HIGHER EDUCATION AND STATES

CONSTITUTIONAL DISTRIBUTION of legislative power in a dual polity like India occasionally gives rise to important and difficult legal controversies. This happens because, while any such division of legislative power tries to distribute subject matters of legislation between the Centre and states, actual administrative exigencies and political demands might occasionally run counter to the scheme of distribution of power. For reasons good or bad, either the Centre or states may desire to exercise legislative power over a matter which is not very clearly assigned to them. For such disputes an independent judiciary has to be entrusted with the task of adjudication.

The problem arose in an interesting manner in the State of Andhra Pradesh. In 1986, the state legislature enacted the Andhra Pradesh Commissionerate of Higher Education Act 1986 providing for the creation of a commissionerate of higher education. The higher education was defined as meaning intermediate education and education leading to a degree or post-graduate degree including professional and technical education.[1] The main objective of the enactment was to deal with several matters pertaining to higher education within the state and evolve a perspective plan for its development. It must monitor and evaluate academic programmes and *coordinate* academic activities of various institutions and universities. It must oversee the development and streamline higher education in the entire state. It must also perform functions necessary for the furtherance and maintenance of excellence in standards of higher education. It was also expected to control entire funds meant for universities, including grants given by the Central Government for higher education.

The constitutional problem arose because the subject of higher education has been specifically dealt with in the Union list. Though "education" (in the abstract) finds place in the concurrent list, that power is expressly made subject to the power of the Union under various legislative entries assigned to the Union list. Thus the Union list contains the entry: "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."[2] The concurrent list contains the entry: "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."[3] Obviously, the same subject cannot fall within both the lists. According to the Supreme Court, "power of the State to legislate in respect of education

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1. Andhra Pradesh Commissionerate of Higher Education Act 1986, s. 2(*e*).
2. List 1, entry 66.
3. List III, entry 25.

including Universities must to the extent to which it is entrusted to the Union Parliament be deemed to be restricted." This was already decided in *Gujarat University* v. *Krishna Ranganath Mudholkar*.[4] Occasionally, courts take note of realities and permit legislation by states laying down criteria for admission to colleges within their territories from amongst students who secure minimum qualifying marks prescribed by a university.[5]

But the power conferred on the commissionerate by the Andhra Pradesh Act went much further. It included the power to evaluate, harmonise and secure proper relationships amongst various institutions of higher education in the state. For this reason, it was difficult to sustain the validity of the Act as a measure within its competence. A challenge to the validity of the Act, though it failed in the Andhra Pradesh High Court, ultimately succeeded before the Supreme Court on appeal in *Osmania University Teachers Association* v. *State of Andhra Pradesh*.[6]

So far as the interpretation of constitutional aspects goes, the above judgment cannot be faulted. Entry 66 of the Union list deals with two aspects of higher education. In the first place, it covers co-ordination of standards in such institutions; secondly, it covers also the determination of standards in institutions for higher education. Thus the moment a law begins to concern itself with improving or maintaining excellence in institutions of higher learning, the Union list takes over and the concurrent list must take leave.

Coming to the Andhra Pradesh Act, one of the major duties of the commissionerate, as mentioned in section 7(*a*) of the Act, was "to evolve a perspective plan for the *development* of higher education in the State."[7] Again section 11(*g*) vested in the commissionerate the function to "*co-ordinate* the academic activities of various institutions of higher education in the State."[8] Then, there was the residuary function as mentioned in section 11(*p*) to "perform any other functions necessary to the furtherance and maintenance of excellence in the standards of *higher education* in the State."[9] These are examples selected at random to show how some of the provisions of the Act were directly relateable to co-ordination and determination of standards in institutions of higher education and research. The problem which those, who defended the validity of the Act, had to face was how to escape this position. Besides, a comparative examination of provisions of the University Grants Commission Act 1956 and Andhra Pradesh Act under dispute showed considerable similarity and overlapping. Only a few years ago, the Supreme Court had specifically held that the former

4. (1963) Supp. 1 S.C.R. 112 at 137.

5. See, *e.g.*, *R. Chitralekha* v. *State of Mysore*, (1964) 6 S.C.R. 368; *Ambesh Kumar* v. *Principal, LLRM Medical College*, A.I.R. 1987 S.C. 400.

6. (1987) 3 S.C.J. 294.

7. Emphasis added.

8. Emphasis added.

9. Emphasis added.

falls under entry 66 of the Union list.[10] In the result the Andhra Pradesh Act was held to be beyond the power of the state.

Nevertheless, as the Supreme Court pointed out, the need for improvement in standards does not disappear by adjudicating upon the validity or otherwise of a state law. It was a high power committee of the Government of Andhra Pradesh, appointed in February 1986, whose report had led to the enactment of the Act. It had pointed out the absence of a policy perspective in the development of higher education in the state. It had emphasised the need for streamlining higher education. The state government had accepted the recommendations and passed the Act. The court said :

> The Act now disappears for want of legislative competence. What about the need to enact that Act? It will not vanish to the thin air. The defects and deficiencies pointed out by the High Power Committee in regard to higher education may continue to remain to the detriment of the interests of the State and the Nation. Such defects in the higher education may not be an isolated feature only in the State of Andhra Pradesh. It may be a common feature in some other states as well.[11]

Thus the court made a constructive suggestion which the authorities concerned with educational administration should take note of. Of course, this judgment also tempts one to draw attention to one aspect of legal research and knowledge in India also.

Our Constitution, by no means a simple document, has been the subject matter of many academic treatises and articles. But, by and large, these have concentrated on two specific areas of constitutional law, *viz.*, fundamental rights and directive principles of state policy. An important area has not so far been cultivated in a noticeable degree. That is the topic of distribution of legislative powers between the Centre and states. The somewhat intricate scheme of distribution of legislative topics now deserves greater academic attention than it has received so far. Not only should the general scheme be studied in detail, but there is also scope for an examination in depth of specific legislative entries. For example, what is the dividing line between security of the state —a Union subject — and maintenance of public order—a state subject? How does one demarcate the boundaries of public health— a state subject— and other entries relevant to public health? Again, what is the precise scope and ambit of entries relating to criminal law which appear in the concurrent list at the very head of the list? The last mentioned issue assumes practical importance every time when a state legislature passes a law regulating some social or economic activity. It arose, incidentally, in regard to the recent Rajasthan legislation

10. See *Prem Chand Jain* v. *R.K. Chhabra*, (1984) 2 S.C.R. 883.
11. *Supra* note 6 at 307-08.

relating to *sati*, *viz.*, the Commission of Sati (Prevention) Act 1987. It is likely to arise whenever other social malpractices are subjected to legislative regulation or prohibition. Fundamental rights are, of course, important. But indepth studies of so many legislative entries still await good research, thinking and reflection in India. The Supreme Court judgment on higher education analysed above is an example of the need for clarifying our concepts.

At the same time, as pointed out above, observations made by the court as to the need to have a second look at some aspects of our administration of institutions concerned with higher education should receive immediate attention. Probably, the composition and functioning of the University Grants Commission could be revised so as to provide for (*i*) more attention being paid to peculiar problems experienced by some of the states; (*ii*) greater emphasis being laid on a study of local problems; and (*iii*) more active participation of state governments, not only in the formulation of policies but also in the execution of policy measures. The object could be better achieved by small meetings frequently held in state capitals, rather than by very ambitious and large meetings where nothing concrete can be achieved.

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