The Gujarat University, Ahmedabad vs Krishna Ranganath Mudholkar And Others on 21 February, 1962

Equivalent citations: 1963 AIR 703, 1963 SCR SUPL. (1) 122

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, Syed Jaffer Imam, K.N. Wanchoo, N. Rajagopala Ayyangar

PETITIONER:
THE GUJARAT UNIVERSITY, AHMEDABAD

Vs.

RESPONDENT:
KRISHNA RANGANATH MUDHOLKAR AND OTHERS

DATE OF JUDGMENT:
21/02/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
IMAM, SYED JAFFER
SUBBARAO, K.
WANCHOO, K.N.
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 703 1963 SCR Supl. (1) 122
CITATOR INFO :
R 1964 SC1823 (6,34,35)
R 1970 SC2079 (10)
R 1971 SC1731 (12)
RF 1979 SC 83 (2)
RF 1987 SC2034 (16,17)
RF 1988 SC 305 (7)

ACT:
University Education--Fixation of exclusive medium of instruction--Legislative Competence of State Legislature--Constitution of India, Art. 254 (1), Seventh Schedule, List I, Entry 66, List II, Entry 11--Gujarat University Act, 1949 (Bom. 56 of 1949) as amended by Act 4 of 1961, ss. 4, 18, 20, 22, 38A--University Statutes, 207,

208 209.

HEADNOTE:

The second respondent joined the First Year Arts Class of the St. Xavier's College, affiliated to the Gujarat University, where instruction was imparted through the medium of English and after successfully completing that course sought admission to the classes preparing for the Intermediate Arts Examination of the University through the medium of English. The Principal of the college informed him that in view of the provisions of the Gujarat University Act, 1949, and statutes 207, 208 and 209 framed by the Senate of the University, as amended in 1961, he could not be admitted without the sanction of the University. The first respondent (father of the second respondent)

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moved the Vice-Chancellor but sanction was refused. The respondents then moved the High Court under Art. 226 of the Constitution for writs requiring the university and the Principal of the College not to enforce the provisions of ss. 4 (27) 18(1) (XIV) and 38 A of the Gujarat University Act and Statutes 207, 208, 209 and that Court holding in favour of the respondents issued the- writs prayed for. The State and the University filed separate appeals to this Court. It was contended on behalf of the University that s. 4 of the Act conferred power on the University to impose Gujarati or Hindi as the exclusive medium of instruction and examination, and that the impugned provisions were valid. The questions for determination were, (1) whether the Gujarat University had the power under the Act to prescribe Gujarati or Hindi or both as exclusive medium or media of instruction and examination, (2) whether legislation authorising the University to impose such media was constitutionally valid in view of Entry 66 of list I of the Seventh Schedule to the Constitution.

Held, (Per Sinha, C. J., Imam, Wanchoo, Shah and Ayyangar,JJ.), that neither under the Gujarat University Act, 1949, as originally enacted nor as amended by Act 4 of 1961, was power conferred on the University to impose Gujarati or Hindi or both as exclusive medium or media of instruction or examination and since no power was conferred on the University the Senate could exercise no such power.

Clause (27) of s. 4 of the Act, which alone expressly dealt with the subject of medium of instruction, properly construed, did not indicate that the Legislature was therein indirectly dealing with the subject of prescribing an exclusive medium of instruction. From the use of the word "Promote" read in the context of the indefinite article "a", it was clear that the University was not empowered to impose Gujarati or Hindi as exclusive medium of instruction and examination. Use of the definite article "the" in the

proviso in relation to English as the medium of instruction supported this view.

Since cl. (27) was not intended to authorise the imposition of Gujarati or 'Hindi or both as exclusive medium or media, cl. (28) of s. 4 could not also be held to do so. Nor did ss. 18, 20, 22 or any other section of the Act confer that authority.

A corporation has ordinarily an implied power to carry out its objects; but that rule could not by itself, in the absence of express provisions in the Act, authorise the University to impose an exclusive medium of instruction.

The letter dated August 7, 1949, addressed by the Government of India to the Universities and Provincial Governments

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requesting them to gradually replace English as the medium of instruction at the University stage by the regional or State language could not affect the interpretation of the plain language of the Act.

Nor could the Statement of Objects and Reasons of the Act, which proposed to empower the University to adopt Gujarati or the national language as the medium of instruction, justify the court in assuming that the proposal was carried out, the Statement of Objects and Reasons must be ignored in interpreting the statute.

It was not correct to say that legislation prescribing the medium or media of instruction in higher education and other instructions must fall within Item 11 of List 11 of the Seventh Schedule to the Constitution. The use of the expression "subject to" in that Item clearly indicates that legislation in respect of matters excluded by that Item cannot be undertaken by the State Legislature.

Hingir-Rampur Coal Co. v. State of Orissa, [1961] 1 S.C.R. 537, referred to.

Item 11 of List II and Item 66 of List I must be harmoniously construed and where they overlap the power conferred by Item 66 on the Parliament must prevail over the power conferred on the State Legislatures by Item 11.

The test of the validity of a State Legislation on University education or education in Technical and Scientific Institutions not covered by Entry 64 of List I, would be whether such legislation impinges on the field reserved for the Union by Item 66 of List, I and prejudicially affects coordination and determination of standards, and not the existence of some definite Union Legislation to that end. If there be one, that would prevail over the State legislation under Art. 254(1) of the Constitution. Even if there is no such legislation, State law trenching upon the Union field must still be invalid.

Item 66 of List I cannot be narrowly construed and the power it confers extends to all ancillary or subsidiary matters which can be fairly and reasonably comprehended by it, such as disparities resulting from the adoption of a regional medium of instruction resulting in a falling of standards in

higher education. The word 'co-ordination' does not merely mean evaluation but also harmonising relationship for concerted action.. The power under this Item is absolute and not conditioned by the existence of a state of emergency or unequal standards calling for its exercise.

Since medium of instruction is not an item in the legislative Lists, it necessarily falls within Item II of List II, as

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also within items 63 to 66 of List I and in so far as it is a necessary incident of the power under Item 66 it must be deemed to be excluded from Item 11 of List II.

If a legislation imposing a regional language or Hindi as the exclusive medium of instruction is likely to result in lowering of standards, it must necessarily fall within Item 66 of List I and be excluded to that extent from Item II of List II.

Per Subba Rao, J.-Under what entry a legislation falls must be decided by the scope and effect of the legislation and by its pith and substance. Case-law has laid down various tests to get at the core of the legislation but no case has yet held that even if the pith and substance of a legislation falls within one entry, it is liable to be struck down on the ground that it may possibly come into conflict with another by a co-ordinate legislature under another entry. If the impact of a State law on a Central subject has the effect of wiping out or abridging the Central field, then the State law may be held to be a colourable exercise of power and that in pith and substance it falls not under the State entry but under the Union entry. The case-law does not, however, recognise an independent principle of direct impact outside the doctrine of pith and substance.

Prafulla Kumar v. Bank of Commerce, Khulna, A.I.R. 1947 P.C. 60,. State of Bombay v. F. N. Balsara, [1951] S.C.R. 682, A. S. Krishna v. State of Madras, [1957] S.C.-R. 399, Union Colliery Co. of British Columbia Ltd. v. Bryden [1899] A.C. 580, Bank of Toronto v. Lambe, [1882] 12 A.C. 575 and Attorney General for Alberta v. Attorney General for Canada, [1939] A.C. 117, discussed.

The well-settled rules of interpretation are that the widest amplitude should be given to the language of the Entries and when they overlap this Court should reconcile and harmonise them. So construed, it was clear that medium of instruction was included in Entry 11 of List II and not in Entry 66 of List I which relates to "co-ordination" and "determination of standards". The State legislature could, therefore, make a law empowering the University to prescribe a regional language as the exclusive medium of instruction. The Gujarat University Act was thus within Entry II and did not affect the Union Entry which does not necessarily involve a particular medium of instruction.

Calcutta Gas Co. v. The State of West Bengal [1962] Supp. 3

S. C. R. I applied,
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When an act confers a power on a corporation such as the University, it impliedly grarnts the power of doing all acts which are essentially accessary for exercising a that power. The provisions of the Act leave no manner of doubt that the University had the implied power to prescribe for the purposes of higher education a number of media or instructions or even a sole and exclusive medium. That power is implicit in cl. (1) of s.4 and the other clauses thereof. Clause (27) did not curtail that power but conferred an additional power, to promote the study of Gujarati or Hindi and the use of them as medium of instruction and examination; the proviso to it also corresponds with the scheme.

JUDGMENT:

CIVIL APPELLATE JURISDICTION :Civil Appeals Nos. 234 and 262 of 1962.

Appeals from the judgment and order dated January 24, 1962, of the Gujarat High Court in, Special Civil Application No. 624 of 1961.

J. C. Bhatt, H. K. Thakore and V. J. Merchand, for the appellants (in C.A. No. 234/62) and respondents nos. 2 and 3 (in C.A. No. 262/62).

N. A. Palkhivala, C. T. Daru, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondent No. 1 (in both the appeals.) M. C. Setalvad, Attorney-General of lndia J. M. Thakore, Advocate-General for the State of Gujarat, M. G. Doshit and R. H. Dhebar, for the respondent No. 3 (in C.A. No. 234/62) and the appellant (in C. A. No. 262 of 1962). I. M. Nanavati and o. Oopalakrishna, for the intervener (in C.A. No. 234/62).

Frank Anthony, Charanjit Talwar, P. O. Agarwala, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for Intervener No. 2 (in both the appeals).

1962. September 21. The judgment of Sinha, C. J., Imam, Wanchoo, Shah and Ayyangar, JJ., was delivered by Shah, J., Subba Rao,J. delivered a separate judgment.

