

# Supreme Court of India Judgement

(12 September, 2002)

In the matter of

The National Curriculum Framework For School Education, 2000



राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद  
NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING

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# CONSTITUTION OF INDIA

## Chapter IVA

### Fundamental Duties of Citizens

#### ARTICLE 51A

**Fundamental Duties – It shall be the duty of every citizen of India —**

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India
- (d) to defend the country and render national service when called upon to do so;
- (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) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

REPORTABLE NO. 375/2002

IN THE SUPREME COURT OF INDIA  
(ORIGINAL CIVIL JURISDICTION)  
WRIT PETITION (CIVIL) NO. 98 OF 2002  
(Under Article 32 of the Constitution of India)

Ms Aruna Roy and Ors. .. Petitioners

Vs

Union of India and Ors .. Respondents

THE 12TH DAY OF SEPTEMBER, 2002

Present:

Hon'ble Mr. Justice M B. Shah  
Hon'ble Mr. Justice D M Dharmadhikari  
Hon'ble Mr. Justice H K. Sema

Harish N. Salve, Solicitor General, C.S. Vaidyanathan, Raju Ramachandran, Kapil Sibal (N.P.), P. P. Rao, P. S. Misra, Amarendra Sharan, M. N. Krishnamani, Sr. Advocates, Hari Priya, K V Vijaykumar, K.C. Kaushik, Siddhartha Choudhary, R. N. Poddar, C. Radhakrishna, B. V. Balram Das, Ms. Meenakshi Sakhardaude, Ms. Gayatri Goswami, Ms. Aparajita Singh, K.C. Kaushik, D.S. Mahra, Ms. Neelam Sharma, Tara Chandra Sharma, Ajay Sharma, Rupesh Kumar, Rajeev Sharma, Ashok Kr. Pandey, G Balajee, Chandra Shekhar Singh, J.S. Bhasin, Amit Kumar, Amit Tiwary, Vishnu Sharma, Tathagat H Vardhan, Samir Ali Khan, Miss Deepa Rai, Mr S. Pani, R. K. Singh, K.V. Mohan, Sunil Kr Jain, Vijay Hansaria, M S Rahi, J K Bhatia, M.P. Vinod, Deepal Prakash and Nikhil Nayar, Advocates with them for the appearing parties.

**JUDGMENT**

The following Judgment of the Court was delivered :

# **IN THE SUPREME COURT OF INDIA**

## **ORIGINAL CIVIL JURISDICTION**

### **WRIT PETITION (CIVIL) NO. 98 OF 2002**

Ms. Aruna Roy and others ..... Petitioners

*Versus*

Union of India and others ..... Respondents

## **JUDGMENT**

**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 CAGE

As per the Resolution dated 10<sup>th</sup> April, 1986 issued by the Ministry of Human Resource Development (Department of Education), Government of India, the functions of the CAGE 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 Education 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 CAGE.***
2. The revised functions of CAGE 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  $2/3^{\text{rd}}$  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 CAHE was constituted in April 1982 and its term expired in September 1985.

Subsequently, on 19<sup>th</sup> October, 1990, on the same line, the Government of India passed the Resolution reconstituting CAFE which *inter alia* reads thus :

“The Central Advisory Board of Education (CABE) 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 CABE** and it has provided a forum for arriving at a consensus on issues relating to educational and cultural development. CABE 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 functions of the CABE 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 C.A.B.E. was not sought as it has not yet been reconstituted. It is further submitted that the Programme of Action 1992 (POA) states that "C.A.B.E. 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 (C.A.B.E.) 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 C.A.B.E. would be expected to play a meaningful and important role in the implementation of the NPE.**

23.7.3. The C.A.B.E. 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 C.A.B.E. 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 CAFE. 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 (CAFE), 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 42<sup>nd</sup> 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 12<sup>th</sup> 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 CAHE 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 CAHE 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 38<sup>th</sup> CABE meeting in 1975 have been extracted. The relevant portion extracted itself clearly shows CABE'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 CABE makes it amply evident that the NCFSE has to be recommended by the CABE prior to implementation. If there is no question of approval by the CABE as alleged by the respondents, there would have been no requirement for the CABE 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 CABE has adopted the NCF 1988; while NCERT draws up the Curriculum, CABE approves it prior to implementation. Further, the Notification reconstituting CABE refers to the role played by CABE 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 CABE 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 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 CAIE upon its reconstitution in 1990 (by the Government resolution dated 19<sup>th</sup> 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 CABE 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 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.**

*Th 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 Education- A 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 spiritual**—are “correlated with the five major objectives of education, namely knowledge, skill, balance, vision and identity.” (81<sup>st</sup> Report on Value-Based Education presented to Rajya Sabha on 26<sup>th</sup> 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 22<sup>nd</sup> 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 Educations, 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 16<sup>th</sup> January, 1997, which was subsequently re-constituted on 6<sup>th</sup> 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 6<sup>th</sup> 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 (Ahimsa) 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 over-whelming 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 handhs 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, uptil 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 SSC 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 *Brihadaranyakopnishad* 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 Yudhisthira “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: “यतो धर्मस्ततो नयः” (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 narrowmindedness, 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) 6SCC 579], the Court negated 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 CAFE**

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

- a) CAFE is not a statutory body;
- b) There is nothing in the resolution passed by the Government constituting the CAFE in 1986 and 1990 that CAFE is required to be consulted before framing NCFSE. Functions of the CAFE 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 CAFE. However, we are not required to decide why the CAFE 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 12<sup>th</sup>

February, 1997 written by the Deputy Secretary, Government of India, for reconstitution of CABE.

