play at the present juncture in view of the decision of the Government to appoint a Committee under the Chairpersonship of Acharya Ramamurti to review the National Policy on Education 1986 and also in view of the significant socio-economic and socio-cultural developments taking place in the country. It is a matter of importance that the Central and State Governments and educationists and teachers, should increase their interaction so that education becomes an instrument for national reconstruction and social cohesion."

The remaining part, providing for functions and mode of its discharge, remains the same, as stated in the earlier resolution.

From the aforesaid two resolutions, which are produced on record, it is apparent that the functions of the CAGE are limited. It nowhere mandates that before framing national curriculum framework for school education, the Government shall consult the CAGE and act as per its advice. However, it is contended that since years before framing such national curriculum, the CAGE is always consulted and, therefore, non-consultation of the CAGE by the Government or the NCERT is against the established principle for oblique motive.

In our view, this submission cannot be accepted. Firstly, it is to be reiterated that CAGE is a non-statutory body constituted by the resolutions of the Government of India from time to time. It is true that it is functioning since 1935. However, it being constituted by exercise of the Executive function of the Government, it cannot be held that as the CAGE is not consulted, the policy laid down by the NCERT is violative of any statutory provision or rules.

It is further submitted that the CAGE is in existence today as is evidenced by the fact that the Rajya Sabha website, in the list of bodies in which its nominees are present, mentions the CAGE even till date and the issue regarding approval of the CAGE has been raised by Members of Parliament and others in July, 2001, i.e. prior to the finalisation of the NCFSE. Despite the same the Government failed to reconstitute the body and it now cannot state that it has not reconstituted the body as the present petition is sub-judice before this Court. The Union of India having failed to comply with its duty to fill in the vacancies cannot now be permitted to take advantage of its own wrong and be heard to say that the approval of the CAGE was not sought as it has not yet been reconstituted. It is further submitted that the Programme of Action 1992 (POA) states that "CAGE is the historic forum for forging a national consensus on educational issues". The POA reviewed the National Policy on Education 1986 (NPE'86) and made certain minor modifications therein. The said programme of action further states as under:

"23.7.2. The Central Advisory Board of Education (CAGE)

has emerged as a very effective instrument of meaningful partnership between the States and the Centre, particularly at evolving a consensus on the major policy issues in the field of human resource development. The CAGE would be expected to play a meaningful and important role in the implementation of the NPE.

23.7.3. The CAGE would have to evolve appropriate mechanisms and processes to discharge its tasks of overseeing and reviewing the implementation of the NPE. It may have to devise appropriate structures within its system and also seek the support of professional organizations and autonomous bodies in discharging its role. The CAGE may consider the modalities it would adopt for its role in implementing the NPE/POA."

It is also pointed out that the Report of the Ministry of Human Resource Development of 1990-92 on the Development of Education in India also notes the importance of the CAGE. The relevant extract is as follows:

"1.12 Actions related to education at the national level including planning and policy-making are guided and coordinated by the Central Advisory Board of Education (CAGE), the members of which include Ministers of Education of all States and Union Territories and leading educationists of the country. A few national level institutions specialising in particular aspects of education, assist and advise the Central and State Governments in the formulation and implementation of policies and programmes in their respective areas. Special mention may be made in this regard, of organizations such as the National Institute of Educational Planning and Administration, the National Council of Educational Research and Training and the University Grants Commission."

It is further contended that due to the presence of education in the Concurrent List, the issue relating to State-Centre coordination must not be lost sight of, in evolving national consensus on any issue pertaining to education which requires implementation in all the States. The NPE'86 also refers to the 42nd Amendment to the Constitution whereby education was brought to the Concurrent List and talks of a meaningful partnership between State and Centre in this regard.

Admittedly, CAGE for one or other reason was not reconstituted since 1994 as the Government has not nominated the members nor the Parliament has elected members as required by 1990 resolution. As per the 1990 Resolution, the tenure of office of the members of the Board other than ex-officio members was only for three years. Thereafter, no further Resolution is passed reconstituting the CAGE. It is true that if we read the Resolution as it is, it may mean that for ex-officio members tenure is not limited. However, why it is not reconstituted by the Government since 1994 cannot be decided in this petition. Respondent has brought on record one letter dated 12th February, 1997 written by Deputy Secretary, Government of India, pertaining to reconstitution of CAGE and nomination thereto. The letter, inter-alia, states that the Prime

Minister has felt that the proposed Board is too unwieldy and he desired to know whether there could be a compact Board and that the Department of Education was accordingly requested to examine the proposal. Therefore, for one or other reason, it is apparent that CAGE was not reconstituted since 1994.

The learned counsel for respondent also submitted that the discussions/workshops were held at various levels before framing the National Curriculum Framework (NCF). No doubt, this is disputed contention which is not required to be decided.

However, as stated above the main function of the CAGE as per the resolutions is to review the progress of education from time to time and to appraise the extent and manner in which the Education Policy has been implemented by the Central and State Governments and other concerned agencies and to give appropriate advice in the matter. It can also advise the Government regarding coordination between the Central Government and the State Government for educational development in accordance with the Education Policy. Suo moto also, it can advise on any educational question. Therefore, it cannot be said that non-consultation of the CAGE by the NCERT is against the established principle for any oblique motive.