SHAH J.-Shrikant son of Shri Krishna Madholkar appeared for the Secondary School Certificate examination held by the State of Bombay in March, 1960, and was declared successful. He took instruction in the various subjects prescribed for the examination through the medium of Marathi (which is his mother-tongue) and answered the questions at the examination also in the medium of Marathi. Shrikant joined the St. Xavier's College affiliated to the University of Gujarat, in the First Year Arts class and was admitted in the section in which instructions were imparted through the medium of English. After successfully completing the First Year Arts course in March, 1961,

Shrikant applied for admission to the classes preparing for the Intermediate Arts examination of the University through the medium of English. The Principal of the College informed Shrikant that in view of the provisions of the Gujarat University Act, 1949, and the Statutes 207, 208 and 209 framed by the Senate of the Uni- versity, as amended in 1961 he could not without the sanction of the University permit him to attend classes in which instructions were imparted through the medium of English. Shri Krishna, father of Shrikant then moved the Vice-Chancellor of the University for sanction to permit Shrikant to attend the "English medium classes" in the St. Xavier's College. The Registrar of the University declined to grant the request, but by another letter Shrikant was "'allowed to keep English as a medium of examination" but not for instruction.

A petition was then filed by Shri Krishna Madholkar on behalf of himself and his minor son Shrikant in the High Court of Gujarat for a writ or order in the nature of Mandamus or other writ, direction or order requiring the University of Gujarat to treat ss. 4(27), 18 (i) (xiv) and 38A of the Gujarat University Act, 1949, and Statutes 207, 208 and 209 as void and inoperative and to forbear from acting upon or enforcing those provisions and requiring the Vice- Chancellor to treat the letters or circulars issued by him in connection with the medium of instruction as illegal and to forbear from acting upon or enforcing the same, and also requiring the University to forbear from objecting to or from prohibiting the admission of Shrikant to "the English medium Arts class," and requiring the Principal of the College to admit Shrikant to the "English medium Inter- mediate Arts class" on the footing that the impugned provisions of the Act, Statutes and letters and circulars were void and inoperative.

The High Court of Gujarat by order dated January 24, 1962, issued the writs prayed for. The University and the State of Gujarat have separately appealed to this Court with certificates of fitness granted by the High Court. The judgment of the High Court proceeded upon diverse grounds which are summarised in their judgment as follows (1) Statutes 207 and 209 in so far as they seek to lay down and impose Gujarati and/or Hindi in Devanagri script as media of ins-

truction and examination in institutions other than those maintained by the University are unauthorised and therefore null and void, for neither s. 4(27) nor any other provision of the Act empowers the University to lay down Gujarati or Hindi as a medium of instruction and examination in such institutions or to forbid the use of English as a medium of instruction and examination for and in such institutions;

(2) In any event, the University has the power only to lay down Gujrati or Hindi as one of the medium of instruction and examination and not as the only medium of instruction and examination to the exclusion of other languages;

(3) The proviso to cl. 27 of s. 4 of the Gujarat University Act as amended by Act 4 of 1961 constitutes an encroachment on the field of Entry 66 of List I of the Seventh Schedule to the Constitution and is therefore beyond the legislative competence of the State and the Statutes 207 and 209 made thereunder are null and void ; and (4) Even if on a true construction of s. 4(27) and other provisions of the Act the University is authorised to prescribe a particular language or languages as medium or media of instruction and examination for affiliated colleges and to prohibit the use of English as a

medium of instruction and examination in affiliated colleges, the provisions authorising the imposition of exclusive media and the Statutes and circulars issued in pursuance thereof are void and infringing Articles 29 (1) and 30 (1) of the Constitution.

We have declined to hear arguments about the alleged infringement of fundamental rights under Articles 29 (1)and 30 (1) by the Act assuming as it authorises imposition of Gujarati or Hindi as an exclusive medium of instruction, for, in our view, the petition suffers from a singular lack of pleading in support of that case, and even the St. Xavier's College authorities who had at one stage adopted a noncontentious attitude but later supported the case of the petitioner, did not choose to place evidence on the record which would " justify the Court in entering upon an investigation of this plea of far reaching .importance. Manifestly, the decision of the question whether such legislation infringes Arts. 29 (1) and 30(1) depends upon proof of several facts such as existence of a distinct language, script or culture of a section of citizens for whom the St. Xavier's College caters or the existence of a minority based on religion or language having been by the enactment of the impugned legislation obstructed or likely to be obstructed in the exercise of its rights to establish and administer educational institutions of its choice. We, therefore, express no opinion on the question whether the provisions of the Act and the Statutes and circulars issued infringe any fundamental rights of any section of citizens or any minority religious or linguistic. We must, however, make it clear that we refuse to decide the question not because the petitioner had no right to maintain the petition under Art. 226 of the Constitution as contended by the University. and the State of Gujarat, but because of the paucity of pleading and evidence on the record.

Two substantial questions survive for determination-(1) whether under the Gujarat University Act, 1949, it is open to the University to prescribe Gujarati or Hindi or both as an exclusive medium or media of instruction and examination in the affiliated colleges, and (2) whether legislation authorising the University to impose such media would infringe Entry 66 of List I, Seventh Schedule to the Constitution.

St. Xavier's College was affiliated to the University of Bombay under Bombay Act 4 of 1928. The Legislature of the Province of Bombay enacted the Gujarat University Act, 1949, to establish and incorporate a teaching and affiliating University "as a measure of decentralization and re-organisation" of University education in the province. By s. 5(3) of the Act, from the prescribed date all educational institutions admitted to the privileges of the University of Bombay and situate within the University area of Gujarat were deemed to be admitted to the privileges of the University of Gujarat. Section 3 incorporated by the University with perpetual succession and a common seal. Section 4 of the Act enacted a provision which is not normally found in similar Acts constituting Universities. By that. section various powers of the University were enumerated. These powers were made exercisable by diverse authorities of the University set out in s. 15. We are concerned in these appeals with the Senate, the Syndicate and the Academic Council. Some of the powers conferred by S. 4 were made exercisable by s. 18 by the Senate. The Senate was by that section authorised, subject to conditions as may be prescribed by or under the provisions of the Act, to exercise the powers and to perform the duties as set out in sub-s. (1). By s. 20 certain powers of the University were made exercisable by the Syndicate, and by s. 22, the Academic Council was invested with the control and general regulation of, and was made responsible for, the maintenance of standards of teaching and

examinations of the University and was authorised to exercise certain powers of the University. The powers and the duties of the Senate are to be exercised and performed by the promulgation of Statutes, of the Syndicate by Ordinances and of the Academic Council by Regulations. In 1954, the Gujarat University framed certain Regulations dealing with the media of instruction. They are Statutes 207, 208 and 209. Statute 207 provided (1) Gujarati shall be medium of Instruction and Examination.

(2) Notwithstanding anything in clause (1) above' English shall continue to be the medium of instruction and examination for a period not exceeding ten years from the date on which section 3 of the Gujarat University Act comes into force, except as prescribed from time to time by Statutes.

(3) Notwithstanding anything in clause (1) above.- it is hereby provided that non--

Gujarati students and teachers will save the option, the former for their examination and the latter for their teaching work, to use Hindi as themedium, if they so desire.

The Syndicate will regulate this by making suitable Ordinances in this behalf, if, as and when necessary.

(4) Notwithstanding anything in (1), (2), (3) .above, the medium of examination and instruction for modern Indian Languages and English may be the respective languages.

Statute 208 provided that the medium of instruction and examination in all subjects from June, 1955, in First Year Arts, First Year Science and First Year Commerce in all subjects and from June, 1956, in Inter Arts' Inter Science, Inter Commerce and First Year Science (Agri.) shall cease to be English and shall be as laid down in Statute 207(1). This Statute further provided that a student or a teacher who feels that he cannot "use Gujarati or Hindi tolerably well' would be permitted the use of English in examination and instruction respectively up to November, 1960, (which according to the academic year would mean June, 1961) in one or more subjects. Statute 209 is to the same effect enumerating therein the permitted use of English for the B.A., B.Sc., and-other examinations. After the constitution of a separate State of' Gujarat, Act 4 of 1961 was enacted by the Gujarat State Legislature. By that Act the proviso to s. 4(27) was amended so as to extend the use of English as the medium of instruction beyond the period originally contemplated and s. 38A which imposed an obligation upon all affiliated colleges and recognised institutions to comply with the provisions relating to the media of instruction was enacted. It was provided by s. 38A(2) that if an affiliated college or recognised institution contravenes the provisions of the Act, Rules, Ordinances & Regulations in respect of media of instruction the rights conferred on such institution or college shall stand withdrawn from the date of the contravention and that the college or institution shall cease to be affiliated college or recognised institution for the purpose of the Act. The Senate of the University thereafter amended Statutes 207 and 209. Material part of Statute 207 as amended is as follows :-

(1) Gujarati shall be the medium of instruction and examination:

> Notwithstanding anything contained in subitem (1) above, Hindi will be permitted as an alternative medium of instruction and examina- tion in the following faculties :
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> (i) Faculty of Medicine,
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> (ii) Faculty of Technology including En- gineering, and
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> (iii) Faculty of Law ; and
>
> (iv) in all faculties for post-graduate studies ;
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> (2) Notwithstanding anything contained in clause (1) above, English may continue to. be the medium of instruction and examination for such period and in respect of such subjects and courses of studies as may, from time to time, be prescribed by the Statutes under sec.

4(27) of the Gujarat University Act for the time being in force.

(3) Notwithstanding anything contained in clause (1) above, it is hereby provided that students and teachers, whose mother-tongue is not Gujarati will have the option, the former for their examination and the latter for their instruction to use Hindi as the medium., if they so desire.

(4) Notwithstanding anything contained in clauses (1) & (3) above, it is hereby provided that the affiliated Colleges, recognised Institutions and University Departments, as the case may be, will have the option to use, for one or more subjects, Hindi as a medium of instruction and examination for students whose mother- tongue is not Gujarati.

(5) Notwithstanding anything in clauses (1), (2), (3) and (4) above, the medium of examination and instruction for modem Indian languages and English may be the respective languages.

Statute 209 as amended provides that the medium of instruction and examination in all subjects in the examinations enumerated therein shall cease to be English and shall be as laid down in Statute 207 as amended with effect from the years mentioned against the respective examinations.

The Registrar of the University thereafter issued a Circular on June 22, 1961, addressed to Principals of Affiliated Colleges stating that the Vice-Chancellor in exercise of the powers vested in him under s. 11(4)(a) of the Act was pleased to direct that-

(i) Only those students who have done their Secondary education through the medium of English and who have further continued their studies in First Year (Pre-University) Arts Class in the year 1960-61 through English, shall be permitted to continue to use English as the medium of their examination in the Intermediate Arts Class for one year i.e. in the year 1961-62, and

(ii) The Colleges be permitted to make arrangements for giving instructions to students mentioned in (i) above through the medium of English for only one year i.e. during the academic year 1961-62, and

(iii) That the Principals shall satisfy themselves that only such students as mentioned in (i) above are permitted to avail themselves of the concession mentioned therein.

