

FREEDOM OF EXPRESSION AND EDUCATIONAL PLANNING

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A realistic appraisal of the need for and the kind of educational planning required has been made in the Five Year Plans drawn so far. Not only did the plans emphasize the determining influence of the system of education on the rate at which economic progress is achieved but went further to assert that for economic development to make its full contribution to the well-being of the mass of the people programmes of education should be ahead of economic plans. These assertions have been made on the indisputable basis that economic development naturally calls for values and attitudes in building up democratic socialism. To help this, widespread participation of the people in all activities and constructive leadership at various levels becomes necessary. The modern economic development especially calls for a wide diffusion of the scientific temper of mind, a sense of dignity in labour and discipline in service, and a readiness to adapt new techniques and new knowledge to the needs of the people. The Third Five Year Plan wishes that in the background of the momentum created in the past decade for economic growth, education should become the *focal point of planned development*. It was axiomatic that the success of planning in India largely depended upon our capacity to hold together as a nation in the midst of diversity of language, region, caste and religion. Unity in a democracy, it proceeds to say, must be based on the consciousness of a common cultural heritage and commonly accepted future goals and a constant effort to realize them. To the culture of India, rich and composite, every section of the community had made its contribution; this culture, therefore, presupposed broad-mindedness and mutual tolerance, balance between the material and the spiritual and the cooperative way of life in which various individuals in a group are bound together by *commonly accepted rights and obligations*. India's future goals are embodied in the Constitution and the development plans are among the principal means of realizing them.

In order to have a fuller view of what the planners said it is well to notice the mid-term appraisal of the current plan. It noticed with satisfaction the progress in terms of physical achievements, but regretted the overcrowding in classes, the unfavourable teacher-pupil ratio, the shortage of teachers for institutions of technical education and of science in schools and colleges and the deterioration of standards in primary and secondary education.

The difficulty which planners have to face will consist in the need to achieve, if it is possible, at least a rough balance between education having to serve society in *non-educational ways* and yet keeping in view the *primary purpose of education*, viz., knowledge being its own end and not merely a means to an end. The present phase of intense development which the country is going through calls for the exercise of great skills in this rather difficult, if not altogether impossible, task which has surely to be performed with the greatest awareness of the need for academic freedom in the sense in which it seems to be understood in countries like the United Kingdom and the United States. Writing as recently as the year 1961, Professor David Fellman said: "While there has been no dearth of litigation in the state appellate courts on subjects involving teachers and education, a reading of hundreds of cases has yielded very few opinions which pay any attention to the subject of academic freedom, and, much less, show any genuine appreciation of either its meaning or importance."¹ American decisional law on this subject has been characterized as "formless" and almost "rudimentary." Genuine appreciation of the great values of academic freedom in the life of the nation has been considered to be almost non-existent in the published views of the American appellate judges. But two important pronouncements of the Supreme Court are well worth our attention in this context. The first is *Sweezy v. New Hampshire*² and the other is *Barenblatt v. United States*.³ In *Sweezy*, the Court reversed a conviction for contempt of a professor who had refused to answer questions asked by the state authority concerning his connection with the Progressive Party and the content of his lecture delivered at the university. No majority opinion was written though six Justices concurred in the result. In *Barenblatt*, the conviction of a professor who had refused to answer questions concerning his membership in the Communist Party propounded by a sub-committee of the House Committee on Un-American Activities was upheld. *Sweezy* was distinguished on the ground that the Communist Party and the Progressive Party were very different things and that there was no interrogation of the content of a lecture in *Barenblatt*, thus leading to a possible view that *Barenblatt* confined itself to Communist-association and did not concern itself with academic freedom. The sum of the two cases is that by the year 1959 all the nine Justices of the Supreme Court, who were then presiding over that Court, had clearly recognized academic freedom as being within the area of constitutional protection. In *Sweezy*, Mr. Chief Justice Warren (Justices Black, Douglas and Brennan concurring) stated :

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the

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1. Fellman, "Academic Freedom in American Law," *Wis. L. Rev.* 3, 17 (1961).
 2. (1957) 354 U.S. 234.
 3. (1959) 360 U.S. 169.

vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.⁴

Mr. Justice Frankfurter (Mr. Justice Harlan joining him) wrote a separate, but concurring, opinion in which he said :

When weighed against the grave harm resulting from governmental intrusion into the intellectual life of a university, such justification for compelling a witness to discuss the contents of his lecture appears grossly inadequate.⁵

Further :

It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.⁶

In *Barenblatt* Mr. Justice Harlan said :

Of course, broadly viewed, inquiries cannot be made into the teaching that is pursued in any of our educational institutions. When academic teaching-freedom and its corollary learning-freedom, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain.⁷

One has only to see that the American Bill of Rights goes on, from religious freedom, to declare that Congress shall not abridge the freedom of speech, thus elevating, as it were, this freedom to man's highest privilege. Judge Learned Hand, addressing the Convocation of the University of the State of New York, stated the full ambit of the freedom of speech :

Risk for risk, for myself, I had rather take my chance that some traitors will escape detection than spread abroad a spirit of general suspicion and distrust, which accepts rumor and gossip in place of undismayed and unintimidated inquiry. I believe that that community is already in process of dissolution where each man begins to eye his neighbour as a possible enemy, where non-conformity with

4. (1957) 354 U.S. 234, 250.

5. *Id.* at 261.

6. *Ibid.*

7. (1959) 360 U.S. 109, 112.

the accepted creed political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists, to win or lose. Such fears as these are a solvent which can eat out the cement that binds the stones together; they may in the end subject us to despotism as evil as any that we dread.⁸

Mr. Justice Frankfurter talked in *Dennis v. U.S.*⁹ of the suppression of the advocates of overthrow inevitably tending also to silence the critics who do not advocate overthrow for fear that their criticism may be so construed.

Despite these expressions of eminent judges and jurists the American scene reveals a very important experiment, from which we must draw serious lessons, during an epoch when there was such fear of Communist infiltration into all aspects of American life, chiefly the academic, that the measures to meet the same induced by such fear, led to remedies worse than the dreaded evil itself. There have been so many instructive studies on this subject that it is not practicable to even enumerate them. The Special Committee Report of the American Association of University Professors on "Academic Freedom and Tenure in the Quest for National Security" is, however, one to which I cannot but make at least a passing reference. The exchanges¹⁰ among Professors Ralph Fuchs, Sidney Hook and Arthur Lovejoy may provide interesting reading to those who wish to pursue this subject further. The Special Committee did not use the word "presumption"; instead it carefully employed the following expression: "indications of past or present Communist association or activities" by a teacher create "possibility of his involvement in activities subversive of education itself, or otherwise indicative, to an important degree, of his unfitness to teach." The Committee approved the position taken by the Corporation of Harvard University that in the absence of extraordinary circumstances present membership in the Communist Party by a member of the faculty would be regarded as grave misconduct, justifying removal. There was agreement, however, on all hands that the faculties of all institutions of higher learning, or their representative committee, should be guardians and sole judges of the professional integrity of their members; there was difference only about procedural principles. Measures like the Aliens Registration Act of 1940 (commonly known as the Smith Act), the Communist Control Act of 1954 and the requirement of the "College Affidavit" in particular, were among

8. Learned Hand, *The Spirit of Liberty* 284 (Compiled by Irwin Dollard 1953).

9. (1951) 341 U.S. 494.

10. Sidney Hook, *Political Power and Personal Freedom* 303-09.

those designed to combat the spread of Communism; but in practice they were found to lead to evils greater than those sought to be avoided. The Loyalty Oaths were not found to visibly improve the position. We find Mr. Justice Black observing in *Speiser v. Randall*,¹¹ "Loyalty must arise spontaneously from the hearts of the people who love their country and respect their Government."¹²

It is now worth our while to have a look at the United Kingdom where there is a conspicuous absence of any constitutional guarantee of academic freedom. The universities there have never been state institutions. The Inns of Courts were controlled by the legal profession. Oxford and Cambridge were the only two universities which were there even for nearly a century and a half after James II fled the country having unsuccessfully attempted to build Roman Catholicism at Oxford and attacked Cambridge. The Whig leaders were *alumni* of one university or the other and, perhaps, no opportunity arose thereafter for conflict. The needed finance and initiative came from voluntary organizations and individuals to found universities later. Successive governments were content, indeed happy, to merely stand by and watch the work of the universities. The position seemed to remain unaltered even when at the beginning of the present fifties Lord Vansitart made an attack on the Communist clique in the University of Birmingham. Thus academic freedom is seen to be largely a matter of tradition in the United Kingdom.