Further, as per the relevant extract of the Report of the Ministry of Human Resource Development of 1990-92 upon which reliance is placed by the learned counsel for the petitioners, it is to be stated that in the said Report itself, it is noted that there were few national level institutions specialising in particular aspects of education, assist and advise the Central and State Governments in the formulation and implementation of policies and programmes in their respective areas. A special mention is made of organizations such as National Institute of Educational Planning and Administration, the National Council of Educational Research and Training and the University Grants Commission. From this report, it is apparent that CAGE is only an advisory body and there are other institutions including the NCERT which also assist the Government in formulation and implementation of policies and programmes.

Further, there is nothing on record to establish that in past approval of the CAGE was sought before NCFSE was published or implemented. The preamble of 1990 resolution constituting CAGE inter alia takes note of the fact that it is a matter of importance that Central Government, State Governments, educationists and teachers should increase their interaction so that education becomes an instrument for national reconstruction and social cohesion. This would also indicate that the main object of constituting CAGE is to have interactions so that imparting of education is helpful in national reconstruction and social cohesion. Further, this preamble specifically states that to review the NPE'86, the Committee was appointed under the Chairpersonship of Acharya Ramamurti. Same is the position in the present case. The recommendations of S.B. Chavan Committee constituted by Parliament are accepted.

However, it is submitted that the POA'92 which made some minor changes to the NPE'86 and formulated a programme for implementation of the NPE'86 also talks of the effective role played by the CAGE. It is also submitted that the contention that CAGE is only for implementation of the NCFSE is belied by the fact that the NCF of 1988 was approved by the CAGE. In our view, once there are specific Resolutions on record constituting CAGE and providing its functions, it would be unreasonable and unnecessary to consider that in past CAGE was consulted before framing of NCFSE. The functions as narrated in the Resolutions nowhere indicate it.

It is further stated that the Union of India and the NCERT in

their Counter affidavits have only taken the plea that there is no legal requirement to consult CAGE and that in any event CAGE has not been in existence after the alleged expiry of its term in 1994. Nowhere they have controverted the fact that CAGE in fact did approve the NCF 1988. In the additional affidavit of NCERT which was produced on 1st August, 2002 minutes of the 38th CAGE meeting in 1975 have been extracted. The relevant portion extracted itself clearly shows CAGE's vital role in Curriculum Framework:

"The National Curriculum for the 10 Year School prepared by the NCERT is recommended to the State Governments."

It is submitted that this extract of the said minutes of the CAGE makes it amply evident that the NCFSE has to be recommended by the CAGE prior to implementation. If there is no question of approval by the CAGE as alleged by the respondents, there would have been no requirement for the CAGE to have recommended the NCFSE to the States. Similarly, the relevant extract relating to the NCF 1988 set out in the additional affidavit clearly shows that the CAGE has adopted the NCF 1988; while NCERT draws up the Curriculum, CAGE approves it prior to implementation. Further, the Notification reconstituting CAGE refers to the role played by CAGE in reviewing progress of education, implementation of the policy and co-ordination between Centre and State. NCFSE is a mode of implementation of the NPE and consequently it is definitely one of the functions of CAGE to make sure that the NCFSE is in accordance with the NPE'86. The NCFSE being a national document requiring implementation throughout the country raises important Centre State issues and consequently CAGE should be consulted as a co-ordinator of Centre and State in such National issues with serious federal implications.

It is true that for coordination between the State and the Centre in implementing the education policy, CAGE had played an important role. But this would not mean that before framing such policy by an independent body, namely, NCERT, CAGE ought to have been reconstituted and consulted.

On behalf of respondent, it is also pointed out that NCERT is an autonomous body established by the Union Government as a vehicle to promote inter alia the uniformity of standards in education. The Memorandum of Association of NCERT, states "the objects of the Council shall be to assist and advice the Ministry of Education and Social Welfare in the implementation of its policies and major programmes in the field of education particularly school education." The programmes and activities which the Council may undertake include inter alia the following

"(a) To develop and/or to disseminate improved educational techniques and practices in schools;

(b) To cooperate with, collaborate and assist the State education departments, universities and other educational institutions for the furtherance of its objects;

(c) To advise the State Governments and other educational organisations and institutions on matters relating to school education;

(d) To undertake the preparation and/or the publication of such books, materials; periodicals and other literature as may be necessary for the furtherance of its objects".

It is rightly pointed out that it is clear from a reading of the Memorandum of Association of NCERT that the preparation of a curriculum model, which could be followed generally to improve educational techniques and practices, and which could also form the basis of the preparation and/or publication of books and other material, is one of roles specifically assigned to the NCERT. The Constitution of the Council, under the Rules, shows that it is a high-powered body. The Union Minister for Education (now the Minister for Human Resource Development) is the ex-officio President, the Secretary of the Union Ministry of Education (now HRD), the Chairman of the University Grants Commission, four Vice-Chancellors, one from each region, and the Education Minister of each State Government are on the Council. In addition to these, it also includes 6 nominees (of whom not less than four shall be school teachers). In other words, the Council comprises a body which has the highest representatives from the executive Government at the Union as well as the States and other experts from the field of education. It is, therefore, submitted that the authority of the NCERT to publish a national curriculum to serve as a model for the States as well as to be a guide for publication of its own books and literature cannot be seriously disputed. There is no statute nor there is any limitation in the Rules or Regulations framed for the working of NCERT, which would require it to seek the approval or concurrence of any other authority before publishing the national curriculum. There is nothing in either the constitution of the NCERT or in any other Rule, Regulation or Executive order to suggest that the NCERT is structurally "subordinate" or inferior to any other body in the field. The CAGE upon its reconstitution in 1990 (by the Government resolution dated 19th October 1990) is also chaired by the Union Minister of Human Resource Development. It also comprises of Union Ministers and Ministers of Education of the States, and other elected members including some members of Parliament, ex-officio members (i.e. Chairman of University Grants Commission and other similar functionaries) and other persons appointed by the Government.