Shrikant had not appeared at the S.S.C. Examination in the medium of English and under the first clause of the circular he could not be permitted by the Principal of the St. Xavier's College to continue to use English as the medium of instruction in the Intermediate Arts class: if the Principal permitted Shrikant to do so the College would be exposed to the penalties prescribed by s. 38A.

The petitioner challenged the authority of the University to impose Gujarati or Hindi as the exclusive medium of instruction under the powers conferred by the Gujarat University Act, 1949, as amended by Act 4 of 1961. The University contended that authority in that behalf was expressly conferred under diverse clauses of s. 4, and it being the duty of' the Senate to exercise that power under s. 18(XIV), Statutes 207 and 209 were lawfully promulgated. In any event, it was submitted that the University being a Corporation invested with control over higher education for the area in which it functions such a power must be deemed to be necessarily implied.

In considering whether power to impose Gujarati or Hindi or both as exclusive medium or media of instruction is conferred upon the University by the Gujarat University Act, 1949, clauses (1), (2), (7), (8), (10), (14), (27), and (28) of s. 4 only need be considered. By cl. (1) power is conferred upon the University "to provide for instruction, teaching and training in such branches of learning and courses of study` as it may think fit to make provision for research and dissemination of knowledge". We do not, having regard to the phraseology used by the Legislature, agree with the High Court that this power is restricted in its exercise to institutions set up by the University and does not extend to affiliated colleges. The language used in the clause does not warrant this restriction. But we agree with the High Court that the power conferred by cl. (1) does not relate primarily to the medium of instruction but to the syllabi in diverse branches of learning and courses of study. The clause confers authority upon the University to direct that instruction, teaching and training be imparted in different branches of learning and courses of study as the University thinks fit, but not to prescribe an exclusive medium in which instruction in the branches of learning and courses of study is to be imparted. Clause (2) which authorises the University "to make such provision as would enable affiliated colleges and recognised institutions to undertake specialisation of studies", has no direct bearing on the subject of an exclusive medium of instruction. Nor does cl. (7) which enables the University "to lay down the courses of instruction for various examinations" authorise the University to prescribe an exclusive medium, of instruction. Clause (8) which confers power "to guide the teaching in colleges or recognised institutions" has no bearing on the power to prescribe an exclusive medium. Power to designate branches of learning, or courses of study in which instruction is to be imparted, or power to take steps to facilitate specialized studies, or to guide teaching in institutions affiliated to or recognised by the University undoubtedly includes the power to indicate the medium through which instructions were at the date of the Act normally imparted, but that power by itself does not include, in the absence of a provision express or by clear

implication, power to compel instruction through an exclusive medium. Clause (10) provides that the University shall have the power "to hold examinations and confer degrees, titles, diplomas and other academic distinctions on persons who =(a) have, pursued approved courses of study in the University or in an affiliated college unless exempted therefrom in the manner prescribed by the Statutes, Ordinances and Regulations and have passed the examination prescribed by the University, or (b) have carried on research under conditions prescribed by the Ordinances and Regulations". Counsel for the University contended that by cl. 10(a), the University had the authority to approve courses of study in the manner prescribed by the Statutes, Ordinances and Regulations and as power was given by s. 18 (XIV) to the Senate to frame Statutes providing either Gujarati or Hindi or both. as medium or media of instruction, the power of the University to impose an exclusive medium of its choice was expressly entrusted to the University. But the argument proceeded upon an incorrect reading of the section. The provision does not by itself empower the University to prescribe the use of any exclusive medium of instruction and examination. The University is thereby authorised to confer degrees or, academic distinctions upon persons who have pursued approved courses of study and have passed the examination prescribed by the University. Power is also reserved to the University to confer degrees or academic distinctions upon persons who have not pursued the courses prescribed by the University if exemption in that behalf is prescribed by the Statutes, Ordinances or Regulations. The expression "in the manner"

> prescribed by the Statute, Ordinance or Regulation has no reference to the class of persons who have pursued approved courses of study in the University or in an affiliated college, but qualifies the expression "unless exempted therefrom" immediately preceding. By the clause the University is authorised to confer degrees, diplomas or distinctions not only upon persons who have pursued the courses of instruction prescribed and have passed the qualifying examination but upon other persons as well who have not pursued the courses of instruction but have passed the prescribed examination, if exemption in behalf is given by the Statutes. Ordinances or Regulations. The power under sub-cl. (a) of cl. (10) does not carry with it the power to impose an exclusive medium such as Gujarati or Hindi. By cl. (14) power among others to take measures to ensure that proper standards of instructions, teaching or training are maintained in the affiliated colleges and recognised institutions is granted, and cl.(15) invests the University with power to control and co-ordinate the activities of, and give financial aid to affiliated colleges and recognised ins- titutions, but not the power to provide for an exclusive medium as claimed by the University. The Legislature in cl.(27) has dealt with the subject of medium of instructions and the other clauses on which reliance is placed do not expressly deal with that topic. It would be difficult then to hold that the Legislature while providing in cl.(27) about the medium of instruction was also dealing indirectly with the subject of prescribing an exclusive medium of instruction, when it made provisions relating to instruction, teaching and training in educational institutions or for enabling those institutions to undertake specialized studies- or giving guidance in teaching in colleges, or for providing for degrees or academic distinctions or for taking measures ensuring proper standard of instructions, teaching or training or the conduct of activities.

Clause (27), before it was amended, by Act IV of 1961, ran as follows :-

> "to promote the development of the study of Gujarati and Hindi in Devnagari script and the use of Gujarati or Hindi in Devnagari script or both as a medium of instruction and exami- nation;
>
> Provided that English may continue to be the medium of instruction and examination in such subjects and for such period not exceeding ten years from the date on which section 3 comes into force as may from time to time be prescribed by the Statutes."

By the first paragraph of cl.(27) power is conferred to promote the development and use of Gujarati or Hindi or both as a medium of instruction. That clause is not in its expression, grammatically accurate. It should, if it had been drafted in strict accordance with the rules of grammar, have stated that the University was invested with power to promote the use of Gujarati or Hindi or both as a medium or media of instruction and examination. The use of the expression "promote" suggests that power was confer-red upon the University to encourage the study of Gujarati and Hindi and their use as media of instruction and examination: it does not imply that power was given to provide for exclusive use of Gujarati or Hindi or both as a medium or media of instruction and examination and that inference is strengthened by the indefinite article "'a"

> before the expression "medium of instruction". The use of the expression "a medium of instruction" clearly suggests that Gujarati or Hindi was to be one of several media of instruction, and steps were to be taken to encourage the development of Gujarati and Hindi and their use as media of instruction and examination. From the use of the expression "promote" read in the context of the indefinite article "a"

it is abundantly clear that power to impose Gujarati or Hindi as the medium of instruction and examination to the exclusion of other media was not entrusted to the University. It may be noticed that if the expression "'promote the use of Gujarati or Hindi as a medium of instruction and examination" was intended to mean "'to promote the exclusive use of Hindi or Gujarati", a similar interpretation would have to be put on the use of the expression "'to promote the development of Gujarati and Hindi", thereby ascribing to the Legislature an intention that no other languages beside Gujarati and Hindi were to be developed. Use in the proviso of the definite article "'the" in relation to English as medium of instruction further supports this view. When the Legislature enacted that English was to continue as the medium of instruction and examination in certain subjects it merely provided for continuance of an existing and accepted exclusive medium of instruction. It is common ground, that in the University of Bombay the exclusive medium of instruction was English, in the various affiliated colleges in the region or area over which the Gujarat University acquired authority. By the proviso to cl.(27) of s.4 in the subjects to be prescribed under the proviso the medium of instruction was to continue to remain English. By the operative part of cl.(27) therefore the Legislature provided that use of Gujarati or Hindi or both as a medium or media of instruction was to be promoted thereby indicating that Gujarati or' Hindi or both was or were not to be the exclusive medium or media but to be adopted in addition to the accepted medium viz. English, for instruction and examination, whereas under the proviso in respect of the subjects prescribed, English was to be

the only medium for the periods specified. Clause (28) which confers authority upon University "to do all acts and things whether incidental to the powers aforesaid or not as may be requisite in order to further the objects of the University and generally to cultivate and promote arts, science and other branches of learning and culture" confers additional powers which though not necessarily incidental to the powers already conferred by cls.(1) and (27) were intended to be exercised to further the object of the University. But if the object of the University as indicated by cl.(27) was not to authorise the imposition of Gujarati or Hindi or both, as an exclusive medium or media it would be straining the language of cl.(28) to interpret it as exhibiting an intention to confer upon the University by using the somewhat indefinite expression "requisite in order to further the objects" power to provide for such an exclusive medium.

Reliance was also placed upon s.18(1)(xiv) by counsel for the University in support of the contention that the Senate was bound to make provision relating to the use of Gujarati or Hindi in Devanagri script or both as a medium of instruction and examination. It is true that s.18(1) deals with powers and duties of the Senate. Phraseology used in the diverse clauses is Prima facie not susceptible of the meaning that each clause authorises the Senate to exercise the powers of the University and imposes also a concomitant duty.Assuming, however, that the power conferred upon the Senate also carries with it a duty to exercise the power, we do not think that the exercise of power or performance of duty relating to the use of Gujarati or Hindi or both as a medium or media of instruction and examination postulates a duty to make exclusive use of Gujarati or Hindi or both for that purpose. The use of the indefinite article "'a" even in this clause clearly indicates that Gujarati or Hindi or both were to be selected out of several media of instruction and examination and not the sole medium. No other clause of ss. 18, 20 and 22 relating to the powers and duties of the Senate, the Syndicate and the Academic Council was relied upon and we are unable to find any which invests the University or its organs, such as the Senate, the Syndicate or the Academic Council with power to impose Gujarati or Hindi as an exclusive medium of instruction'. A corporation has ordinarily an implied power to carry out its objects; power to indicate a medium of instruction in affiliated or constituent colleges may therefore be deemed to be vested in a University but the power to indicate a medium of instruction does not carry with it, in the absence of an express provision, power to impose upon the affiliated institutions an exclusive medium of instruction. Reliance was placed by counsel for the University upon a letter dated August 7, 1949, (which is reproduced in the University Commission's report), addressed by the Government of India to various Universities and Provincial Governments. It was recited in the letter that the Government of India were of the opinion that in the interest of national education it was hoped that Universities and Provincial Governments will take early steps towards the implementation of certain recommendations viz :-

> "Item I.-The Government of India requests the University and Provincial Governments to take steps to :-
>
> (a) replace English as the medium of ins-

truction at the University stage, by gradual stage during next five years and

(b) adopt in its place the language of the State or Province or region as the medium of instruction and examination.

