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INDIAN FEDERALISM - DISTRIBUTION OF POWER OVER EDUCATION

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Before the 32nd amendment to the Constitution, the legislative power over education was distributed among the State,[1] Concurrent,[2] and the Union[3] Lists. The effect of this distribution was that primary and secondary education was within the exclusive sphere of the States.

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

2. "25. Vocational and technical training of labour".

3. "63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University; the university established in pursuance of article 371E; and other institution declared by Parliament by law to be an institution of national importance.
64. 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.
65. 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.

contd..../-2

The power over higher education was divided between the States and the Union. The power in respect of certain institutions of higher education and the power for co-ordination and determination of standards of higher education belonged to the Union. The power in other respects, including the incorporation of Universities, belonged to the States. Substantial opinion seems to have developed in the country that education should be transferred to the Concurrent List.[4] As a result of the 42nd Amendment entry II of State List has been deleted and entry 25 in the Concurrent List has been substituted by a revised entry.[5] This paper seeks to draw attention to the failure of the Union Government to play the constitutional role assigned to it by this division of power.

The power for the co-ordination and determination of standards of higher education has been givento the Union for fostering the development of high all India standards. Only if such standards are maintained, the country can produce sufficient number of men to work on the advancing frontiers of knowledge, and reap for the benefit of the whole society, the fruits in the fields of

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66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutio

4. For, example, Parliamentary Committee known as Sapru Committee recommended the transfer of education to the Concurrent List. See Joshi, A.C. "Administrative Organisation of Higher Education and Educational Planning" in _Educational Planning Its Legal and Constitutional Implications in India_, Ed. by G.S.Sharma, _Indian Law Institute,(1967)_ p.187 at p.191. See also Jain, M.P., '_Indian_ Federalism : A Background Paper in _Constitutional Developments since Independence_, Indian Law Institute, (1975) p.207 at pp.220-425.

5. The revised entry is:"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List 1; vocational and technical training of labour".

science and technology and in other fields of endeavour which would enrich the texture of life. In this area, though the Government of India have taken some measures, they seem to have fallen far below expectations of the framers of the Constitution. But the judicial interpretation of the Union's power has been, by and large, liberal enough.

The well-known case of Gujarat University v. Sri Krishna[6] had raised the question of the power of a State to prescribe prematurely Indian languages as the exclusive media of instruction at the University level. The Supreme Court held that the effect of making entry 11 in List II subject to entry 66 in the Union List was to carve out of the total field of education an area for the exclusive legislation of the Union Parliament. In accordance with the principle laid down by the Supreme Court in Hingir-Rampur Coal Co. v. State of Orissa,[7] when a legislative field was thus carved out of the State's field, there was a lack of competence in that area for the State legislature. The power to legislate in respect of medium of instruction in so far as it had the bearing on co-ordination and determination of standards came within the power of the Union under entry 66. As a result, the Gujarat University had no power to prescribe Gujrati or Hindi as an exclusive medium of instruction in the University.

The court also held that the power to co-ordinate, though somewhat difficult to be determined in the abstract, was not confined to the evaluation and fixing of standards. It included the power to harmonise and promote the factors that contributed to the standards and to prevent what would make co-ordination impossible or difficult. It also included the power to ensure the maintenance and the improvement of standards, and could be exercised even without waiting for an actual fall in the standards.[8] Ir is true that this broad interpretation has been somewhat narrowed by the Supreme Court in the case of Chitralekha v. State of Mysore.[9] Still it is submitted that the Union power is comprehensive enough to enable the Government of India to maintain and improve standards of higher education.

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6. A.I.R. 1963 S.C. 703.

7. A.I.R. 1961 S.C. 459.

8. Ibid., p.716,717

9. A.I.R. 1964 S.C. 1823.

The main instrumentality of the Union Government for discharging its responsibility under entry 66 of List I has been the University Grants Commission established under the University Grants Commission Act of 1956 (3 of 1956). The preamble to the Act itself says that the Act was meant to make provision for the co-ordination and determination of standards in Universities. But the U.G.C., though credited with no mean achievements, has been functioning primarily as a grant-distributing agency. Its method of action has been to secure compliance by the State Government and Universities in policy matters by the lure of grants and the threat of withdrawal of grants. In State of Maharashtra v. Association of Maharashtra Educational Service Class II Officers,[10] the Supreme Court has expressed grave doubts as to whether the recommendations of the U.G.C. could give rise to rights and obligations enforceable in a court of law.[11]

This limited function of the U.G.C. has not at all been conducive to the development and maintenance of standards of higher education. Unless the University Grants Commission effectively formulates the policy aspects of higher education in a manner binding on the States and the Universities very little can be achieved in the field of higher education. This need may be illustrated with reference to some matters.