- 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.

..... J.

(M. B. SHAH)

New Delhi;

September 12, 2002

# **IN THE SUPREME COURT OF INDIA**

(Original Civil Jurisdiction)

## **WRIT PETITION (CIVIL) NO. 98 OF 2002**

Ms. Aruna Roy and Ors

.....

Petitioners

*Versus*

Union of India and Ors

.....

Respondents

## **JUDGMENT**

**D. M. DHARMADHIKARI, J.**

I have carefully gone through the erudite and well considered opinion of learned Brother M. B Shah J. I am in respectful agreement with his conclusion but I would like to add my own reasons I am in agreement with the view that education of religions can be imparted even in 'educational institutions' fully maintained out of State funds But the education on religion which can be allowed to be imparted in 'educational institutions fully maintained out of State funds' as

mentioned in Clause (1) of Article 28 of the Constitution has to be education of a nature different from religious education or religious instructions which can be imparted in educational institutions maintained by minorities or those 'established under any endowment or trust' as referred in Clause (2) of Article 28. I have, therefore, found it necessary to give my own opinion on the important issues raised on behalf of the petitioners questioning introduction of religious education in educational institutions fully maintained out of State funds. According to them, it runs counter to the concept of 'secularism' which should guide the activities of the State in the field of education.

**Secularism** is the basic structure of the Constitution. Clause (1) of Article 28 prohibits imparting of 'religious instructions' in educational institutions fully maintained out of State funds. The case of ***D. A. V. College Vs. State of Punjab [1971 (2) SCC 269]*** has been noted. The words "religious instructions" have been held as not prohibiting education of religions dissociated from "tenets, the rituals, observances, ceremonies and modes of worship of a particular sect or denomination". The academic study of the teaching and the philosophy of any great Saint such as Kabir, Gurunanak and Mahabir was held to be not prohibited by Article 28 (1) of the Constitution.



A distinction, thus, has been made between imparting “religious instructions” that is teaching of rituals, observances, customs and traditions and other non-essential observances or modes of worship in religions and teaching of philosophies of religions with more emphasis on study of essential moral and spiritual thoughts contained in various religions. There is a very thin dividing line between imparting of ‘religious instructions’ and ‘study of religions’. Special care has to be taken of avoiding possibility of imparing ‘religious instructions’ in the name of ‘religious education’ or ‘Study of Religions’.

The English word ‘religion’ does not fully convey the Indian concept of religion. Hindus believe in Vedas. The word ‘Dharma’ has a very wide meaning. One meaning of it is the ‘moral values or ethics’ on which the life is naturally regulated. Dharma or righteousness is elemental and fundamental in all nations, periods and times. For example truth, love, compassion are human virtues. This is what Hindu call **Sanatan Dharma** meaning religion which is **immutable, constant, living permanent and ever in existence.** Religion, in wide sense, therefore, is those fundamental principles which sustain life and without which the life will not survive. Rig Veda describes Dharma as **Athodharmani Dharayan.** In this concept of religion or Dharma, different faiths, sects and schools of thoughts merely are

different ways of knowing truth which is one. The various sects or religious groups are understood as **Panth or Sampradaya**. In Western world particularly in Britain, religious education has been understood as nearly identical with the religious instructions. India which is wedded to a secular philosophy by its constitution; 'Religious education' to distinguish it from 'religious instructions' can mean approaching the many religions of the world with an attitude of understanding and trying to convey that attitude to children. This distinction between 'religious instructions' and 'religious education' has to be maintained while introducing a curriculum of religious education and implementing it. This would require a constant vigil on the part of those imparting religious education from primary stage to the higher level otherwise there is a potent danger of religious education being perverted by educational authorities whosoever may be in power by imparting in the name of 'religious education,' 'religious instructions' in which they have faith and belief. Modern philosopher and educationists particularly those who belong to the schools of thought which encourage free thinking and an independence of choice to be given to the children in the matter of inculcating human values and philosophy based on their individual liking or inclination, are very sceptical about imparting religious instructions or religious education by traditional methods. They see that in teaching religions, there is a

possibility of indoctrination or brain-washing of the children and thus, curbing their inquisitiveness and free thinking in the name of religion, Indoctrination of children in a particular faith or belief has to be avoided. J. Krishnamurti, a modern renowned philosopher of India in his book 'Education and the Significance of Life' has sounded a note of caution in introducing religious education. His caveat, in his words, is as under :

"What we call religion is merely organised belief, with its dogmas, rituals, mysteries and Superstitions. Each religion has its own sacred book, its mediator, its priests and its ways of threatening and holding people. Most of us have been conditioned to all this, which is considered religious education; but this conditioning sets man against man, it creates antagonism, not only among the believers, but also against those of other beliefs. Though all religions assert that they worship God and say that we must love one another, they instil fear through their doctrines of reward and punishment, and through their competitive dogmas they perpetuate suspicion and antagonism.