Item II.-Universities are requested to

(i) provide for a compulsory test in the Federal language during the first degree course of the University without prejudice to the results of the Degree Examination and

(ii) provide facilities for the teaching of the Federal language to all students who wish to take it up as optional subject."

Item III.-	x	x	x	x	x	x
Item IV and V-	x	x	x	x	x	x
Item VI.-	x	x	x	x	x	x
Item VII.	x	x	x	x	x	x

The Government of India may have in the year 1948 intended that English should be replaced in gradual stages as the medium of instruction by the language of the State or the Province, or region, but that will not be a ground for interpreting the provisions of the Act in a manner contrary to the intention of the Legislature plainly expressed. This recommendation of the Government of India has been ignored if not by all, by a large majority of Universities. It is also true that in the Statement of Objects and Reasons of the Gujarat University Act, it was stated..... As recommended by the Committee, it is proposed to empower the University to adopt Gujarati or the national language as the medium of instruction except that for the first ten years English may be allowed as the medium of instruction in subjects in which this medium is considered necessary". But if the Legislature has made no provision in that behalf a mere proposal by the Government, which is incorporated in the Statement of Objects and Reasons will not justify the Court in assuming that the proposal was carried out. Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute, but in interpreting the Statute they must be ignored. We accordingly agree with the High Court that power to impose Gujarati or Hindi or both as an exclusive medium or media has not been conferred under cl. (27) or any other clauses of s. 4.

The proviso to cl. (27) was amended by Act 4 of 1961 and the following proviso was substituted :-

> "Provided that English may continue to be the medium-
>
> (i) of instruction and examination for such period as may from time to time be prescribed by the Statutes until the end of May 1966 in respect of. such subjects. and courses of study as may be so prescribed.
>
> (11) of instruction and examination for such period as may from time to time be prescribed by the Statutes until the end of May 1968 in respect of post-

graduate instruction., teaching and training in subjects comprised in Faculties of Agriculture and Technology including Engineering and until the end of May 1969 in respect of post-graduate instruction, teaching and training in the subjects comprised in the Faculty of Medicine, and

(iii) of examination at two successive examinations in any subjects held next after the period prescribed under clause (i) or as the case may be, the period prescribed under clause (ii) in respect of those candidates who during such period have failed to appear in or pass the respective examination held with English as the medium of examination in the same subjects :

> Provided further that nothing in this clause shall effect the use of English as the medium of instruction and examination in respect of English as a subject."
>
> It is common ground before us that if power to impose Gujarati or Hindi as an exclusive medium is not conferred by the operative part of cl. (27.) there is nothing in the proviso which independently conferred such a power upon the University. The proviso merely extends the use of English as the medium of instruction in certain branches beyond the period of ten years originally prescribed. The proviso has however some bearing on the interpretation of cl. (27) : in the second proviso the distinction between the definite article "the"preceding "'medium of instruction and examination" in so far as it relates to English is further accentuated. The second proviso savs-" Provided further that nothing in this clause shall affect the use of English as the medium of instruction and examination in respect of English as a subject". When the Legislature intended to provide English as the sole medium of instruction, definite . article the was used while in other cases indefinite article a was used denoting thereby that the medium would be One out of several. Therefore, neither under the Act as originally framed nor under the Act as amended by Act 4 of 1961 was there any power conferred on the University to impose Gujarati or Hindi or both as exclusive medium or media of instruction and examination and if no such power was conferred upon the University, the Senate could not exercise such a power. The Senate is a body acting on behalf of the University and its powers to enact Statutes must lie within the contour of the powers of the University conferred by the Act.
>
> On the view we have expressed, consideration of the question whether the State Government is competent to enact laws imposing Gujarati or Hindi or both as an exclusive medium or media of instruction in the Universities, may appear academic, But we have thought it necessary to consider the question because the High Court has declared certain provi- sions of Act 4 of 1961 relating to medium of instruction as ultra vires the State Legislature and on the question which was argued at considerable length we were invited by counsel for the appellants to express our view for their guidance in any future legislation which may be undertaken. Power of the Bombay Provincial Legislature to enact the Gujarat University Act was derived from Entry No. 17 of the Government of India Act, 1935, List 11 of the Seventh Schedule-"Education including Universities other than those specified in paragraph

> 13 of List I". In List I item 13 were included the Benaras Hindu University and the Aligarh Muslim University. Therefore, except to the extent expressly limited by item 17 of List II read with item 13 of List I, a Provincial Legislature was invested with plenary power to enact legislation in respect of all matters pertaining to education including education at University level. The expression " education' is of wide import and includes all matters relating to imparting and controlling education; it may therefore have been open to the Provincial Legislature to enact legislation prescribing either a federal or a regional language as an exclusive medium for subjects selected by the University. If by s. 4 (27) the power to select the federal or regional language as an exclusive medium of instruction had been entrusted by the Legislature to the University, the validity of the impugned statutes 207, 208 and 209 could not be open to question. But the Legislature did not entrust any power to the University to select Gujarati or Hindi as an exclusive medium of instruction under s. 4 (27). By the Constitution a vital change has been made in the pattern of distribution of legislative powers relating to education between the Union Parliament and the State Legislatures. By item No. 1 1 of List II of the Seventh Schedule to the Constitution, the State Legislature has power to legislate in respect of "'education including Universities subject to the provisions of items 63, 64, 65 and 66 of List I and 25 of List III".

Item No. 63 of List I replaces with modification item No. 13 of List I to the Seventh Schedule of the Government of India Act, 1935. Power to enact legislation with respect to the institutions known at the commencement of the Constitution as the Benaras Hindu University, the Aligarh Muslim University and the Delhi University and other institutions declared by Parliament by laws to be an institution of national importance is thereby granted exclusively to Parliament. Item 64 invests the Parliament with power to legislate in respect of "'institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament, by law, to be institutions of national importance". Item 65 vests in the Parliament power to legislate for "Union agencies and institutions for (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime". By item 66 power is entrusted to Parliament to legislate on "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". Item 25 of the Concurrent List confers power upon the Union Parliament and the State Legislatures to enact legislation with respect to "vocational and technical training of labour". It is manifest that the extensive power vested in the Provincial Legislature to legislate with respect to higher, scientific and technical education and vocational and technical training of labour, under the Government of India Act is under the Constitution controlled by the five items in List I and List III mentioned in item 11 of List II. Item 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. Use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In Hingir-Rampur Coal Company v. State of Orissa (1), this Court in considering the import of the expression "subject to" used in an entry in List II, in relation to an entry in List I observed that to the extent of the restriction imposed by the use of the expression

""subject to" in an entry in List II, the power is taken away from the State Legislature. Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of "education including Universities" power to legislate on that subject must (1) [1961] 2 S.C.R. 537.

lie with the Parliament. The plea raised by counsel for the University and for the State of Gujarat that legislation prescribing the medium or media in which instruction should be imparted in institutions of higher education and in other institutions always falls within item 11 of List II has no force. If it be assumed from the terms of item 11 of List II that power to legislate in respect of medium of instruction falls only within the competence of the State Legislature and never in the excluded field, even in respect of institutions mentioned in items 63 to 65, power to legislate on medium of instruction would rest with the State, whereas legislation in other respects for excluded subjects would fall within the competence of the Union Parliament. Such an interpretation would lead to the somewhat startling result that even in respect of national institutions or Universities of national importance, power to legislate on the medium of instruction would vest in the Legislature of the States within which they Are situate, even though the State Legislature would have no other power in respect of those institutions. Item 11 of List II and item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap : but to the extent of overlapping, the power conferred by item 66 List I must prevail over the power of the State under item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour. The power to legislate in respect of primary or secondary education is exclusively vested in the States by item No. 11 of List II, and power to legislate on medium of instruction in institutions of primary or secondary education must therefore rest with the State Legislatures. Power to legislate in respect of medium of instruction is, however, not a distinct legislative head; it resides with the State Legislatures in which the power to legislate on education. is- vested, unless it is taken away by necessary intendment to the contrary. Under items 63 to 65 the power to legislate in respect of medium of instruction having regard to the width of those items, must be deemed to vest in the Union. Power to legislate in respect of medium of instruction, in so far it has a direct bearing and impact upon the legislative head of co-ordination and determination of' standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66 List I to be vested in the Union.

The State has the power to prescribe ;he syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the co-ordination of such standards either on an All India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the' one hand, it is certainly within the province of the State Legislature to

prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is to ensure maintenance or improvement of standards. The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254(1) ; even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid. Counsel for the University submitted that the power conferred by item No. 66 of List I is merely a power to co- ordinate and to determine standards i. e. it is a power merely to evaluate and fix standards of education, because, the expression "co-ordination" merely means evaluation, and "determination" means fixation. Parliament has therefore power to legislate only for the purpose of evaluation and fixation of standards in institutions referred to in item

66. In the course of the argument, however, it was somewhat reluctantly admitted that steps to remove disparities which have actually resulted from the adoption of a regional medium and the falling of standards, may be undertaken and legislation for equalising standards in higher education may be enacted by the Union Parliament. We are unable to agree with this contention for several reasons. Item No. 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon, the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehend in that subject. Again there is nothing either in items 66 or elsewhere in the Constitution which supports the submission that the expression "co-ordination"

> must mean in the context in which it is used merely evaluation, co-ordination in its normal connotation means harmonising or bringing into proper relation in which all the things coordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by item 66 List I is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power.