Learned senior counsel Mr. Vaidyanathan further submitted that the claim of respondents that NCERT General Council has approved the final document is false and incorrect. Number of Ministers of Education of States walked out protesting against the stand taken by NCERT in the NCERT General Council meeting. In our view, in this petition under Article 32, it would be difficult to find out whether the said submission is justified or not. However, it is to be stated that in democracy, decisions which are taken by the majority are to prevail unless they are contrary to any statutory provisions or rules or are arbitrary. On behalf of the respondent- Union, it has been repeatedly pointed out that NCERT also consists of experts in the field of education as well as ex-officio members. If the constitution of NCERT and CAGE is limited to its ex-officio members more or less it would consist of same members. In any case, it is difficult to accept the contention raised by the learned senior counsel Mr. Vaidyanathan that NCERT General Council has not given its approval to NCFSE. Approval depends upon view of the majority.

Hence, the contention of the learned senior counsel for the petitioners that as CAGE is not consulted or its approval is not sought by the Government before framing the NCFSE-2000 the said policy requires to be set aside, cannot be accepted.

Violation of Article 28

Learned counsel for the petitioners vehemently objected and pointed out that NCFSE pertaining to education for value

development is violative of Article 28 of the Constitution. Before referring to the contention raised by the learned counsel for the parties, we would refer to the relevant part of NCFSE which reads thus:

1.4.7. Education for Value Development.

The past five decades after independence have witnessed constant erosion of the essential social, moral and spiritual values and an increase in cynicism at all levels. Although schools are not isolated islands untouched by the prevailing mood of indifference and even disregard for the entire value system, their potential for and role in the task of guiding the national psyche cannot be underestimated. Schools can and must strive to restore and sustain the universal and eternal values oriented towards the unity and integration of the people, their moral and spiritual growth enabling them to realise the treasure within. People must realise who they are and what is the ultimate purpose of human life. Self-recognition would come to them through proper value education that would facilitate their spiritual march from the level of sub-consciousness to that of super consciousness through the different intermediary stages. Value-based education would help the nation fight against all kinds of fanaticism, ill will, violence, fatalism, dishonesty, avarice, corruption, exploitation and drug abuse.

The National Policy on Education (1986) lays emphasis on equity and social justice in education to promote the country's unique socio-cultural identity and to contribute to national cohesion, promoting tolerance, scientific temper and the concerns enshrined in the Indian Constitution. The recommendations of the Justice J.S. Verma Committee on Fundamental Duties of Citizens pave the way for strong commitment to basic human values and social justice. The core components of school curriculum as mentioned in the National Curriculum for Elementary and Secondary EducationA Framework (1988) are all the more relevant in the present scenario. The Constitutional Amendment incorporating the ten Fundamental Duties of Citizens is a valuable pointer to what the country expects of its citizens. All these must find a prominent place in the total education system of India including the school environs.

The School Curriculum in 1988 was designed to enable the learner to acquire knowledge to develop concepts and inculcate values commensurate with the social, cultural, economic and environmental realities at the national and international levels. The social values aimed at were friendliness, cooperativeness, compassion, self-discipline, courage, love for social justice, etc. Truth, righteous conduct, peace, love and non-violence are the core universal values that can become the foundation for building the value-based education programme as per the recommendations of the S.B. Chavan Committee Report submitted to the Indian Parliament in February, 1999. These five universal values represent the five domains of the human personality intellectual, physical, emotional, psychological and spiritualare "correlated with the five major objectives of education, namely knowledge, skill, balance, vision and identity." (81st Report on Value-Based Education presented to Rajya Sabha on 26th

February, 1999, Item No.8).

Besides, curriculum in schools has to develop the key qualities like regularity and punctuality, cleanliness, self-control, industriousness, sense of duty, desire to serve, responsibility, enterprise, creativity, sensitivity to greater equality, fraternity democratic attitude and sense of obligation to environmental protection.

Another significant factor that merits urgent attention now is religion. Although it is not the only source of essential values, it certainly is a major source of value generation. What is required today is not religious education but education about religions, their basics, the values inherent therein and also a comparative study of the philosophy of all religions. These need to be inculcated at appropriate stages in education right from the primary years. Students have to be given the awareness that the essence of every religion is common, only the practices differ. The students should also be led to believe that differences of opinion in certain areas are also to be respected. The Chavan Committee (1999) strongly urges education about religions as an instrument of social cohesion and social and religious harmony. The UNESCO Department for Intercultural Dialogue and Pluralism for a Culture of Peace pleads for "Spiritual Convergence" and proposes to promote dialogue among the different religious and spiritual traditions in a world where intra and inter-religious conflicts have become the order of the day (January 2000). It observes "that it is from early childhood that children should be introduced to the discovery of "otherness", and to the values of tolerance, respect, and confidence in the "other" that will bring about a change of behaviour and attitudes towards others. The introduction of specific teaching of intercultural and interreligious dialogue, through the adequate pedagogical tools, is conceived as a means to foster reciprocal knowledge of shared values contained in the message issued by religious and spiritual traditions, which can be considered as a common spiritual and cultural heritage".

