

JUDICIAL REVIEW AND EDUCATION - 4

STUDY IN TRENDS

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Education is the only means through which a society can seek to secure active and intelligent participation of all its members in the complex processes of modern living. In developing countries like India the educational process cannot only be left to develop sporadically through free enterprise but must be a major governmental responsibility because of securing quick results. Article 45 of the Indian Constitution visualizes universal, compulsory and free education. It is, however, a persuasive provision drawing attention to government's moral responsibility but provides for no effective sanctions.

Any step towards the discharge of its moral responsibility by the State involves considerable thinking and research and of necessity has to be effectively planned and directed. Effective planning and direction envisage vast degrees of infringement upon the liberties of groups and individuals and thus call for an examination and assessment of the constitutional and other legal provisions to understand what can and what cannot be done.

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The purpose of this monograph is to present such an examination and assessment through the study of cases of the Supreme Court and the High Courts relating to educational matters. The following scheme has been adopted:

1. Conflict between regional and national interests.
2. Conflict between public and private interest.
3. Are educational institutions 'industries'?
4. Courts and autonomy of educational institutions.

### I. National and Regional Interests

Entries<sup>1</sup> in Lists I and II of the Seventh Schedule of the Constitution divide spheres of action in educational matters between Central or State Governments. This division is now, however, functionally clear and the Supreme Court had occasions<sup>2</sup> to show and define when action by one Government would amount to an encroachment in the sphere of another.

Entry 11 of List II confers on State Governments power in regard to all educational matters except those which have been allotted to the Central Government under Entries 63-66 in List I. Entry 66 of List I keeps for the Central Government 'co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions'. The Gujarat University<sup>3</sup> had prescribed

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1. Entries 63, 64, 65 and 66 in List I, List II Entry 11.
  2. *Joshi v. Madhya Bharat*, AIR 1955 S.C. 334, *State of Gujarat v. Srikrishna* AIR 1963 SC 703, *Chitrallekha v. State of Mysore* AIR 1964 SC 1323.
  3. *State of Gujarat v. Sri Krishna* AIR 1963 SC 703