There is nothing in the entry which indicates that the power to legislate on co-ordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to co-ordinate, and of necessity, implied therein is the power to prevent what would make coordination impossible or difficult. The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention. It is true that "medium of instruction" is not an item in the legislative list. It falls within item No. 11 as a necessary incident of the power to legislate on education :

it also falls within items 63 to 66. In so far as it is a necessary incident of the powers under item 66 List I it must be deemed to be included in that item and therefore excluded from item 11 List II. How far State legislation relating to medium of instruction in institutions has impact upon co-ordination of higher education is a matter which is not susceptible, in the absence of any concrete challenge to a specific statute, of a categorical answer. Manifestly, in imparting instructions in certain subjects, medium may have subordinate importance and little bearing on standards of education while in certain others its importance will be vital. Normally, in imparting scientific or technical instructions or in training students for professional courses like law, engineering, medicine and the like existence of adequate text books at a given time, the existence of journals and other literature, availability of competent instructors and the capacity of students to under- stand instructions imparted through the medium in which it is imparted are matters which have an important bearing on the effectiveness of instruction and resultant standards achieved thereby. If adequate text-books are not available or competent instructors in the medium, through which instruction is directed to be imparted, are not available or the students are not able to receive or imbibe instructions through the medium in which it is imparted, standard is must of necessity fall, and legislation for co-ordination of standards in such matters would include legislation relating to medium of instruction.

If legislation relating to imposition of an exclusive medium of instruction in a regional language or in Hindi, having regard to the absence of textbooks and journals, competent teachers and incapacity of the students to understand the subjects, is likely to result in the lowering of standards, that legislation Would, in our judgment, necessarily fall within item 66 of List I and would be deemed to be excluded to that extent from the amplitude of the power conferred by item No. 11 of list II It must be observed, that these observations have been made by us on certain abstract considerations which have been placed before us. We have no specific statute the validity of which, apart from the one which we will presently mention, is challenged.

Counsel for the State and the University invited us to express our opinion on the question whether legislation which the State may undertake with a view to rectify the deficiency pointed out by us in interpreting s. 4 (27), would be within the competence of the State Legislature. What shape such legislation may take is for the State to decide. We have, however, proceeded somewhat broadly to deal with what we conceive is the true effect of item 66 in List I in its relation to item 11 in List II in so far as the two items deal with the power of the Parliament and the State Legislature to enact laws in respect of medium of instruction.

We are unable, however, to agree with the High Court that Act 4 of 1961 in so far as it amended the proviso to s. 4(27) is invalid, because it is beyond the competence of the State Legislature. By the amendment of the proviso to s. 4 (27), the Legislature purported to continue the use of English as the medium of instruction in subjects selected by the Senate beyond a period of ten years prescribed by the Gujarat University Act, 1949. Before the date on which the parent Act was enacted, English was the traditional medium of instruction in respect of all subjects at the University level. By enacting the proviso as it originally stood, the University was authorised to continue the use of English as an exclusive medium of instruction in respect of certain subjects to be selected by the Senate. By the amendment it is common ground that no power to provide an exclusive medium other than the pre-existing medium is granted.

Manifestly, imparting instruction through a common medium, which was before the Act the only medium of instruction all over the Country, cannot by itself result in lowering standards and coordination and determination of standards cannot be affected thereby. By extending the provisions relating to imparting of instruction for a period longer than ten years through the medium of English in the, subjects selected by the University, no attempt was made to encroach upon the powers of the Union under item No. 66 List I. If the University have no power to prescribe an exclusive medium, the enactment of s. 38A which prescribes penalties for failing to carry out directions relating to the media of instruction will doubtless be not invalid. The order of the High Court relating to the invalidity of the Statutes 207 and 209 of the University in so far as they purport to impose "Gujarati or Hindi or both as exclusive medium or media" of instruction, and the circulars enforcing those statutes must therefore be confirmed. We do not express any opinion on the alleged infringement of fundamental rights of the petitioner under Arts. 29(1), 30(1) of the Constitution. We set aside the order of the High Court in so far as it declares s. 4 cl. (27) proviso and s. 38A invalid. This will be, however, subject to the interpretation placed by us upon the relevant provisions, and the power of the State Legislature to impose Gujarati or Hindi or both as exclusive medium or media for instructions in the affiliated and constituent colleges. The appellants will pay the costs of the respondents in the two appeals. One hearing fee.

SUBBA RAO, J.-.With the greatest respect,, I cannot agree. The facts have been fully stated in the judgment of my learned brother:, Shah, J., and I need not restate them. Two questions arise for consideration, namely, (1) whether the State Legislature has the constitutional competence to make a law prescribing an exclusive medium of instruction in the affiliated colleges, and (2) whether

under the Gujarat University Act, as amended by Act IV of 1961. the said University has the power to prescribe an exclusive medium of instruction. The first question maybe elaborated thus: Is the State Legislature competent to make a law under entry 11 of List II of the Seventh Schedule to the Constitution prescribing an exclusive medium of instruction in the affiliated colleges of the University? To put it in other words, can a State law enable a University to prohibit, expressly or 'by necessary implication, any media of instruction other than those prescribed by it? Learned counsel., appearing for the University of Gujarat and for the State of Gujarat, contend that the State Legislature has such a power under entry 11 of List II of the Seventh Schedule to the Constitution, whereas learned counsel for the respondents, while conceding that a State Legislature has the power to empower a university to prescribe a medium of instruction, broadly contend that a State law which prohibits the use of a medium of instruction, such as English, which is traditionally the exclusive current medium of instruction in the universities of this country, and directs the use of a regional language as the sole medium or as an additional medium of instruction, along with other Indian languages, impinges directly on entry 66 of List I of the Seventh Schedule to the Constitution, since, it is said, the fixation of standards and co-ordination on all-India basis is rendered difficult, if not made impossible, by such a State law. Before I consider the impact of entry 66 of List I on entry II of List II., it would be convenient to notice briefly the relevant principles of construction. Learned counsel for the respondents contend that the principle of pith and substance has no relevance to a case where one entry is made subject to another entry; if out of the scope of one entry, the argument proceeds, a field of legislation covered by another entry is carved out, there is no scope for overlapping and, therefore, there is no occasion for invoking the principle of pith and substance in the matter of interpreting the said entries; to meet such a situation, his further argument is, the courts have evolved another principle of "direct impact", i.e., if a State law has a "direct impact" on an entry in the Union List, the said law falls outside the scope of the State entry. Let us see whether there is any such independent doctrine of construction in decided cases or in principle. The judicial Committee, in Prafulla Kumar v. Bank of Commerce, Khulna(1), had invoked the principle of "pith and substance" to ascertain whether the Bengal Money-lenders Act (X of 1940) was ultra vires the Provincial Legislature. There, the conflict was between items 28 and 38 of List I of the Seventh Schedule to the Government of India Act, 1935, namely, promissory notes and banking, and item 27 of List II thereof, namely, moneylending. The judicial Committee held that the pith and substance of the Act being money-lending, it came under item 27 of List II and was not rendered invalid because it incidentally trenched upon matters reserved to the Federal Legislature, namely, promissory notes and banking. At p.65 of the report the following instructive passage appears:

> "But the overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of juris- diction%.
>
> Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment-of which complaint is made and in what list is its true nature and character to be found."

(1) A. I. R. 1947 P. C. 60, 65.

Then their Lordships proceeded to state :

> "Thirdly, the extent of the invasion by the Provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with Provincial matters; but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending out promissory notes or banking It is clear from the said passage that the degree of invasion of a law made by virtue of an entry in one List into the field of an entry in another List is not governed by a separate doctrine but is only a circumstance relevant for ascertaining the pith and substance of an impugned Act. This Court, in The State of Bombay v. F. N. Balsara (1), has accepted that principle. There, the constitutional validity of the Bombay Prohibition Act (XXV of 1949) was in issue. The question was whether that Act fell under entry 31 of list II of the Seventh Schedule to the Government of India Act, 1935, namely, "intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors", or under entry 19 of List I, namely, import and export across customs frontier, which is a dominion subject. This Court held that the pith and substance of the Act fell under the former entry and not under the latter, though the Act incidentally encroached upon the Dominion field of legislation. It was argued, inter alia, that the Prohibition of purchase, use, transports and sale of liquor, (1) [1951] S. C. R, 682.

would affect the import. The argument was advanced as a part of the doctrine of pith and substance and was rejected on the ground that the said encroachment did not affect the true nature and character of the legislation. This Court again had to deal with the vires of the provisions of the Madras Prohibition Act in A. S. Krishna v. The State of Madras(1). There, the argument was that the said provisions were repugnant to the provisions of the existing Indian laws with respect to the same matter, to wit, Indian Evidence Act I of 1872 and Criminal Procedure Code Act No. V of 1898. In that context the argument based upon impact of the former legislation on the latter was advanced. This Court rejecting the contention observed:

> "That is to say, if a statute is found in substance to relate to a topic within th e competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment."

But it is said that the separate existence of the doctrine of "direct impact was conceded in Union Colliery Company of British Columbia, Ltd. v. Bryden(2) . There, the question was whether s.4 of the British Columbia Coal Mines Regulation Act, 1890, which prohibited Chinamen of full age from employment in underground coal workings, was in that respect ultra vires of the provincial legislature nasmuch as the subject of "naturalization and aliens"

(1) [1957] S. C. R. 399, 406.

(2) [1899] A. C. 580, 587.

was within the exclusive authority of the Dominion Parliament conferred under s.91, sub-s.25 of the British North America Act, 1867. On a consideration of the material factors and on a construction of the relevant provisions, the judicial Committee observed :

> "But the leading feature of the enactments consists in this-that they have, and can have, no application except to Chinamen who are aliens or naturalized subjects, and that they establish no rule or regulation except that these aliens or naturalized subjects shall not work, or be allowed to work, in underground coal mines within-the Province of British Columbia."

After arriving at that finding, their Lordships proceeded to say :

> "Their Lordships see no reason to doubt that, by virtue of s. 91, sub-s. 25, the legislature of the Dominion is invested with exclusive authority in all matters which directly concern the rights, privileges, and disabilities of the class of Chinamen who are resident in the provinces of Canada. They are also of opinion that the whole pith and substance of the enactments of s. 4 of the Coal Mines Regulation Act, in so far as objected to by the appellant company consists in establishing a statutory prohibition which affects aliens or naturalised subjects, and therefore trench upon the exclusive authority of the Parliament of Canada."