However, a word of caution is required here. Education about religions must be handled with extreme care. All steps must be taken in advance to ensure that no personal prejudice or narrow minded perceptions are allowed to distort the real purpose of this venture and no rituals, dogmas and superstitions are propagated in the name of education about religions. All religions therefore have to be treated with equal respect (Sarva Dharma Sambhav) and that there has to be no discrimination on the ground of any religion (Panthnirapekshata)."

From the aforesaid paragraph, it can be culled out:

(i) that the object for value based education is to have national fight against all kinds of fanaticism, ill-will, violence, dishonesty, corruption, exploitation and drug abuses;

(ii) National policy on Education (1986) also lays down emphasis on equity and social justice in education and to promote the country's unique, socio-cultural identity and to contribute to national cohesion, promoting tolerance;

(iii) Enable the learner to acquire knowledge to develop concepts and inculcate values commensurate with social values aimed at friendliness, cooperativeness, compassion, self-discipline, courage, love for social justice, truth, righteous conduct and non-violence;

(iv) For religion, it is stated that students have to be given the awareness that the essence of every religion is common, only practices differ;

(v) As a matter of caution it provides that all steps should be taken in advance to ensure that no personal prejudices or narrow minded perceptions are allowed to distort the real purpose of imparting education on religions; no righteous dogmas and superstitions should be promoted to propagate in the name of education about religions.

From the aforesaid entire paragraph the learned counsel for the petitioners vehemently objected only to the following part "what is required today is not religious education but education about religions, their basics, the values inherent therein and also comparative study of the philosophy of all religions." It is contended that giving education about religions would be violative of Article 28 and also it would offend the basic structure of the Constitution, namely, secularism.

Contra, learned Solicitor General Shri Salve, submitted that for challenging the policy framed by NCERT, petitioners have picked up some sentences out of the context. This national curriculum is prepared on the basis of report submitted to the Parliament on 22nd January, 1999 by the S.B. Chavan Committee which was appointed by the Parliament in 1996. The report of the Committee is based on earlier reports submitted by various Committees, namely, the Radhakrishnan Commission (1948-49), Kothari Commission (1964-66), National Policy on Education (1986), Ramamurti Committee (1990), Central Advisory Board of Education (CABE) Committee on Policy (1992), Planning Commission Core Group on Value Orientation of Education (1992), which have highlighted the urgent need for making the educational system value-based.

The Secretary of respondent no.3 - NCERT, has filed affidavit stating therein that the NCERT followed what the Parliamentary Committee asked it to do; The S.B. Chavan Committee's report on value based education was tabled in Parliament; after its approval, since there was no opposition, NCERT was asked to implement this report. It is submitted that some of the recommendations in the curriculum proposed by NCERT are virtual and verbatim copy of the report of the S.B. Chavan Committee. Further, NCERT in fact consulted other institutions and other individual experts and sent the draft curriculum document to the Education Ministers of all the States and its Governments who would have been members of the CABE, had it been reconstituted. Further, 13 Regional and National Seminars were arranged by NCERT in different parts of India to find out reaction to this new proposal. Majority of those who participated was for the new curriculum. Therefore, to say that NCERT did not consult anyone is unfair and in ignorance of facts and if not deliberate suppression of facts.

At this stage, we would quote the relevant part of the S.B. Chavan Committee's report as under:

1. Values are principles which are consistent and

universal and which direct our action and activities. They are in-built in our society, common to not only all the communities but also to all religions at all times. Values are, in other words, virtues in an individual. These values, if deteriorated, will hasten or accelerate the break-down of family, society and nation as a whole. India has age-old tradition of values interwoven in the national fabric. Although there has been great advancement in science and technology, there has been a gradual erosion of values which is reflected in the day-to-day life of a large section of our present society. Our young generation under the growing influence of negative aspects of Western culture, is stranded on the cross-roads, not able to decide which direction to take.

2. Education should aim at multi-faced development of a human being his intellectual, physical, spiritual and ethical development. Youth is the mirror in which future of a nation is fully reflected. In order to preserve, maintain and advance the position of our country in the world, it is imperative that there should be a comprehensive programme of value-education starting from the pre-primary level, embracing the entire spectrum of educational process. The minds, hearts and hands of children are to be engaged in forming their own character to know what is 'good', 'love good' and 'do good'.

3. The Committee is aware that since independence, a number of higher-powered Commissions and Committees on Education, namely, the Radhakrishnan Commission (1948-49), Kothari Commission (1964-66), National Policy on Education (1986), Ramamurti Committee (1990), Central Advisory Board of Education (CABE) Committee on Policy (1992), Planning Commission Core Group on Value Orientation of Education (1992) have highlighted the urgent need for making our educational system value based. However, the Committee finds it very disappointing to observe that such well-concerted efforts during the last four decades have failed to achieve the desired results. Well-chalked out plans and strategies for making education value-oriented still remain on paper. The Committee feels that lack of co-ordinated effort on the part of all the implementing agencies may be held responsible for this sort of affairs."

4. Against this background, the Committee decided to re-examine the entire gamut of value-orientation of our educational system so as to come up with some effective suggestions for bringing about a much-awaited change. Realising that a smaller group would be in a better position to make an in-depth analysis of the subject, a Sub-Committee on Value based Education was constituted on 16th January, 1997, which was subsequently re-constituted on 6th August, 1997. However, as the work allocated to the Sub-Committee could not be completed during the term of the previous main Committee, a new Sub-Committee came into being on 6th August, 1998.