Dogmas, mysteries and rituals are not conducive to a spiritual life. Religious education in the true sense is to encourage the child to understand his own relationship to people, to things and to nature. There is no existence without relationship, and without self-knowledge, all relationship, with the one and with the many, brings conflict and sorrow. Of course, to explain this fully to a child is impossible, but if the educator and the parents deeply grasp the full significance of relationship, then by their attitude, conduct and speech they will surely be able to convey to the child, without too many words and explanations, the meaning of a spiritual life.

Religious education, therefore, even if permitted to be imparted should consist of "understanding the child as he is without imposing upon him an ideal of what we think he should be". Howsoever highly educated, one may be but without deep integration of thought and

feeling, his life is incomplete, contradictory and torn with many fears; and as long as education does not cultivate an integrated outlook on life, it has very little significance.

“True religion is not a set of beliefs and rituals, hopes and fears; and if we can allow the child to grow up without these hindering influences, then perhaps, as he matures, he will begin to inquire into the nature or reality. That is why in educating a child, deep insight and understanding are necessary”.

True religious education is to help the child to be intelligently aware, to discern for himself the temporary and the real, and to have a disinterested approach to life; and would it not have more meaning to begin each day at home or at school with a serious thought, or with a reading that has depth and significance, rather than mumble some oft-repeated words or phrases ..... To educate the student rightly is to help him to understand the total process of himself; for it is only that there is integration of the mind and heart in everyday action that there can be intelligence and inward transformation.

An educator is not merely a giver of information; he is one who points the way to wisdom, to truth. Truth is far more important than the teacher. The search for truth is religion, and truth is of no country,

of no creed, it is not to be found in any temple, church or mosque. Without a search for truth, society soon decays.

**[Source : 'Education and the Significance of Life' by J. Krishnamurti]**

A great philosopher, social reformer and religious man of our times, Vinoba Bhave who studied all the religions of India and some of other countries has suggested a balanced approach in the matter of imparting religious education in pluralistic society wedded to secularism. He finds the best co-ordinating formula on study of religions in 'Vedas' He quotes the following lines of Rig Vedas- 'Ekam Sat Vipra Bahuda Vadanti'. Truth everywhere is same; the devotees worship it in different forms. The other meaning of this Sanskrit couplet is "the thought of truth everywhere is the same, we have understood only a part of it, others have understood the other part of it". Therefore, according to him, different religious thoughts can be assimilated and synthesised for creating religious harmony. In the world, different thoughts on relationship of man with God and nature are to be found in various religions like Hindus, Buddhists, Parsies, Jains, Yahudies, Islams, Cristians and many others. These different thoughts influenced crores of people who are following them. The common factor of all these thoughts should be understood as the ultimate truth. If we delve deep into these various thoughts we get

this knowledge. These words should inspire the educationists and the people of India in creating a real secular society in which 'religion' in its wider sense is imbibed and a heart felt respect develops in people of one religious faith towards people of another religious faith.

The lives of Indian people have been enriched by integration of various religions and that is the strength of this nation. Whatever kind of people came to India either for shelter or as aggressors, India has tried to accept the best part of their religions. As a result, composite culture gradually developed in India and enriched the lives of Indians. This happened in India because of capacity of Indians to assimilate thoughts of different religions. This process should continue for betterment of multi-religious society which is India.

In a pluralistic society like India which accepts secularism as the basic ideology to govern its secular activities, education can include study based on the 'religious pluralism'. 'Religious pluralism' is opposed to exclusivism and encourages inclusivism.

Exclusivism in religion has been explained to mean — the view that one particular tradition alone teaches the truth and constitutes the way to salvation or liberation. The Christians believe in the words

attributed to Jesus in the 'Gospel of John', "No one can come to the Father, but by me". They also believe as early as the third century that dogma of *extra ecclesiam nulla salus* ('outside the church, no salvation).

Muslims similarly believe that there is only one God and His one messenger 'the Prophet'. Jews cherish their ethnically exclusive identity as God's chosen people.

Hindus revere Vedas as eternal and absolute and Buddhists have often seen Gautama's teachings as the Dharma that alone can liberate human beings from illusion and misery.

The above kind of perception has led to inclusivist theologies and religious philosophies that their own tradition presents the final truth and other traditions are seen as approaches to that final truth.

The comprehensive approach to religion which should be inculcated in a society comprising people of different religions and faiths is described as inclusivism. In explicit pluralism, the view accepted is that the great world faiths embodied different perceptions and conceptions of and correspondingly different

responses to, the Real or Ultimate and that within each of them independently the transformation of human existence from self-centeredness to reality-centeredness is taking place.

Education in India which is to be governed by secular ethos contained in its Constitution and where 'religious instructions' in institutions of the State are forbidden by Article 28(1), the 'religious education' which can be permitted, would be education based on 'religious pluralism'. The experiment is delicate and difficult but if undertaken sincerely and in good faith for creating peace and harmony in the society is not to be thwarted on the ground that it is against the concept of 'secularism' as narrowly understood to mean neutrality of State towards all religions and bereft of positive approach towards all religions.

Such religious education permitting 'religious pluralism' having emphasis on inclusivism in religious education instead of allowing exclusivism can be demonstrated by giving instances.

There can be found instances of religious vision capable of either inclusivist or pluralist development within each or the word religion although they may not constitute a central thing.



For instances, in the New Testament, it is written that Logos, which became incarnate as Jesus Christ, was "the light that lightens every man".