This passage indicates that the judicial Committee found that', in pith and substance., the impugned law affected the rights and privileges of Chinamen which subject was within the exclusive authority of the Parliament of Canada. This judgment only reiterates the principle of pith and substance; and it does not in any way countenance a new principle ,of "'direct impact" outside the scope of the said doctrine. In Bank of Toronto v. Lambe (1) the Qyebec Act was attacked on two grounds, first that the tax was not "taxation within the Province", and secondly, that the tax was not a "direct tax". The judicial Committee held that the Act was within the legislative competence of the Province. It was observed therein :

> "If (the judges) find that on the due cons- truction of the Act a legislative power falls within s. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament."

The argument of anticipatory encroachment was rejected. This case was considered and distinguished in Attorney- General for Alberta v. Attorney-General for Canada (2). There, the Province of Alberta passed an Act respecting ""the taxation of Banks", imposing on every corporation or joint stock company, other than the Bank of Canada, incorporated for the purpose of doing banking or savings bank business in the Province, an annual tax, in addition to any tax payable under any other Act., of (a) 1/2 per cent. on the paid-up capital, and (b) 1 per cent. on the reserve fund and undivided profits. The Board held that the proposed taxation was not in any true sense taxation "'in order to the raising of a revenue for Provincial purposes"

> so as to be within the exclusive legislative competence of the Provincial Legislature under s. 92 (2) of the British North America Act, but was merely part of a legislative plan to prevent the operation within the Province of those banking institutions which had been called into existence and given the necessary powers there to conduct their business by the only proper authority' the Parliament of the Dominion, under s. 91 of the British North America Act. The Board in effect, therefore, held that the Provincial Act, though (1) [1882] 12 A. C. 575, 587.
>
> (2) [1939] A. C. 117, 130, 133, couched as a taxation measure, was a colourable attempt to prevent the functioning of the banking institutions, the regulation whereof was the Dominion subject. The pith and substance of the statute was not direct taxation or taxation within the Province within the meaning of s. 92 of the British North America Act, but was one that fell under the Dominion subject of "banking". The reason for this conclusion is found at p. 133 and it is as follows :
>
> "Their Lordships agree with the opinion expressed by Kerwin, J. (concurred in by Crocket,J.) that there is no escape from the conclusion that, instead of being in any true sense taxation in order to the raising of a revenue for Provincial purposes, the Bill No. 1 is merely "part of a legislative plan to prevent the operation within the Province of those banking institutions which have been called into existence and given the necessary powers to conduct their business by the only proper authority, the Parliament of Canada."

That is to say, the constitutional validity of the Bill was sustained on the ground that it was a colourable piece of legislation in respect of a subject which in substance was within the Dominion field. The judicial Committee in coming to the conclusion laid down the rules of guidance for ascertaining the true nature of a legislation. Their Lordships premised their discussion with the following statement :

> "..... it is well established that if a given subject-matter falls within any class of subjects enumerated in s. 91, it cannot be treated as covered by any of those within s.
>
> 92."

And to ascertain whether a particular subject-matter falls in one class or other, their Lordships laid down the following rules of guidance :

> (1) "It is therefore necessary to compare the two complete lists of categories with a view to ascertaining whether the legislation in question, fairly considered, falls prima facie within s. 91 rather than within s. 92." (2) "The next step in a case of difficulty will be to examine the effect of the legislation."
>
> (3) "The object or purpose of the Act in question. "
>
> It will, therefore, be seen that the judicial Committee did not lay down any new principle of "direct impact" dehors the doctrine of pith and substance. The heavy impact and crippling effect of an impugned legislation on a Dominion subject was taken as an important indication of its colourable nature. The foregoing discussion does not countenance the suggestion that apart from the doctrine of pith and substance, the courts have recognized an independent principle of "direct impact".

Nor can I agree with the argument of learned counsel that the doctrine of pith and substance has no application in a case where one entry in a list is expressly made subject to another entry in a different list. In such a case it only means that out of the scope of the former entry a field of legislation has been carved out and put in the latter entry. That in itself has no bearing on the applicability or other- wise of the doctrine. The position is exactly the same as in the matter of construing two entries in different lists. Whether two entries are carved out of one subject or deal with two different subjects, the principle of construction must be the same : in either case the Court is called upon to ascertain under what entry the impugned law falls. The doctrine of pith and substance only means that if on an examination of a statute it is found that the legislation is in substance one on a matter assigned to the Legislature, then it must be held to be valid in its entirety, even though it may trench upon matters which are beyond its comprehension:see The State of Bombay v. F. N. Balsara (1) and A. S. Krishna v. The State of Madrass (2). The true character of the legislation is the criterion and its incidental encroachment on other items is not material. If that be so, once we come to the conclusion that the impugned legislation squarely falls within one entry, its incidental encroachment on another entry whether carved out of the former entry or has an independent existence althrough, will not make it any the less one made within the limits of the former entry.

To summarize: When a question arises under what entry an impugned legislation falls, the court directs its mind to ascertain the scope and effect of the legislation and its pith and substance. Decided cases afford many criteria to ascertain its scope, namely, comparison of conflicting entries, effect of the impugned legislation, its object and purpose, its legislative history, its colourable nature and similar others all or some of them would be useful guides to get at the core of the legislation. But no authority has gone so far as to hold that even if the pith and substance of an Act falls squarely within the ambit of a particular entry, it should be struck down on the speculative and anticipatory ground that it may come into conflict with a law made by a co-ordinate Legislature by virtue of another entry. If the impact of a State law on a Central subject is so heavy and devastating as to wipe

out or appreciably abridge the Central field, then it may be a ground for holding that the State law is a colourable exercise of power and that in pith and substance it falls not under the State entry but under the Union entry. The case-law, therefore, does not warrant the acceptance of a new doctrine dehors that of pith and substance.

In this context it will be useful to notice some of the well settled rules of interpretation laid down by the Federal Court and accepted by this Court in the matter of construing the entries. In Calcutta Gas (1) [1951] S. C. R. 682. (2) (1957) S. C. R. 399,406.

Company v. The State of West Bengal (1), it is observed "The power to legislate is given to the appropriate Legislatures by Art. 246 of the constitution. The entries in the three Lists are only legislative heads or fields of legislation: they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different Lists or in the same List may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them..... It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory."

With this background let me look at the two entries, namely, entry 11 of List II and entry 66 of List I. The said entries read:

> Entry 11 of List II. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

Entry 66 of List I. Go-ordination and deter- mination of Standards in institutions for higher education or research and scientific and technological institutions.

We are not concerned with the question of medium of instruction in regard to that part which has been specially carved out and included in entries 63, 64 and 65 of List I. The entire field of education, (1) [1962] SUPP. 3 S. C. R. 1.

including universities, subject to the exceptions mentioned in entry 11 of List II, is entrusted to the State Legislature. There cannot be education except through a medium or media of instruction. Education can be imparted only through a medium. To separate them is to destroy the concept. It is inconceivable that any reasonable body of constitution makers would entrust the subject of medium of instruction to Parliament and education dehors medium to a State: it is like cutting away the hand that feeds the mouth. That no such separation was made in the case of elementary and secondary education is conceded. It cannot also be doubted that medium of instruction is also included in entry 63 of List I relating to the specified universities. If so much is conceded, what is the reason for excluding it from the university education in entry 11 of List II ? There is none. Conversely, the express terms of entry 66 of List I does not prima facie take in the subject of medium of instruction. The phraseology is rather wide, but none the less clear. Let me look at the two crucial expressions

"co-ordination" and "determination of standards". The contention of learned counsel for the appellant that the composite term means fixing of standards for the purpose of correlation and equating them if they vary, appears to be plausible, but is rather too restrictive and, if accepted makes the role of Parliament that of a disinterested spectator. It must be more purposive and effective. The interpretation sought to be put upon it by learned counsel for the respondents, namely, that under certain circumstances the Parliament can make a law displacing the medium of instruction prescribed by the State law by another of its choice, cuts so deeply into the State entry that it cannot be countenanced unless the entry in List I is clear and unambiguous. "To determine" is "to settle, or decide or fix". The expression "coordination" is given the following meanings, among others, in the dictionary: "to place in the same order, rank or division to place in proper position relatively to each other and to the system of which they form parts; to act in combined order for the production of a particular result". That entry enables Parliament to make a law for fixing the standards in institutions for higher education for the purpose of harmonious co-ordination of the said institutions for the achievement of the desired result,namely, the improvement of higher education. The expression co-ordination and determination. of standards" is a composite term; and the fixing up of standards for the purpose of co-ordination does not necessarily involve a particular medium of instruction. To illustrate: education cannot be imparted effectively without books, professors, students, equipment, buildings, finance, proper medium of instruction, etc. All the said matters admittedly are comprehended by the word "education", for they are the necessary concomitants of education. It would be unreasonable to hold that all the said matters fall under the heading "co-ordination and determination of standards", for, if it was so held, the entry "education'.' would be robbed of its entire content. In such a case the principle of harmonious construction should be invoked and a demarcating line drawn; the clue for drawing such a line is found in the word " co-ordination". So understood, the State can make a law for imparting education and for maintaining its standards; whereas Parliament can step in only to improve the said standards for the purpose of co- ordination. The standards of some universities may fall because of the deficiency in any of the aforesaid things. Parliament may make a law providing for facilities in respect of any or all the aforesaid matters so that the backward universities may pick up and come to the level of other advanced universities. It may also make a law for raising the general standards of all the universities. The law made by Parliament may determine the general standards in respect of the said and similar matters and provide the necessary financial and other help to enable the universities to reach the level prescribed. It may also be that the said law may provide for a machinery to enrich the language adopted as a medium of instruction by a particular university so that it may become a useful vehicle for higher education and for technological and scientific studies. If the pith and substance of the law is "'co-ordination and determination of standards" its incidental encroachment on the medium of instruction for the purpose of enriching it may probably be sustained. But in the name of co-ordination it cannot displace the medium of instruction, for, in that event, the encroachment on the subject of education is not incidental but direct. For the said entry does not permit the making of any law which allows direct interference by an outside body with the course of education in any university, but enables it generally to prescribe standards and give adventitious aids for reaching the said standards. In short, the role of a guardian angel is allotted to Parliament so that it can make a law providing a machinery to watch, advise, give financial and other help, so that the universities may perform their allotted role. 'The University Commission Act was passed in the implementation of such a role. So understood, there cannot be any possible dichotomy between

the two entries.