5. The Committee invited suggestions from noted

educationists on various aspects of value-based education, at what stage it should be introduced, whether both Govt. and NGOs should be involved in this task and in what manner it should be introduced. In order to have an over-all idea about the state-run value based education programmes, the Committee held discussions with representatives of a number of State Governments. The Committee was also benefited by views of quite a few eminent experts/NGOs, doing pioneering work in this area. Besides that, the Committee also held interactions with representatives of various Government Organisations. An encouraging response from individuals/organisations was received from all parts of the country. This showed the public concern with this vital aspect the building up of our national character.

6. It was generally felt that ours is a vast and diverse ancient country historically, geographically and socially. Traditions are different, the ways of thinking and living are also different. But there are certain common elements which unite the country in its diversity. This country has a long tradition. Here from ancient times, there have been great saints and thinkers from different religions and sects who have talked about some eternal values. These values are to be inculcated by our young generation.

7. In ancient times in Gurukuls, emphasis used to be primarily on building the character of a student. Today, right from the schools up to the professional colleges, emphasis is on acquiring techniques and not values. We seem to have forgotten that skills acquired on computers tend to become outdated after sometime but values remain for ever. In other words, present day education is nothing but an information transmission process. Our educational system aims at only information based knowledge and the holistic views turning the student into a perfect human being and a useful member of society has been completely set aside. Swami Vivekananda aptly said,

"Education is not the amount of information that is put in your brain and runs riot there, undigested, all your life. We must have life-building. Man-making, character-making, assimilation of ideas. If education is identical with information, libraries are the greatest sages of the world and encyclopedias are rishis."

8. Truth (Satya), Righteous Conduct (Dharma), Peace (Shanti), Love (Prema) and Non-violence (Ahinsa) are the core universal values which can be identified as the foundation stone on which the value-based education programme can be built up. These five are indeed universal values and respectively represent the five domains of human personality, intellectual, physical, emotional, psychological and spiritual. They also are correspondingly co-related with the five major objectives of education, namely, knowledge, skill, balance, vision and identity.

9. Primary school stage is the period in child's life when seed of value-education can be implanted in his/her impressionable mind in a very subtle way. If this seed is nurtured by the capable hands of dedicated

teachers in school, if they insert values at appropriate intervals during a child's school life, it can be easily said that half the battle in building up national character has been won.

10. It is very essential that at the school level right from primary stage, deliberate, planned and sustained efforts are made to inculcate basic human values among the students. Values are best initiated by a mother to her small child under her tender care in the secure atmosphere of home. However, nowadays, children are enrolled in school as early as at the age of four. At this impressionable stage, values like respect for parents, elders and teachers, truth, punctuality, cleanliness and courtesy can be easily inculcated in small children. They can also be sensitised regarding gender equality.

11. Besides the personal values, there are certain social values which ought to be imbibed by the young mind. These are the values which concern the whole community concern for the aged and the handicapped, for the deprived sections of the society etc. Sincere belief in the dignity of labour is generally found to be lacking in our young generation. Values of self-dependence and insistence on doing manual labour are thus required to be impressed upon small children.

12. In view of the diverse character of our country, it is essential that certain National Values are also imbibed by our young students. They should be acquainted with the history of India's freedom struggle, cultural heritage, constitutional obligations and the features comprising our national identity. The Committee feels that some of these national values can be imparted indirectly at the primary stage while at the middle and secondary level, these can be included in the curriculum.

13. Another aspect that must be given some thought is religion, which is the most misused and misunderstood concept. The process of making the students acquainted with the basics of all religions, the values inherent therein and also a comparative study of the philosophy of all religions should begin at the middle stage in schools and continue up to the university level. Students have to be made aware that the basic concept behind every religion is common, only the practices differ. Even if there are differences of opinion in certain areas, people have to learn to co-exist and carry no hatred against any religion.

14. One should never forget that all the values are derived from ultimate reality supreme power or self-consciousness to which man orients himself. Once faith in that reality is lost, then values lose their meaning. To believe that we have the divine spark in each one of us is the most important eternal value to be inculcated by the small children even before starting their school life. It is acknowledged now the world over that ultimate goal of education is realisation of the treasure within.

32. The Committee is in agreement with the widely-accepted view that value-based education should be introduced at the school level and extended to college and university level. In the secondary stage, some advanced values which are of vital importance for

national integration should be integrated into the syllabus.

38. With the advancement in information technology, audio-visual media has dominated the information/knowledge system of our country. Under the invasion of Western culture penetrating into India through the media, the young are being literally moved away from our age-old traditions and values. Any attempt to instil indigenous values in students in schools, colleges are over-shadowed by the overwhelming impact of Western culture. The Committee is of the considered view that stringent efforts are required on the part of the Govt. to monitor the programmes being aired/telecast through its media. Similar steps need to be taken so as to have a mechanism of quality control of programmes under the control of private agencies too."

Undisputedly, the aforesaid S.B. Chavan Committee's report was placed before the Parliament for discussion. None can also dispute that past five decades have witnessed constant erosion of the essential social, moral and spiritual values and increase in cynicism at all levels. We are heading for a materialistic society disregarding the entire value based social system. None can also dispute that in secular society, moral values are of utmost importance. Society where there are no moral values, there would neither be social order nor secularism. Bereft of moral values secular society or democracy may not survive. As observed by the Committee, values are virtues in an individual and if these values deteriorate, it will hasten or accelerate the break down of the family, society and nation as a whole. In a society where there is constant evaporation of social and moral values for getting property, power or post, is it not advisable to have solid social foundation from base level so that a grown up person would fight against all kinds of fanaticism, ill will, violence, dishonesty, corruption and exploitation? Answer would obviously be 'yes'.