In the Hindu Bhagavadgita the Lord says, "However men may approach me, even so do I accept them; for, on all sides, whatever path they may choose is mine". And in the Mahayana stream of Buddhism, the bodhisattva gives himself "for the salvation of all beings" In the Quran, a following declaration is found :-

**To God belong the East  
And the West: whithersoever  
Ye turn, there is the Presence [or Face]  
Of God. For God is all pervading,  
All knowing.**

And the Muslim Sufi poet Rumi wrote this of the different religious traditions : "The lamps are different but the light is the same: it comes from beyond".

The study of religious pluralism can be articulated in generally acceptable way and such attempt has to be made particularly in India which time and again has suffered due to religious conflicts and communal disharmony. What is needed in the education is that the

children of this country should acknowledge the vast range and complexity of differences apparent in the phenomenology of religion while at the same time they should understand the major streams of religious experience and thought as embodying different awarenesses of the one ultimate reality. A wider acceptance of pluralist view of the religious life of humanity must involve developments in the self understanding of each tradition, a modification of their claims to unique superiority in the interests of a more universal conception of the presence of the Real to the human spirit. **[See : Comparative Study of Religion contained in the Encyclopedia of Religion under the heading "Religious Pluralism: p.331-333]**

The purpose of making a survey of various thoughts and philosophy of different religions and the views of different philosophers, educationists and thinkers is only to show that the majority of them do not advocate ban on religious education to children from school to college stage. What has been emphasised is that the religious education imparted to children should be one to make them aware of various thoughts and philosophies in religions without indoctrinating them and without curbing their free thinking, right to make choices for conducting their own life and deciding upon their course of action according to their individual inclinations. For an

all round development of a child, all educationists feel that mere imparting of information to students to sharpen their intellect is not enough. Inner qualities of head and heart as also capacity to regulate their own life and their relation with society should also be imparted to them for their own and general good of the society as also for achieving the highest goal of life. The attainment of constitutional ideals is possible only if side by side with sharpening intellect, moral character of children, is also developed to make them good citizens.

How best this religious pluralism to accord with 'secular thought' of the country can be achieved by properly selecting the material for inclusion in the text books for children of different ages and different stages in the education, is a matter which has to be left to the academicians and educationists. Their involvement with all dignitaries and with other experts in related fields is necessary. This exercise has to be undertaken by the Government for which any direction from the court is neither required and nor can the court assume such power to encroach on the field of preparation of an educational policy by the State.

The scrutiny of the text books to find out whether they conform to the secular thought of the country is also to be undertaken by the

experts, academicians and educationists. The members of NCERT should be open to any such dialogue with the academicians and educationists. On the basis of general consensus, suitable curriculum, which accords with secularism as understood in wide and benevolent sense, has to be evolved.

The expression 'religious instructions' used in Article 28 (1) has a restricted meaning. It conveys that teaching of customs, ways of worships, practices or rituals cannot be allowed in educational institutions wholly maintained out of States funds. But Article 28 (1) cannot be read as prohibiting **study of different religions** existing in India and outside India. If that prohibition is read with the words "religious instructions", study of philosophy which is necessarily based on study of religions would be impermissible. That would amount to denying children a right to understand their own religion and religions of others, with whom they are living in India and with whom they may like to live and interact. Study of religions, therefore, is not prohibited by the Constitution and the constitutional provisions should not be read so, otherwise the chances of spiritual growth of human-being, which is considered to be the highest goal of human existence, would be totally frustrated. Any interpretation of Article 28 (1), which negates the fundamental right of a child or a person to get education

of different religions of the country and outside the country and of his own religion would be destructive of his fundamental right of receiving information, deriving knowledge and conducting his life on the basis of philosophy of his liking

The debates in the Constituent Assembly when Article 28 of the Constitution was being considered are illuminating and helpful in understanding the expression 'religious instruction' used in the said Article. See the following part of the debates:-

**Pandit Lakshmi Kanta Maitra:** May I put the Hon'ble Member one question? There is, for instance, an educational institution wholly managed by the Government, like the Sanskrit College, Calcutta. There the Vedas are taught, *Smritis* are taught, the *Gita* is taught, the *Upanishads* are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22 (1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of Vedas, or *Smritis*, or *Shastras* or *Upanishads* comes within the meaning of a religious instruction? In that case all these institutions will have to be closed down.

**The Hon'ble Dr. B.R. Ambedkar:** Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is, therefore, quite difficult for me.

**Pandit Lakshmi Kanta Maitra:** Take for instance the teaching of *Gita*, *Upanishads*, the Vedas and things like that in Government Sanskrit Colleges and schools.

**The Hon'ble Dr. B.R. Ambedkar:** My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that Pagambar the Prophet is the last Prophet and so on, in other words, what we call "dogma" A dogma is quite different from study.

**Mr. Vice-President :** May I interpose for one minute? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction, it was regarded as a course in culture

**Pandit Lakshmi Kanta Maltra :** My point is, this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction? Expounding Upanishads is not a matter of research

**Mr. Vice-President :** It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College

**Shri H.V. Kamath :** On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory?

**The Hon'ble Dr. B.R. Ambedkar :** It is left to them. It is left to the community to make it compulsory or not. **All that we do** is to lay down that that community will not have the right to make it **compulsory for children of communities which do not** belong to the **Community which runs the school.**

**Prof. Shihban Lal Saksena :** **The way in which** you have explained the word **"religious instruction" should find a place** in the Constitution.