The scheme of the Constitution also negatives the idea of legislation by Parliament in respect of medium of instruction. When the Constitution was passed, there were many fairly well developed languages in different parts of our country and they were mentioned in the Eighth Schedule to the Constitution. At that time, English was the medium of instruction at all levels and was also the official language of the administration. It was accepted on all hands that English should be replaced at all levels, but the process should be phased. Article 343 of the Constitution declares that the official language of the Union shall be Hindi in Devnagari script and it permits the use of English for all official purposes for a specified period. But in the case of education no such go- slow process was indicated, presumably, because it was left to the wisdom of the Legislatures of States and educationists to work out the programme for smooth transition. But the insistence on the replacement of English by Hindi for all official purposes, the recognition of regional languages, the omission of English in the Eighth Schedule, the direction under Art. 351 that Hindi should be enriched by a process of assimilation from the languages specified in the Eighth Schedule and from Hindustani, all indicate that the makers of the Constitution were confident that the regional languages were rich or at any rate resilient enough to be or to become convenient vehicles of instruction at all levels of education. That is why no express reservation was made for replacing English by regional languages by convenient stages. It may, therefore, be accepted that the makers of the Constitution thought that the specified regional languages would be suitable vehicles of instruction, though it may equally be conceded that they require to be enriched to meet the demands of higher education. In this context entry 66 of List I must be construed on the assumption that the regional languages would be the media of instruction in all the universities, and if so construed the law fixing the standards for co- ordination cannot displace the medium of instruction. Let me now look at it from a different angle. It is contended that English is the established medium of instruction throughout the country, that following the example of the Gujarat University other universities might follow suit, that consequently there would be a steep fall in the standards of higher education, and that if the argument of the appellant was accepted, Parliament would be a helpless spectator witnessing the debacle. In effect, on the appellant's construction, the major part of the field of co-ordination would be wiped out. This in effect was the argument of learned counsel for the respondents though couched in different phraseology. This is another way of saying that the pith and substance of such legislation made by a State prohibiting the use of English falls not tinder the subject of "education" but under the entry "co- ordination". This argument though appears to be attractive, is without legal or factual basis. If the pith and substance of the Impugned law is covered by the entry "education", the question of effacing the Union entry does not arise at all. It is an argument of policy rather than a legal construction. The simple answer is that the Constituent-Assembly did not think fit to entrust the subject of medium of instruction to Parliament, but relied upon the wisdom of the Legislatures to rise to the occasion, and enact suitable legislation. Factually, except in Gujarat, where the Legislature introduced Gujarati as the exclusive medium of instruction by an accelerated process, all other States are adopting a go-slow policy. Though that circumstance, in my view, has no relevance in construing the relevant provisions of the Constitution there is no immediate danger of all the other States abolishing English as an additional medium of instruction. I would prefer to accept the natural meaning of the word "'education" than to stretch the expression "'co-ordination" to meet a possible emergency when all the States,

following a policy adopted by a State, might set their face against English. That apart, the picture drawn by learned counsel is rather extravagant. It presupposes that, but for the continuance of English as one of the media of instruction, education is bound to fall in standards and co-ordination may become impossible. But our Constitution-makers did not think so, and they did not provide for the continuance of English in the universities. Further, the standards can be maintained, perhaps with some trouble and expense' by imparting education through other media of' instruction, provided the languages are suitably enriched. The State Legislatures, and more so the universities, can be relied upon to make every reasonable attempt to maintain the standards. It cannot be assumed that the State Legislatures would function against the best interests of university education, while Parliament can safely be relied upon to act always in its interest. All the legislative bodies under our Constitution are elected on adult franchise and this Court rightly presumes that they act with wisdom and in the interests of the people they represent. If the Legislature of a State could in a particular instance act precipitately by replacing English by a regional language, Parliament also in its wisdom, if it has power to do so., may cut the Gordian knot by replacing English by Hindi in all the universities. It is after all a constitutional choice of institutions to implement a particular purpose and it is, therefore, the duty of this Court to interpret the provisions of the Constitution uninfluenced by ephemeral local conditions and situations. I would, therefore, hold that entry 11 of List IL takes in the medium of instruction and that it is not comprehended by the phraseology of entry 66 of List I of the Seventh Schedule to the Constitution. It follows that the State Legislature can make a law empowering the 'University to prescribe a regional language as the exclusive medium of instruction.

The next question is whether under the provisions of the Gujarat University Act, 1949, hereinafter called the Act, the University has the power to prescribe a language as. the exclusive medium of. instruction; or to state it differently, whether the University has power to prohibit, expressly or by necessary implication, the use of any language other than that prescribed as the medium of instruction.

At the outset it would be convenient to notice briefly the scheme of the Act so that the relevant provisions may be constructed in their propel setting. Under the Act, the Chancellor and the Vice-Chancellor of the University, and the members of the Senate, the Syndicate and the Academic Council of the University constitute a body corporate by the name of ""The Gujarat University". It is a teaching and affiliating University. It has, inter alia, powers to provide for instruction, teaching and training in different branches of learning and courses of study; to hold examinations and confer degrees; to control and co-ordinate the activities of various institutions connected with the University; and to do all acts and things incidental to the said powers. The said purposes are carried out through three instrument- alities,, namely, the Senate, the legislative body, the Syndicate, the executive, and the Academic Council, which is responsible for the maintenance of standards in the examinations of the University. The Chancellor is the head of the University. The Senate passes statutes; the Syndicate, ordinances; and the Academic Council, the regulations-all providing for the subjects entrusted to them respectively. The Chancellor and the State Government have the power of inspection over the affairs of the University and of giving necessary instructions. Briefly stated, the University is a corporate body with a large degree of autonomy, forming an institution for the promotion of education in the higher branches of learning. It has power to confer degrees and other

privileges on the successful alumni of the institutions under its control. With this background let me look at the relevant provisions of the Act. Clause (1) of s. 4 empowers the University to provide for instruction, teaching and training in such branches of learning and courses of study as it may think fit and to make provisions for research and dissemination of knowledge; cl. (7) thereof, to Jay down the courses of instruction for various examinations; cl. (8), to guide the teaching in colleges or recognized institutions; cl. (10), to hold examinations and confer degrees, titles, diplomas and other academic distinctions; cl. (14), to inspect colleges and recognized institutions and to take measures to ensure that proper standards of instructions, teaching or training are maintained in them; cl. (15), to control and co-ordinate the activities of, and to give financial aid to affiliated colleges and recognized institutions; and cl. (28), to do all such acts and things whether incidental to the power,% aforesaid or not as may be requisite in order to further the objects of the University and generally to cultivate and promote arts, science and other branches of learning and culture. Apart from the incidental powers expressly conferred by cl. (28), it is well settled that a corporation can also exercise powers incidental to or consequential upon those expressly conferred on it. The legal position has been neatly brought out by Viscount Cave L. C. in Deuchar v. Light and Coke Company (1), by placing two passages of earlier decisions in juxtaposition thus :

> "Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be, ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions."
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> "'I must stop there. To that statement I may add a sentence from the speech of Lord Selborne in the case of Attorney-General v. Great Eastern Py. Co. (2) where he said this : "I agree with Lord justice james that this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or (1) [1925] A.C. 691, 695.
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> (2) [1880] 5 A.C. 473, 478.

consequential upon, those things which' the Legislature has authorized, ought not (unless. expressly prohibited) to be held, by judicial construction, to be ultra vires."

When an Act confers a power on a corporation, it impliedly also grants tee power of doing all acts which are essentially necessary for exercising the same. Bearing the aforesaid principles in mind, I must ask the question whether, on, a fair reading of the aforesaid Provisions, it can be said that the University has the implied power to prescribe an exclusive medium of instruction. If once I reach the conclusion, namely, that such a power is necessary for carrying out the purposes expressly authorized by the statute, I must hold that the said power is not beyond the competence of the University. The University has to provide for instruction, teaching and training in different branches of learning and courses of study, to lay down the courses of instructions for various examinations and to guide the teaching in colleges or recognized institutions. The power to prescribe a medium of

instruction is implicit in the power to provide for instruction and the power to guide the teaching. One can only instruct through a medium. It is impossible to conceive of instruction without a medium. Indeed, they are parts of the same process. A university cannot make a provision for instruction or teaching without at the same time prescribing a medium or media for teaching it. If it can fix two media, it can equally prescribe a sole medium if it thinks that for the proper instruction a particular language is the most suitable medium. A perusal or the earlier Bombay statutes and similar statutes of other universities of this country indicates that the said universities prescribed the English medium only in exercise of similar powers conferred on them. If this fundamental power to prescribe the medium is denied to the universities, the substratum of their autonomy and utility under the Act will largely be jeopardized or affected. To illustrate, there may be 20 colleges affiliated to a university; if the university cannot prescribe a sole medium of instruction for all the affiliated colleges, each one of them may adopt a different language as its medium, with the result that there will be chaos in the sphere of higher education. If such a power does not exist, how is it possible for a university to hold examinations in a particular medium? It will be forced to hold examinations in all the different languages chosen by the affiliated colleges . Though the statute confers a plenary power on the University to hold examinations and confer degrees, it will not have the power, if the construc- tion suggested by learned counsel for the respondents be adopted, to hold examinations in the language chosen by it. But it is suggested that though it has such a power, it must exercise it reasonably so as to satisfy the needs of the different colleges affiliated to it. I do not see how, if the University has the power to hold examinations in one language, the exercise of that power could become unreasonable if affiliated colleges chose to ply their own course in utter disregard of the opinion of the University. Be that as it may, I have no hesitation in holding that the University has the implied power to prescribe for the pur- poses of higher education a number of media of instructions or even a sole medium of instruction to the exclusion of others.