It is, indeed, a very happy augury that this seminar considers educational planning in its broadest setting, not omitting to view it in the light of the provisions of the Constitution. The concept of academic freedom as a constitutionally guaranteed one was seen to be of fairly recent development even in the United States despite the broad manner in which freedom of speech is guaranteed by it and the ban on Congress making any law abridging that freedom. In India, we have only to turn to article 19, it being settled that the freedom mentioned in this article could be controlled only by the exceptions mentioned in it and not by any other provision of the Constitution.¹³ Article 19 (i) (a) assures to all the citizens of India the right to freedom of speech and expression. Article 19(2), as it stood prior to the first amendment of the Constitution, ran as follows: "Nothing in sub-clause (a) of clause (i) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the State." The Supreme Court held in *Romesh Thapper v. State of Madras*¹⁴ that the

11. (1958) 357 U.S. 513.

12. *Id.* at 532.

13. *Gunupati Keshavram v. Nafisul Hasan*, A.I.R. 1954 S.C. 636.

14. A.I.R. 1950 S.C. 240.

concept of "security of state" did not include ordinary breaches of "public order" as such, but would comprise offences directed against the state itself. This led to the passing of the First Constitution Amendment Act, 1951, which enabled the legislature to impose restrictions upon freedom of speech and expression in the interests of (1) security of state, (2) friendly relations with foreign states, (3) public order, (4) decency and morality, (5) contempt of court, (6) defamation and (7) incitement to an offence. The Supreme Court defined the ambit of the newly imported expression "in the interests of" by construing it as a "tendency" test for determining the validity of a restriction under article 19.¹⁵ But this was further construed to be not any remote or fanciful connection between the impugned act and "public order," thus emphasizing the need for proximate relationship to the achievement of "public order."

Professor Ralph Fuchs described the scope of academic freedom in the United States as that freedom of the members of the academic community, assembled in colleges and universities, which underlines the effective performance of the functions of teaching, learning, practice of the arts and research. He thinks of three foundations for the concept of academic freedom :¹⁶

- (1) The philosophy of intellectual freedom, which originated in Greece, arose again in Europe, especially under the impact of the Renaissance, and came to maturity in the Age of Reason.
- (2) The idea of autonomy for community of scholars which arose in the universities of Europe.
- (3) The freedoms guaranteed by the Bill of Rights of the Federal Constitution as elaborated by courts.

The western ideals of education have certainly made their profound impact on India. 1 and 2 would be as much applicable to India. I do not find much evidence of 3. Regarding 1 and 2 the position may, perhaps, be somewhat complicated by the fusion of Indian traditions, which in the ultimate analysis may not, I trust, be found to be less liberal than those of the west. The pedagogic technique of going into the pros and cons of any problem (the *purva* and the *uttara pakshas*) was native to the soil. At the same time the nearly lost tradition of the *gurusishya bhava* and the *gurukulavasa*, in particular, may still furnish some real foundation for the development of healthy traditions in this regard. There was no question in the ancient set-up of any limitation on the kind of

15. *Ramjilal v. State of U.P.*, A.I.R. 1957 S.C. 620.