**The Hon'ble Dr. B. R. Ambedkar :** I think the **courts** will decide when the matter **comes up before them.**

The above relevant part of the constitutional debates and the concluding remark of Dr. B.R. Ambedkar give an indication of the minds of the framers of the Constitution. They had seen the distinction between "religious instruction" as mentioned in clauses (1), (2) & (3) of Article 28 and "study of religions" or "religious education" as a philosophical study.

Constitution is a permanent document framed by the people through their chosen and learned representatives for regulating their social and political life in free India. The constitution has been accepted by the people to govern them for all times to come. The basic structure of the Constitution is unchangeable and only such amendments to the Constitution are allowed which do not affect its basic structure and rob it of its essential character. The Constitution was framed by its makers keeping in view the situations and conditions prevailing at a time of its making; but being a permanent document, it has been conceived in a manner so as to apply to situations and conditions which might arise in future. The words and expressions used in the Constitution, in that sense, have no fixed meaning and must receive Interpretation based on experience of the people in the course of working of the Constitution.

The immortal words of the Chief Justice—Holmes, should guide us in interpreting words and expressions used in our Constitution. He said, "spirit of law is not logic but it has been experience" His words apply with greater force to constitutional law

The word "secularism" used in the preamble of the Constitution is reflected in provisions contained in Articles 25 to 30 and Part IVA added to the Constitution containing Article 51A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years experience of the working of the Constitution. The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstanding and intolerance *inter se* between sections of people of different religions, faiths and beliefs. 'Secularism,' therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. 'Secularism' can be practised by adopting a complete neutral approach towards religions or by a positive approach by making one section of religious people to understand and respect religion and faith of another section of people. Based on such mutual understanding and respect for each other's religious faith, mutual distrust and intolerance can gradually be eliminated.

Study of religions, therefore, in school education cannot be held to be an attempt against the secular philosophy of the Constitution.



The real meaning of secularism in the language of Gandhi is ***Sarva Dharma-Samabhav*** meaning **equal treatment and respect for all religions**, but we have misunderstood the meaning of secularism as ***Sarva-Dharma-Sam-Abhav*** meaning **negation of all religions**. The result of this has been that we do not allow our students even touch of our religious books. Gandhiji in his lifetime has been trying to create religious and communal harmony and laid down his life in doing so. His ardent follower Vinoba Bhave after independence has not only learnt all the languages and made in-depth study of all the religions of India but covered length and breadth of India on foot to unite the hearts of Indian people by spreading his message of non-violence and love. Based on his in-depth study of all religious books of India, he published, in his life time, their essence in the form of different books. He has very strongly recommended that the essence of various religions, which he published in book forms like ***Quran Saar, KhistaDharma-Saar, Bhagwat Dharma-Saar, Manushasanam etc.***, should be introduced to the students through text books because these religious books have been tested since thousands of years and proved to be useful for the development of man and human society. In a society wedded to secularism, 'study of religions' would strengthen the concept of secularism in its true spirit.

In the name of secularism, we should not keep ourselves aloof from such great treasures of knowledge which have been left behind by sages, saints and seers. How can we develop cultured human beings of moral character without teaching them from childhood the fundamental human and spiritual values. **(See *Vinoba Sahitya*, Vol. 17, pg. 44-49 and 67).**

Article 28 (1), therefore, does not prohibit introduction of study of religions in the State educational institutions including those wholly or partly aided by the States. As a matter of fact, study of religions has been considered necessary for the unity and integrity of India. Indian society is composed of people of various religions and faiths. They are expected not only to live together and tolerate each other, but to live a harmonious life in peace and love. Before and after partition in India, religious conflicts and communal disturbances have impeded the growth of this nation and its attempt towards progress. After National Education Policy of 1986, a shift by the impugned National Educational Policy 2002 towards teaching of religions in the schools to educate children to understand common factors in all religions, is not a non-secular step. Even before the government decided to make a shift in the educational policy in that direction, eminent educationalists, thinkers, philosophers and academicians have expressed thoughts that for all round development of child, study of

religions should start in rudimentary form from school education and should continue up to the higher education. It has been emphasised that education should not be for the purposes of making a child merely literate and intelligent. The real education is one in which a child gradually realises that he is made up not only of body and mind but also some inner elemental qualities. Some thoughts of Gandhi on religious education were read before us on behalf of the Petitioners to point out that Gandhi was sceptical on introduction of religion in education. His writings, if read in proper context, on the contrary, contain strong recommendations that common and basic tenets of religions be imparted to the children. In 1908 in an article in *Hind Swaraj* on "**Religious Education**," Gandhi expressed his thoughts thus:-

"The question of religious education is very difficult. Yet we cannot do without it. India will never be godless. Rank atheism cannot flourish in this land. The task is indeed difficult. My head begins to turn as I think of religious education, Our religious teachers are hypocritical and selfish; they will have to be approached. The Mullas, the Dasturs and the Brahmins hold the key in their hands, but if they will not have the good sense, the energy that we have derived from English education will have to be devoted to religious education. This is not very difficult. Only the fringe of the ocean has been polluted, and it is those who are within the fringe who alone need cleansing. We who come under this category can even cleanse ourselves, because my remarks do not apply to the millions. In order to restore India to its pristine condition, we have to return to it. (*Hind Swaraj* (1908), p 1071

To me religion means Truth and Ahimsa or rather Truth alone, because Truth includes Ahimsa, Ahimsa being the necessary and indispensable means for its discovery. Therefore anything that promotes the practice of these virtues is a means for imparting religious education and the best way to do this, in my opinion, is for the teachers rigorously to practise these virtues in their own person. Their very association with the boys, whether on the playground or in the class

room, will then give the pupils a fine training in these fundamental virtues.