Further, for controlling wild animal instinct in human beings and for having civilized cultural society, it appears that religions have come into existence. Religion is the foundation for value base survival of human beings in a civilized society. The force and sanction behind civilized society depends upon moral values. Philosophy of co-existence and how to co-exist is thought over by the Saints all over the world which is revealed by various philosophers. How to co-exist, not only with human beings but all living beings on the earth, may be animals, vegetation and environment including air and water, is thought over and discussed by Saints and leaders all over the world which is reflected in religions. If that is taught, it cannot be objected as it is neither violative of constitutional or legal rights nor it offends moral values. This has been dealt with elaborately by the S.B. Chavan Committee. The Committee as stated above had invited suggestions from noted educationists on various aspect of value based education. As stated by the Committee it had benefited by the views of eminent experts/NGOs doing pioneering work in this area. Further, no one can dispute that truth (satya), righteous conduct (dharma), peace (shanti), love (prem) and non-violence (ahinsa) are the core universal values accepted by all religions. Committee has also pointed out that religion is the most misused and misunderstood concept. However, the process of making the students acquainted with basics of all religions, the values inherited therein and also a comparative study of the philosophy of all religions should begin; students have to be made aware that the basic concept behind every religion is common, only the practices differ. If these recommendations made by the Parliamentary Committee are accepted by the NCERT and are sought to be

implemented, it cannot be stated that its action is arbitrary or unjustified.

Further, it appears to be totally wrong presumption and contention that knowledge of different religions would bring disharmony in the society. On the contrary, knowledge of various religious philosophies is material for bringing communal harmony as ignorance breeds hatred because of wrong notions, assumption, preaching and propaganda by misguided interested persons.

The NCFSE would also be in consonance with the fundamental duties enshrined under Article 51A of the Constitution, which inter alia provides as under:

"51A. Fundamental duties. It shall be the duty of every citizen of India:

- (a) (d) .
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f)
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) ..
- (i) to safeguard public property and to abjure violence;
- (j) "

Let us ask a question to ourselves whether during the last more than five decades, have we tried to safeguard the public property and to abjure violence? Whether bands for attaining a political object or strike for redressing the grievances have not increased the violence? In most of the cases, public properties are targeted and damaged. Loss is to the nation. Further, are we trying to promote harmony and the spirit of common brotherhood among all people of India believing in different religions? It appears that we have not taken necessary steps for such a purpose. Similarly, upto now instead of protecting and improving the natural environment, we have damaged it. There is wide spread deforestation; lakes are being used for constructing buildings and we are losing compassion for living creatures including human beings. Why that is so? Let it be discussed by experts. May be that basics of all religions may help in achieving the objects behind fundamental duties.

In *A.S. Narayana Deekshitulu v. State of A.P. and others* [(1996) 9 SCC 548], in a concurring judgment Justice Hansaria aptly pointed out difference between 'religion' and 'dharma' and observed thus:

"143. Our dharma is said to be 'Sanatana' i.e. one which has eternal values; one which is neither time-bound nor space-bound. It is because of this that Rig Veda has referred to the existence "Sanatan Dharmani".

The concept of 'dharma', therefore, has been with us for time immemorial. The word is derived from the root 'Dh.r' which denotes: 'upholding', 'supporting', 'nourishing' and 'sustaining'. It is because of this that in Karna Parva of the Mahabharata, Verse 58 in Chapter 69 says:

"Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfilment of these objects is Dharma; that is definite."

(This is the English translation of the verse as finding place in the aforesaid Convocation Address by Dr. Shankar Dayal Sharma)

144. The Brhadaranyakopanishad identified dharma with truth, and declared its supreme status thus:

"There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrongdoer) with the help of the King. So what is called dharma is really truth. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this."

(English translation of the original text as given in the aforesaid Convocation Address)

145. The essential aspect of our ancient thought concerning law was the clear recognition of the supremacy of dharma and the clear articulation of the status of 'dharma' which is somewhat akin to the modern concept of the rule of law, i.e. of all being sustained and regulated by it.

146. In Verse 9 of Chapter 5 in the Ashrama Vasika Parva of the Mahabharata, Dhritrashtra states to Yudhishthira: "The State can only be preserved by dharma under the rule of law."

147. Ashoka mentioned about victory of dharma in his rock edict at Kalsi which proclaimed his achievement in terms of the moral and ethical imperatives of dharma, and exemplified the ancient dictum: "Dharma Jayate" (where there is Law, there is Victory).

153. The author goes on to say that the perennial truths, rules, and laws that help maintain peace and harmony in one's individual and in the community life constitute dharma. It applies for all times and in all places. Social laws and even national constitutions devoid of such a dharma will lead a society towards an inevitable decline.

155. ..In the practice of dharma, one is advised to shed the veil of ignorance and practise truthfulness in one's thoughts, speech, and actions. How can dharma be secret, having revelation as its source? Withholding nothing, all the great sages in the world shared their

knowledge with humanity. In the Bhagavad Gita, the Bible, Koran, and Dhammapada knowledge, like the sun, shines for all.