The University Grants Commission in its endeavour to co-ordinate and maintain standards could have intervened in matters of admission. It is well-known that students of merits are prevented from entering higher education because of the politics in many of the states. This is achieved partly by the application of doubtful techniques at the stage of screening for admission;[12]

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10. A.I.R. 1974 S.C. 2184.

11. In this case an attempt of the Government of Maharashtra to impose new conditions for the grant of U.G.C. scales had been quashed by the High Court. On appeal by the State, the Supreme Court confirmed the judgment of the High Court on the ground that the State had misunderstood the implementation of U.G.C. scheme but had not objected to its enforceability through courts of law.

12. The interview marks met with in Chitralekha v. State of Mysore, A.I.R. 1964 S.C. 1823, is one such.

and partly by the abuse of the provisions for reservation of seats for backward classes. In some States at least it seems that the criterion for determining social and educational backwardness for the purpose of admission to educational institutions is not revised in the light of realities but decided by the prevailing communal pull on politics. The result is that the benefits of reservation "by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake,"[13] forgetting that "The constitutional dharma, however, is not an unending deification of 'backwardness' and showering 'classified' homage, regardless of advancement registered, but progressive exercising of the social evil and gradual withdrawal of artificial crutches".[14] Shutting out meritorious students from higher education can be suicidal from the national point of view. What is suggested is not that backward class reservation should not have been allowed by the U.G.C. but it should have been properly kept within the spirit of the Constitution and made available to the really deserving. The U.G.C. could also have actively intervened in the matter of the so-called admission tests.

Another matter which has got a direct bearing on the co-ordination and determination of standards is in the appointment of teaching staff in the universities. Section 26(c) of the U.G.C. Act empowers the U.G.C. to make regulations inter alia "defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction". At least some Universities in India have inaugurated the plan of communal reservation in making appointments to the teaching posts in the Universities. Thus, the universities in Kerala are compelled to follow the communal rotation followed in making appointments to government service.[15] Under this scheme, about 70 to 75% of the population seems to be treated as backward classes [16] eligible for reservation.

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13. V.R.Krishna Iyer, J. in State of Kerala v. N.M. Thomas, A.I.R. 1976 S.C. 490 at p. 531.

14. Ibid at p.539.

15. See section 6 of the Cochin University Act, 1971 and similar provisions in the Kerala and Calicut Universities Acts".

16. The list includes, Muslims, Latin Christians, Ezhavas etc.

if prescription of an exclusive medium has a direct bearing on standards, it should be equally clear that appointments of less meritorious staff would have a similar damaging effect on standards. It does not seem that the U.G.C. has been able to prevent communal appointments in universities.

There are similar other matters too. For example, it is well-known that the structure and functioning of the Universities are thoroughly out of date. Most of the Universities' governing bodies are in the grip of politicians who are unable to rise above narrow consider-ations. The paraphernalia of many bodies like the Board of Studies, Faculties, Academic Council, Syndicate and Senate have only added to the increased political play with hardly any gain from the educational point of view. The Union should have thought of reforming the structure of the Universities, perhaps on lines similar to that of the All India Institutes of Technology. Also, some minimum qualifications and standing in educational matters could be prescribed as a qualification to be on the governing bodies of the Universities. These steps would never interfere with the autonomy of the University which means academic freedom to teach without State dictation.

Perhaps the present Act in making the U.G.C. to function through grants and recommendations does not give adequate powers to the Commission to take care of all the aspects of policy which have bearing on standards of higher education. The present writer would like to submit that the U.G.C. has not gone to the extent it could have even under the existing Act. It is high time that the Union effectively discharges its functions under entry 66, if necessary by amending the U.G.C. Act, and enlarging its powers.

If the Central Government had exercised its powers fully under entry 66 it could have really produced a pattern of education where high standards could be maintained. Even without the transfer of education to the Concurrent List, the union could have, as an exercise of the incidental power in respect of coordin-ation and determination of standards of higher education under entry 66, issued sufficient directives in policy matters with regard to primary and secondary education too because of the impact of these on higher education.

Now that the education has been transferred to the Concurrent List, the present writer suggests that it should be continued in that List. A comprehensive

Education Act should be passed to take care of all aspects of education. In respect of matters coming under entry 66 of the U.G.C., possibly renamed as University Education Commission, should be clothed with all the powers necessary to ensure the realisation of high standards in higher education. In certain matters the powers may be delegated to the State government, with regard to other aspects of education the All India Act should leave the matters to be implemented by the respective State Governments. Within a framework of an all India policy so formulated, which would help the realisation of high standards, there will always be scope for regional diversities to satisfy the claims of state autonomy. The enunciation and implementation of such a policy will really be a help to the States and the Universities which cannot, in the present circumstances, help themselves to increase the efficiency of the higher education.

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