**So much for instruction in the universal essentials of religion. A curriculum of religious instruction should include a study of the tenets of faiths other than one's own. For this purpose the students should be trained to cultivate the habit of understanding and appreciating the doctrines of various great religions of the world in a spirit of reverence and broad-minded tolerance.** This if properly done would help to give them a spiritual assurance and a better appreciation of their own religion. There is one rule, however, which should always be kept in mind while studying all great religions, and that is that one should study them only through the writings of known votaries of the respective religions. For instance, if one wants to study the Bhagavata one should do so not through a translation of it made by a hostile critic but one prepared by a lover of the Bhagavata. Similarly to study the Bible one should study it through the commentaries of devoted Christians. This study of other religions besides one's own will give one a grasp of the rock bottom unity of all religions and afford a glimpse also of that universal and absolute truth which lies beyond the 'dust of creeds and faiths'

Let no one even for a moment entertain the fear that a reverent study of other religions is likely to weaken or shake one's faith in one's own. The Hindu system of philosophy regards all religions as containing the elements of truth in them and enjoins an attitude of respect and reverence towards them all. This of course presupposes regard for one's own religion. Study and appreciation of other religions need not cause a weakening of that regard; it should mean extension of that regard to other religions.

In this respect religion stands on the same footing as culture. Just as preservation of one's own culture does not mean contempt for that of others, but requires assimilation of the best that there may be in all the other cultures, even so should be the case with religion. (*Young India*, 6-12-'28)."

Democracy cannot survive and Constitution cannot work unless Indian citizens are not only learned and intelligent, but they are also of moral character and imbibe the inherent virtues of human-being such as truth, love and compassion. Thinkers and philosophers strongly recommend introduction of teaching of religions in education. There may be some difference of opinion between them as to at what stage

of education it should be introduced. Whether it should be introduced right from the primary stage, may be a subject of debate and it is not for the Courts but for the educationalists and academicians, to assist the Government in formulating a sound Educational Policy for primary education. India is mostly composed of people, who are followers of one or the other religions or faiths. A very small section comprises of those who are non-believers. They be described as purely humanists and rationalists. Bertrand Russell in ***The School Curriculum Before Fourteen***, speaking on the teaching history to the school children, advocates imparting knowledge of impact of thinkers and philosophers. He said : "I should not keep silence, but I should not hold up military conquerors to admiration. The true conquerors, in my teaching of history, should be those who did something to dispel the darkness within and without — Buddha and Socrates, Archimedes, Galileo and Newton, and all the men who have helped to give us mastery over ourselves or over nature. And so I should build up the conception of lordly splendid destiny for the human race, to which we are false when we revert to wars and other atavistic follies, and true only when we put into the world something that adds to our human dominion (See Bertrand Russell on "Education" at p. 172).

Bertrand Russell, who was a sceptic and free thinker opined against indoctrinating children by religious teaching. He is, however, not of the opinion that children should be kept away from the knowledge of religion. He has noted a caution that sometimes teaching of history and religion in the schools which are run and maintained by religious sects may indoctrinate children to mould them to their thought and belief and that would certainly be harmful. Because sometimes certain views on these subjects are imparted so as to magnify one country or one religion and denigrate and degrade the other religions Bertrand Russell is equally critical of the secular teachings that is negative approach to religions. **(See Bertrand Russell "Principles of Social Reconstruction" pp. 105-106).**

Pt. Jawaharlal Nehru Ex. P.M., Dr. S. Radhakrishnan and Dr. Zakir Hussain, Ex-Presidents of India were also strongly of the view that in the march of human philosophy only science and spirituality will be the two greatest primary forces which will keep human-beings in best state of existence. The opinion of Dr. S. Radhakrishnan on education is thus :-

"The end of education, as envisaged by Radhakrishnan, is self-knowledge. Though man is a composite of body, mind and spirit, he has to live by what is the highest in him, which is the spirit and the latter 'should not degenerate into intellect and/or will'. It is the spirit which is the source of all achievement, creativity, freedom and discipline." **(See : The Social and Political Thought of Dr. S. Radhakrishnan by Clarissa Rodrigues, p. 121).**

The greatest secular personality of this country, ex-Prime Minister Jawaharlal Nehru has expressed following thoughts :

"... All education must have a definite social outlook and must train our youth for the kind of society we wish to have. Politicians may strive for political and economic changes in order to bring that society into existence, but the real basis of that society must be laid in the teaching of our schools and colleges. The real change will have to come in the minds of men, though that change can and will be helped greatly by external changes in the environment. The two processes go together and should help each other."