It is then said that cl. (27) confers an express power on the University to prescribe a medium of instruction and, therefore, whatever implied power it may have in its absence it can no longer be exercised under the Act. As much of the argument turned upon the construction of this clause, it would be convenient to read it:

> Clause (27): (The University shall have the power) to promote the development of the study of Gujarati and Hindi in Devnagari script and the use of Gujarati or Hindi in Devnagari script or both as a medium of instruction and examination:
>
> Provided that English may continue to be the medium-
>
> (i) of instruction and examination for such period as may from time to time be prescribed.

by the Statutes until the en of May 1966 in respect of such subjects and courses of study as may be so prescribed, x x x x x It is said that this being the express power conferred upon the University in regard to the prescribing of a medium of instruction, it can only exercise the said power within the four corners of the said clause, and that under that clause the University can only provide for Gujarati or Hindi or both of them in addition to other medium or media of instructions. To put it in

other words, the argument is that the University has no power to provide for an exclusive medium of instruction, but it can only prescribe the said languages as additional media. This argument is sought to be reinforced by a comparison of the indefinite article used in the substantive part of the clause and the definite article used in the proviso thereto. While the substantive part of the clause says that the University has the power to promote the development of the study of Gujarati and Hindi in Devnagari script and the use of Gujarati or Hindi in Devnagari script or both as a medium of instruction and examination, the proviso says that English may continue to be the medium of instruction and examination. The use of the indefinite article " all in the substantive part of the clause in contradistinction to the definite article "'the" used in the proviso, the argument proceeds, is decisive of the question that the University has no power to prescribe Gujarati or Hindi as the medium i. e., the exclusive medium, of instruction in the University. I do not find any merits in this argument. Clause (27) does not exhaust the power of the University to provide for a medium:

> that power is implicit in cl. (1) of s. 4 and other clauses thereof already mentioned. Clause (27) confers an additional power on the University to promote the development of the study of Gujarati or Hindi in Devnagari script and the use of them as medium of instruction and examination. This is a composite power. It enables the University not only to develop the study of the said languages but also to use them as media of instruction. There is an essential distinction between the expression "providing" and "promoting". To promote the development of the said languages means to further their growth. It also implies some action anterior to the existence or occurrence of the thing promoted. The power of promotion confers upon the University the power to prescribe adventitious- aids for the purpose of promotion. To illustrate, Gujarati or Hindi is not the medium of instruction in the University; the said languages have not got sufficient vocabulary to express scientific and technological concepts; there are no professors who are trained to teach the said subjects in those languages- there are no books in the said languages of a standard appropriate to the needs of higher education. The University can certainly help, financially or otherwise, to enrich the said languages so as to make them suitable vehicles for conveying scientific and technological ideas. It may provide for intensive training of the professors and lecturers in those languages to enable them to have sufficient knowledge for communicating their ideas in those languages. It may give concessions in fees etc., for students who take those languages as their media of instruction instead of English or any other language. It may start a pilot college where the medium is only any of those two languages. It may in extreme cases prohibit the use of any medium other than the said two languages. There are many other ways of subsidizing and helping the promotion of the said languages. That apart, cl. (27) does not deal only with 'instruction, but also with examination. Should it be held that the power of the University to prescribe a medium of instruction is derived only from cl. (27) it should also be held that the power to prescribe a medium of instruction for examination is also derived therefrom. If so, it would lead to the anomalous position of the University not being in a position to hold examinations in any language other than the said two languages, while in the case of instruction, the affiliated colleges, if the argument of learned counsel for the respondents be correct., will be able to

instruct in media other than the said two languages: the University will be absolutely powerless to examine the students of a college through the medium chosen by it. It is, therefore, obvious that cl. (27) does not in any way replace or even curtail the undoubted power of the University to prescribe a medium of instruction of its choice, but only confers an additional power and a correlative duty to promote these two languages. If so understood, the proviso also squarely fits in the scheme. What the proviso says is that English may continue to be the medium of instruction and examination in such subjects and for such period until the end of May 1966. It is enacted as a proviso to cl. (27), as, but for that proviso, English may continue to be a medium of instruction, but it cannot be the medium or the sole medium of instruction, for there is a duty cast on the University to introduce one or other of the aforesaid two languages as medium of instruction. The proviso enables the University to postpone the introduction of the aforesaid languages as media of instruction for a prescribed period. In this context, the argument based upon the use of the indefinite article in the substantive part of the clause and of the definite article in the proviso may be considered. The use of the indefinite article, it is said, shows that the power of the University is only to prescribe an additional medium, for otherwise the Legislature would have used the words "the medium" as it has done in the proviso. Grammatically the definite article "the" could not have been used in the substantive part : the definite article is used only to mark the object as before mentioned or already known or contextually particularized. That is why in the proviso the definite article is used in the con- text of the English language which is already in the field as the exclusive medium of instruction. But in the substantive part of cl. (27) the Legislature was providing for an additional power to promote one or other of the two languages mentioned therein or both of them. In that context when different languages, which can alternatively be prescribed, are mentioned, the appropriate article can only be the indefinite article. If the argument of learned counsel for the respondents be accepted, it may lead to a more serious anomaly, namely, that after the prescribed period in the proviso the University becomes powerless to introduce any language other than Gujarati or Hindi as medium of instruction and examination. This difficulty is sought to be met by the contention that the power to continue English as a medium of instruction after the period prescribed in the proviso, is necessarily implied in the proviso. The doctrine of necessary implication as applied to the law of statutory construction means an implication that is absolutely necessary and unavoidable It is not implication by conjecture. I would be attributing to the Legislature an ineptitude in drafting if I should hold that such an important power of prescribing a medium of instruction is left to be implied by construction. It would also be against the natural meaning of the phraseology used in the proviso. The Legislature in enacting cl. (27) of s. 4 must be deemed to have had knowledge that the University has prescribed English as the medium in exercise of the powers vested in it and with that knowledge the Legislature proceeded to enact in the proviso that the University could continue English as the sole medium for a prescribed period. The proviso, therefore, was enacted on the assumption of an existing power: it was not conferring the power for the first time.

Should it be held that the proviso conferred the power on the University to prescribe English as a medium for the first time, it should also be held that the University could not prescribe any medium other than. English, Hindi or Gujarati after the period prescribed in the proviso. But, on the other hand, if cl. (27) is construed in the manner I have done, i.e., it is only a power conferred on the University in addition to its existing power to prescribe a medium or media of instruction, the relevant provisions fall into a piece. The University will then have powers, to prescribe any medium or media, to promote Hindi and Gujarati, to introduce the use of Hindi and Gujarati, to continue English as the sole medium of instruction for the prescribed period and after the said period has run out to prescribe English or any other language as the medium of instruction in addition to Hindi or Gujarati. If the artificial construction suggested by the respondents be accepted, the Legislature should be held to have deprived the University not only of its power to discontinue English as the medium of instruction but also to have prevented it from introducing any medium other than English, Hindi or Gujarati. For the aforesaid reasons I would hold that cl.(27) of s. 4 of the Act gives only an additional power and it does not derogate from the implied power derived from other provisions of the Act.

Some argument is advanced on the basis of s. 18(1)(XIV) of the Act, which reads:

> 18. (1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Senate shall exercise the following powers and perform the following duties, namely :-
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> x x x x (XIV) to make provision relating to the use of Gujarati or Hindi in Devnagari script or both as a medium of instruction and examination.

Learned counsel for the appellant contends that while cl. (27) of s. 4 confers a power on the University, cl. (XIV) of s. 18(1) confers both a power and a duty on the Senate to provide for the use of Gujarati or Hindi in Devnagari script as medium of instruction and examination. Learned counsel for the respondents again emphasize upon the use of the indefinite article in the said clause. I cannot agree with either of the two contentions. When a power is conferred on the University to promote the said two languages as medium of instruction, presumably for public good, there is a correlative duty on the University to exercise that power The fact that under s. 4 only powers are conferred, whereas under s. 18 both powers and duties are mentioned, does not make much difference in a case where a power is conferred for public good. The statute uses three expressions, namely, "provide", " promote", and "'make a provision". Under the statute the powers of the University can only be exercised through the instrumentalities of the University in the manner prescribed. In s. 18 the words used are neither "'provide" nor "'promote" but "'to make provision"

> indicating thereby that specific provisions have to be made presumably through statutes. As the University has got power to provide for the exclusive medium and also to promote the use of the said two languages as media of instruction, the Senate is authorized to make statutes providing for the former in exercise of its power under s. 18 (1) (i) and for the latter under s. 18 (1) (xiv). As to the. promotion of the development of the study of Gujarati and Hindi in Devnagri script, the Senate, the

Syndicate and the Academic Council may make the requisite laws in exercise of the appropriate powers confer-red on them. The use of the indefinite article "a" in cl. (xiv) of s. 18 (1) is not of much relevance, for, as I have already pointed out, it is the appropriate article in the context. Another contention accepted by the High Court, namely, that s. 4 (1) and other clauses of the section apply only to residential colleges, was faintly advanced by learned counsel for the respondents. There is absolutely no force in it, as the phraseology of the said clauses is wide and comprehensive and does not admit of any such limitation. The argument that this construction will enable the University to abolish English altogether as a medium of instructions it is done in the present case, has no relevance, for it can certainly do so, if it has power in that regard. The Constitution depended upon the State Legislatures and the universities for imparting education at the university level. The Legislature in its turn, rightly in my view, conferred the necessary powers on the university, in the interest of higher education. No one is better qualified than the representatives of the intelligentsia of the State who man the various instrumentalities of the University to decide on the medium of instruction to be introduced in the colleges affiliated to the University. It may be that a particular university may have accelerated the pace of the introduction of a regional language as the medium of instruction at the university level, but other universities are following a more cautious policy. It is for the university to decide its own course. If the statute has conferred the power, as I have said it has, these considerations are of no avail. it is not disputed that if the University has the power to prescribe an exclusive medium of instruction under a statute, s. 38A of the Act which is a consequential provision would be valid.

For the aforesaid reasons I hold that the University was well within its rights in prescribing, by statutes, the said two languages as media of instruction to replace English by stages.

In the result the order of the High Court is set aside and the appeals are allowed with costs of the appellants here and in the High Court.

By COURT: In accordance with the view of the majority, both the appeals stand dismissed in the manner indicated in the majority judgment, with costs. There will be one set of hearing fee.

Appeals dismissed.