156. It is because of the above that if one were to ask "What are the signs and symptoms of dharma?", the answer is: that which has no room for narrow-mindedness, sectarianism, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. A sectarian religion is open to a limited group of people whereas dharma embraces all and excludes none. This is the core of our dharma, our psyche."

It is crystal clear that the word "religion" has different shades and colours. Important shade is dharma (duty). That is to say, duty towards the society and the soul. In Santosh Kumar and others v. Secretary, Ministry of Human Resources Development and another [(1994) 6 SCC 579], the Court negatived the contention that teaching of Sanskrit language as an elective subject would act against secularism as accepted by nine-Judge Bench of this Court in S.R. Bommai v. Union of India [(1994) 3 SCC 1] and held thus:

"16. For the disposal of the cases at hand it is not necessary to elaborately discuss what are the basic requirements of secularism inasmuch as in Bommai case this exercise has been well done by the learned Judges. It would be enough for our purpose to note what some of the learned Judges said in this regard. Sawant, J., with whom one of us (Kuldip Singh, J.) agreed, quoted in para 147 of the report what Shri M.C. Setalvad had stated on secularism in his Patel Memorial Lectures, 1965. One of the observations made by Setalvad was that a secular State is not hostile to religion but holds itself neutral in matters of religion. The further observation in para 148 is that the State's tolerance of religion does not make it either a religious or a theocratic State. Ramaswami, J. stated in para 179 that secularism represents faiths born out of the exercise of rational faculties and it enables to see the imperative requirements for human progress in all aspects and cultural and social advancement and indeed for human survival itself.

17. It would be profitable to note that according to Justice H.R. Khanna secularism is neither anti-God nor pro-God; it treats alike the devout, the agnostic and the atheist. According to him, secularism is not antithesis of religious devoutness. He would like to dispel the impression that if a person is devout Hindu or devout Muslim he ceases to be secular. This is illustrated by saying that Vivekananda and Gandhiji were the greatest Hindus yet their entire life and teachings embodied the essence of secularism. (See his article "The Spirit of Secularism" as printed in Secularism and India: Dilemmas and Challenges edited by Shri M.M. Sankhdhar.)

Therefore, in our view, the word 'religion' should not be misunderstood nor contention could be raised that as it is used in the national policy of education, secularism would be at peril. On the contrary, let us have a secularistic democracy where even a very weak man hopes to prevail over a very strong man (having post, power or property) on the strength of rule of law by proper understanding of duties towards the Society. Value based education is likely to help the

nation to fight against all kinds of prevailing fanaticism, ill-will, violence, dishonesty, corruption, exploitation and drug abuses. As stated above, the NCF 1988 was designed to enable the learner to acquire knowledge and was aimed at self-discipline, courage, love for social justice etc. truth, righteous conduct, peace, non-violence which are core universal values that can become the foundation for building the value based education. These high values cannot be achieved without knowledge of moral sanction behind it. For this purpose, knowledge of what is thought over by the leaders in past is required to be understood in its true spirit. Let knowledge, like the sun, shine for all and that there should not be any room for narrow-mindedness, blind faith and dogma. For this purpose also, if basic tenets of all religions over the world are learnt, it cannot be said that secularism would not survive.

Learned counsel for the petitioners heavily relied upon Article 28 of the Constitution for contending that national curriculum is against the mandate of the said Article. For appreciating the said contention, we would first refer to Article 28:

"28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall 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."

In substance, the aforesaid Article prohibits imparting of religious instructions in any educational institution wholly maintained out of State funds. At the same time, there is no such prohibition where such an educational institution is established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

Further, no person attending any educational institution recognised by the State or receiving aid out of State funds could be compelled 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. So the entire emphasis of the Article is against imparting religious instruction or of performing religious worship. There is no prohibition for having study of religious philosophy and culture, particularly for having value based social life in a society which is degenerating for power, post or property. In *DAV College v. State of Punjab* [(1971) 2 SCC 269] the constitutional validity of certain provisions of Guru Nanak University, Amritsar, Act 21 of 1969 was challenged by DAV (Dayanand Anglo Vedic) College Trust. The Trust was formed to perpetuate the memory of Swami Dayanand Saraswati who was the founder of an organisation known as Arya Samaj. It was claimed that it was having fixed religious programme and its constitution is designed to perpetuate the religious teaching and philosophy of its founder. It was

inter alia contended that as the Guru Nanak University was wholly maintained out of the State funds and the provision under Section 4(2) offends Article 28(1) which is not saved by clause (2) thereof and in that context the Court observed (in para 24) thus:

"24. .If the University makes provision for an academic study and research of the life and teachings of any saint it cannot on any reasonable view be considered to require Colleges affiliated to the University to compulsorily study his life and teachings or to do research in them. The impugned provision would merely indicate that the University can institute courses of study or provide research facilities for any student of the University whether he belongs to the majority or the minority community to engage himself in such study or research but be it remembered that this study and research on the life and teachings of the Guru Nanak must be a study in relation to their culture and religious impact in the context of Indian and world civilizations which is mostly an academic and philosophical study."

The Court further observed (in para 26) as under:

"26. Even so the petitioners have still to make out that Section 4(2) implies that religious instruction will be given. We think that such a contention is too remote and divorced from the object of the provision. Religious instruction is that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular sect or denomination. To provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instructions."