"The process of education, therefore, must help to build men and women suited to the age and the task they have to perform. It should presumably deal with certain basic factors in the development of boys and girls to give them strength of character and the right outlook on life. I do not mean by this that they should be conditioned only in one particular way, but rather that they should develop, apart from the essentials of character, a trained receptive and tolerant mind which is capable of considering problems in their entirety and trying to arrive at solutions. They should in effect develop into integrated human beings. Integration means not only a process within themselves, which of course is highly important, but also a measure of integration with the environment." (See : **Nehru on Social Issues by S. P. & J. C. Aggarwal**)

Swami Ranganathananda of Ramakrishna Mission, in the book "**Eternal Values for a Changing Society, Vol. 3: Education for Human Excellence**", has identified six objectives, which should be achieved by education. The following objectives which have been culled fully accord with the constitutional philosophy:-

1. The training of our children to an appreciation of our nation's cultural heritage and to equip them with the desire and the capacity to enhance the same and leave to posterity a richer legacy.
2. The training of our children in talents and capacities by which they become productive units of society and the source of its economic strength.

3. The equipment of our children with the qualities of courage and vision to protect our newly won national freedom, to preserve its democratic structure, function and liberties, and to carry the same to ever wider fields and ever higher levels.
4. The training of our children in virtues and graces that will make them emotionally stable individuals and enable them to live in peace, harmony, and co-operation with their fellow citizens.
5. The training of our children in virtues and graces that will make them international in their outlook and sympathies, and enable them to live in peace, harmony, and co-operation with the emerging world community.
6. The training of our children to an awareness of the spiritual and trans-social dimension of the human personality and to a converging life-endeavour in the realization of this fact in and through life and action.
7. It is only thus that our education will become a fit discipline to help to continue the march of the Indian tradition from an impressive past to a glorious future. "

As pointed out by learned counsel on behalf of petitioners, if there are certain offending portions in the curriculum, which are not historically correct or has a tendency to misrepresent, suppress or project a wrong information, they can be removed. The learned Solicitor General on behalf of the Union of India and the counsel appearing for NCERT have very candidly stated that if those portions are identified, there would be no objection to the Government to consider their deletion from the curriculum. It has been emphatically stated that the object of introducing 'study of religions' in the education from primary stage is to ensure all round development of a



child and with the object that he grows as citizen with respect for constitutional values.

As has been stated by us above, while dealing with the first point, that a National Policy of school education having effect and implications upon children of whole of India should be prepared after careful and thoughtful deliberations. Learned Solicitor General stated that NCERT before finalising the curriculum has not only held symposiums, conferences, talks and debates, but also elicited opinions not only of members of NCERT, but also ex officio members of CIBE. It is stated that although a formal meeting of the members of CIBE could not be called for seeking their advice, but each one of them individually was sent a copy of curriculum to elicit their views for and against it. It is after long deliberations, discussions and exchange of views that the curriculum has been finalised. It is submitted that any restraint puts on introduction of curriculum could harm the interest of the students, who have already started their academic session and a very large quantity of text books and literatures prepared by NCERT in conformity with the National Curriculum of 2002, would go waste. It is, therefore stated that this court should vacate interim order restraining introduction of National Curriculum on certain subjects as mentioned in the Order of this Court dated 1<sup>st</sup> March, 2002. We have looked into the Constitution and functions of CIBE, copy of which has

been provided to us. The Constitution and functions of NCERT are also given to us for perusal. From the language employed therein, we find that the functions of the two Bodies are not so clearly delineated as to put them in water tight compartments. In evolving a National Policy on Education and based thereon a curriculum, in accordance with long standing practice, it was desirable to consult CAGE although for non-consultation the National Policy and the Curriculum, cannot be set aside by the court. In a constitutional democracy, Parliament is supreme and policies have to be framed and approved by the Parliament. Parliament had constituted CAGE and NCERT and if CAGE has any objection to the National Curriculum nothing prevented it from expressing its opinion accordingly. It is ultimately for the Parliament to take a decision on the National Education Policy one way or the other. It is not the province of the Court to decide on the good or bad points of an Educational Policy. The Court's limited Jurisdiction to intervene in implementation of a policy is only if it is found to be against any statute or the Constitution. We have not found anything in the Educational Policy or the Curriculum which is against the Constitution. We have found no ground to grant any relief as prayed for by the Petitioners. We would, however, direct the Union of India to consider the matter of filling the vacancies in the membership of CAGE

and convening a meeting of CAGE for seeking opinion on the policy and the curriculum.

All bodies created by executive power of the State, are answerable to Parliament which is the supreme legislative body with all powers in suggesting and formulating a National Education Policy. It is open to Parliament to fill nominations to CAGE, re-constitute it or do away with it. The court can have no jurisdiction in that subject. This court can enforce constitutional provisions and laws framed by the Parliament. It cannot, however, compel that a particular practice or tradition followed in framing and implementing the policy, must be adhered to. The court has to keep in mind the above limitations on its jurisdiction and power. It is true that if a policy framed in the field of education or other fields runs counter to the constitutional provisions or the philosophy behind those provisions, this court must, as part of its constitutional duty, interdict such policy.

For the reasons given above, we do not find that the National Education Policy 2002 runs counter to the concept of secularism

Before parting with this case, we record our appreciation for the efforts and industry put on the subject by the parties and their counsel. Their joint efforts are commendable and we recognise their sincerity and best intentions in seeking judicial intervention for safeguarding the interest of children, their parents and through them the nation as a whole. We have, however, found no ground to grant any directions as prayed for in these petitions. The petitions are, therefore, disposed of with the observations made above. We make no orders as to costs.