16. *Op. cit. supra* note 10.

questions which the *sisya* could address to his *guru*. The highest of all *vidyas* is the *atma vidya*. The *sisya* asked his *guru* to teach him that which if he knew would render knowledge or everything else unnecessary, that without knowing which knowledge of any other would be useless. There was no question of any third person telling the *guru* what he should teach his *sisya*. But our political freedom having been newly won, there is bound to be, for some time at least, a somewhat lopsided approach to problems touching freedom and an excessively legalistic approach, in particular, to such problems generally. What surprises me, personally, is the remarkable silence of teachers themselves on this very important concept of academic freedom. I had occasion to look into the memorandum which was submitted to the Indian Education Commission based on the results of a study group set up by the South India Teachers' Union and the S.I.T.U Council of Educational Research, Madras. I am unable to find, unless, I am grossly mistaken, any precise articulation therein of the concept of academic freedom; there does not seem to be any reference to it in so many words. I would consider it unfortunate, not because of the failure to articulate and claim such freedom but because of the want of sufficient awareness of such freedom, and, more important, of the responsibilities that go with such freedom. In that printed memorandum, there is reference to religious and moral education and how school programmes should be designed; talking of higher education there is reference also to the autonomy of the university and how it should be safeguarded in respect of internal administration and organization in order to ensure good discipline and the proper climate. Coupled with the need for assertion of the need to protect universities from interference by political parties, I wonder whether these would reflect an adequate appreciation of the need for a positive concept of academic freedom or the distinction, which is fine but valid, between university independence and academic freedom. The former, where it exists, would ensure only a surface-freedom; the real autonomy or internal freedom would depend only upon those who exercise such freedom and what they make of it. If this assumption is correct, it will have considerable significance for India because one will be less able to say, especially after the first amendment, that legislative inroads into the "autonomy" of the university cannot be made. The possible growth of academic freedom can obviously lie, therefore, in the direction of what teachers can make of such freedom as they are left with and the sense of responsibility they can reveal in the matter of carrying out commonly accepted goals. This view explicitly assumes that education in India today has to be goal-oriented. To the extent to which teachers earn the confidence of the public a realistic basis of academic freedom be laid. The place of healthy traditions, in such a context, cannot be overemphasized. Even apart from the legal position, the factual position would itself seem to compel the above view. There is hardly any univer-

sity or educational institution in India which does not depend on state funds: state funds can be linked with definite goals, which factor may by itself be quite compulsive. It is now widely realized that massive subsidies, either by the state or even by foundations or individuals, can have considerable impact on the work (even of a research nature) for which such subsidies are granted.

To me it seems that the future of academic freedom will largely rest on teachers who will earn sufficient public confidence by the exercise of wise self-restraint whenever it is called for in the interest of promoting academic freedom. It is possible to visualize a kind of development similar to associations of doctors and lawyers where association of teachers may not merely further their own purely professional interests but also unhesitatingly condemn, wherever it is called for, individual abuses of academic freedom and lapses from standards. It is also possible to visualize greater need for academic freedom in areas of higher learning than in the lower. If I have been able to understand the American position correctly, there seems to be a greater discussion of academic freedom in the context of higher learning. A rough analogy would be the requirement that courts subordinate to the High Court could only refer to the High Court questions involving interpretation of the Constitution and not to decide them themselves. This would not imply that there is any vital distinction between the judicial functions exercised by judges at levels lower than that of the High Court and those of the High Courts and the Supreme Court. The above requirement is there to obviate the great inconvenience and embarrassment that would otherwise result by a host of judicial officers at all levels in such a vast country as this taking different views about constitutional provisions. It may be still further possible to visualize the need for a distinction between the holding of private views and work in the faculty, to curb, perhaps, activities of teachers outside the campus which are inconsistent with and can damage commonly accepted goals and to confine academic freedom even inside the campus to reasonable limits of teaching in the concerned field of study and/or research.

The above discussion may show that while it may not be so easy as in the United Kingdom to expect academic freedom to be largely a matter of tradition (the history of the growth of universities being different there) it may not also be practicable to rely as much on legal protection as in the United States. The growth of academic freedom in this sub-continent seems to lie, therefore, in not merely building up traditions (to be built up by the universities and the teaching institutions themselves) but also by having the maximum possible discussion of this subject both inside and outside the campuses. To the extent to which this concept of academic freedom is articulated both by the teacher and non-teacher in the light of the need for and the difficulties in the way of achieving such freedom, the Indian concept of academic freedom might itself emerge more and more clearly and also find increasingly concrete expression.