The learned counsel for the petitioners next contended that if philosophy of religion spills into teaching religious tenets, it would fall under "religious instructions". In our view, this submission is hypothetical, premature and without any basis as it is on the assumption that under the guise of religious philosophy, religious instructions would be imparted. Hence, in our view, it is not necessary to refer to the discussion relied upon by the learned counsel in the Constituent Assembly debates. However, we would make it clear that the said discussion is pertaining to religious instructions.

#### Additional Submissions

##### A. Regarding Sanskrit Language

Learned senior counsel Mr. Vaidyanathan further submitted that Sanskrit language is imposed in an unjustified manner.

For Sanskrit language being imposed, it has been pointed that allegation is wholly wrong. The provisions only enable this language to be taught to those students who wish to study it. Sanskrit may be made available as an additional option at the secondary stage and as suitable elective course to all those who wish to study it at the higher secondary stage. It is also pointed out that Sanskrit is one of the official languages of India. Reliance is placed on Santosh Kumar's case (Supra), wherein this Court has emphasized the importance of Sanskrit study and declared the omission of Sanskrit from CBSE syllabus as unjustified.

In the aforesaid case, the Court observed thus:

"19. .we entertain no doubt in our mind that teaching of Sanskrit alone as an elective subject can in no way be regarded as against secularism. Indeed, our Constitution requires giving of fillip to Sanskrit because of what has been stated in Article 351, in which while dealing with the duty of the Union to promote the spread of Hindi, it has been provided that it would draw, whenever necessary or desirable, for its vocabulary, primarily on Sanskrit. Encouragement to Sanskrit is also necessary because of it being one of the languages included in the Eighth Schedule.

20. We, therefore, conclude by saying that in view of importance of Sanskrit for nurturing our cultural heritage, because of which even the official education policy has highlighted the need of study of Sanskrit, making of Sanskrit alone as an elective subject, while not conceding this status to Arabic and/or Persian, would not in any way militate against the basic tenet of secularism. There is thus no merit in the first objection raised by the Board."

B. Regarding Vedic Astrology

It is pointed out that what has been mentioned in the curriculum is 'astronomy' and not 'vedic astrology'. Astronomy is well known science and different from vedic astrology.

C. Regarding Vedic Mathematics

It is submitted that there is no question of imposition of vedic mathematics. It has not been made part of the curriculum but suggested as a computational aid. In teaching mathematics, the teachers are free to merely use it or not as an available idea. It is pointed out that merely because epithet 'vedic' is used, the petitioners has attempted to attribute something of religion to it. The word 'vedic' in this context indicates only time factor.

D. Regarding Hindu Festivals being treated as National Festivals.

It is submitted that this is a clear distortion as the curriculum book no where says so. On the other hand, it says "Schools may organise joint celebration of festivals of major religions and cultural groups. This would generate better understanding of and appreciation and respect for one another and create a tolerant and cohesive society."

E. It is contended that instead of emphasizing development of scientific temper and imparting knowledge to children, to help them develop their own views something contrary is tried to be implemented. There is also distortion of version of history by using the words "Mughals invaded the country as against Britishers conquered the country."

The aforesaid submission does not deserve any consideration hence rejected.

F. Learned senior counsel, Mr. Vaidyanathan, vehemently submitted that NCFSE also runs contrary to Article 14 of the Constitution in as much as it seeks to categorise students into 'gifted' and otherwise for separate treatment only on the basis of 'spiritual quotients' and 'intelligence quotients'. It is his contention that 'intelligence quotient' has been banned through out by the United States of America as not being the correct method to test students. 'Spiritual quotient' is not valid anywhere else in the world. Therefore, the basis of such classification is wholly arbitrary.

The aforesaid question cannot be decided in a writ petition under Article 32. It is for the experts to lay down the criteria for evaluating the merits/gradation/standard of the students and to decide whether criteria adopted in U.S.A. should be followed or not.

#### Non-Consultation with CUBE

In the result, we hold that non-consultation with CUBE cannot be held to be a ground for setting aside the National Curriculum Framework for School Education (NCFSE) as

- a) CUBE is not a statutory body;
- b) There is nothing in the resolution passed by the Government constituting the CUBE in 1986 and 1990 that CUBE is required to be consulted before framing NCFSE. Functions of the CUBE are mainly to advise the Government and co-ordinate between the Centre and State in implementing the National Education Policy.
- c) For one or other reason, it is not reconstituted after 1994, may be that ex-officio members at present constitute CUBE. However, we are not required to decide why the CUBE is not reconstituted. It is for the Government or for the Parliament to decide the said question and to reconstitute the same as it is or by making it a compact Board as suggested by the Prime Minister which is evident from the letter dated 12th February, 1997 written by the Deputy Secretary, Government of India, for reconstitution of CUBE.
- d) NCERT is constituted under the Rules. It also consists of ex-officio members as well as representatives of Parliament and experts in the education.

#### Violation of Article 28

The NCFSE nowhere talks of imparting religious instructions as prohibited under Article 28. What is sought is to have value based education and for 'religion' it is stated that students be given the awareness that the essence of every religion is common. Only practices differ. There is a specific caution that all steps should be taken in advance to ensure that no personal prejudices or narrow minded perceptions are allowed to distort the real purpose. Dogmas and superstitions should not be propagated in the name of education about religions. What is sought to be imparted is incorporated in Article 51(A)(e), which provides "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women" And to see that

universal values, such as truth, righteous conduct, peace, love and non-violence be the foundation of education.

In the result, this petition is dismissed with no order as to costs. Interim relief granted by this Court stands vacated. IAs seeking intervention in this matter stand disposed of accordingly.

JUDIS