..... J.

**( D. M. DHARMADHIKARI )**

New Delhi;

12<sup>th</sup> September, 2002.

IN THE SUPREME COURT OF INDIA  
ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO. 98 OF 2002**

Ms. Aruna Roy and others

..... Petitioners

*Versus*

Union of India and others

..... Respondents

**JUDGMENT**

**SEMA, J.**

I had the privilege of reading the draft judgments prepared by my learned brothers Shah, J. and Dharmadhikari, J. I am broadly in agreement with the conclusion reached at by Brother Shah, J. However, I have some reservations in regard to the opinion expressed by him in respect of role and functions of the Central Advisory Board of Education (CABE) in evolving a national policy on education. Justice Shah was of the view that since CABE is a non-statutory body, its consultation is not necessary.

The view of Justice Shah on the role and functions of CAGE at page 7 of the judgment reads thus:

“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 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.”

While it is true that the CAGE is a non-statutory body but one cannot overlook the fact that it has been in existence since 1935. It has also been accepted as an 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. I am, therefore, of the view that the importance of the role played by CAGE cannot be side tracked on the plea that the body is non-statutory, particularly when it has been playing an important role in the past for evolving a consensus on the major policy decisions involving national policy on education.

It is now well-settled principle that past practices and conventions form a precedent and followed unless decided otherwise. In the case of CAGE, the term of nominated members is only for three years but for ex-officio members there is no fixed term of office. This would mean that the existence of the Board, as such, is in perpetuity. This would also be clearly indicative of the importance of the Board. No resolution has been brought to our notice disbanding or discontinuing CAGE. The only document, which has been brought to our notice is the letter dated 12<sup>th</sup> February, 1997 written by the Deputy Secretary, Cabinet Secretariat, addressed to the Ministry of Human Resource Development, referring to its letter dated 2<sup>nd</sup> January, 1997 and saying that the Prime Minister has felt that the proposed Board is too unwieldy and desired to know whether there could be a compact Board. Thereafter, the matter appears to have not been pursued further.

In my view, side stepping of such an important Advisory Board as CAGE on the plea of non reconstitution of nominated members is not proper. There is yet another reason as to why consultation of the Board is highly essential in issues like relating to the State and Central coordination in evolving a national consensus pertaining to

national policy on education which require implementation in all the States, as the education has now been brought to the Concurrent List by the 42<sup>nd</sup> amendment to the Constitution. This would dispel the lurking suspicion in the minds of the people and also to project the transparency and purity in the decision making process of the Government.

It is true, whether to continue or to discontinue such Board is within the realm of the executive authority, but as long as it exists, consultation with such body, which has been in existence since 1935, cannot be side-tracked. The Union of India is, therefore, directed to consider the filling up the vacancies of the nominated members of CAGE and convene a meeting of CAGE for seeking its opinion on National Curriculum Framework for School Education (NCFSE) as expeditiously as possible and in any case, before the next academic session. This would not, however, mean that NCFSE 2000 published by NCERT is illegal for non-consultation of CAGE.

With this view on CAGE, I concur with the view taken by Brother Shah, J in all other respects.

.....J  
(H.K. SEMA)

New Delhi,  
September 12, 2002



IN THE SUPREME COURT OF INDIA  
ORIGINAL CIVIL JURISDICTION

**WRIT PETITION (CIVIL) NO. 98 OF 2002**

MS ARUNA ROY AND ORS. ....PETITIONER (S)

VERSUS

UNION OF INDIA AND ORS. ... RESPONDENT (S)

**ORDER**

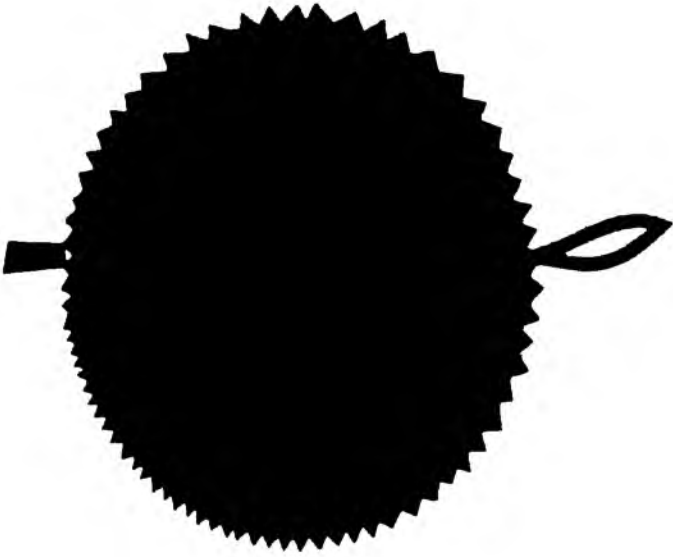
In the result, the writ petition is dismissed. There shall be no order as to costs.

.....J  
(M.B. Shah)

.....J  
(D M. DHARMADHIKARI)

.....J  
(H.K. SEMA)

New Delhi ;  
September 12, 2002



**SEALED IN MY PRESENCE**

**Sd/-**

**14.9.2002**