

LEGAL THEORY AND EDUCATIONAL PLANNING

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Planning is the application and manipulation of knowledge to achieve certain goals and is largely a result of industrial and technological civilization. It is an effort of a community to find out the best ways and means to secure certain ideals on a mass level. A number of plans have appeared in India after independence. While in other directions some relevant and unified thinking has emerged, effective and well-considered educational planning is still to emerge. Even before independence, there were a number of education commissions which produced some educational plans.¹ But none of them is comprehensive enough to suit the conditions of modern independent India. The major question before the educational planners and intellectual elites of the country is to examine the degree and extent of relevance of the existing system of education which was introduced by the British for administrative purposes—a system which has so far been merely tinkered by piecemeal efforts only.

In contemporary India educational scheme or schemes should have the following aims :

- (1) To secure agreed national goals which have been laid out in the Constitution.
- (2) To assure continuing and effective theoretical responses to the challenges that the Indian society faces.
- (3) To provide an evaluative machinery which makes periodic checks upon achievement in both the earlier directions.

The task before educational planning, therefore, is not an easy one and transcends mere formulation of the syllabi and curricula for the arts, science, commerce, medicine, engineering and other branches of education. The responsibility is a wider one of evaluation which needs men of scientific, methodological, as well as philosophical vision. For such an overall task only the state can be expected to undertake the responsibility. And the state can act only through laws, rules, regulations and orders. It is now common knowledge that after independence through various economic, social, educational, scientific and other pressures, behaviour and actions of persons in India are getting more and more regulated and organized by the rules of law to secure a quick social change. The coverage of the legal system vis-a-vis the life of an individual in the

1. For a brief review of these plans see Naik, *Educational Planning in India* (1965).

community is so vast today that it does not leave even the area of personal law free from regulation and control. In such a total coverage the role of legal theory as a continuous rethinking upon the purposes of law becomes an all-engulfing one. There is, therefore, not only a direct and continuing relationship between the problems of value with which both legal theory and educational planning must of necessity deal but an ultimate dependence of all planning for implementation upon law and hence upon legal theory which seeks to appraise the law itself.

Legal theory, also loosely known as jurisprudence, is that branch of knowledge which attempts to examine and evaluate the fundamental rules and principles of law—national or international. Evaluation of any kind needs setting up of standards with reference to which judging and evaluation must proceed. The jurist has to borrow these standards or norms of judgment from other branches of knowledge that deal with the life of man in society. Thus, any serious thinking in law cannot escape continuing and thorough acquaintance with the development in humanities and social sciences which along with the religious thought provide the entire reservoir of values of a community.

This concern of legal theory with values would show that a proper comprehension of the subject in any country would be possible only when it is presented in relation to the problems of the country. It is not appropriate here to go into the details to show that the literature of jurisprudence of every country has been a result of the evaluative activities of thinkers of a particular country on the basic problems of law prevalent there. It is only through the appraisals of national problems that the general principles have been identified by Western jurists and then universalized for projection elsewhere. It is a pity that Indian legal theory has not been placed upon sound national foundations so far. I am not advocating an insular parochial outlook. While legal theory must canvass a universal outlook, its teaching can only be realistic and popular through basically national approaches based upon an examination of familiar legal problems.

This is equally true of political theory and educational theory, indeed of all philosophical speculation. It is unrealistic to talk about democratic theories and ideals unless the characteristics of democracy are perceived and exposed through the basic factual situations of agreed relationships of groups and individuals in the Indian community.

Mr. J.P. Naik, Secretary, Education Commission, Government of India, has in his book, *Educational Planning in India*, suggested nine principles or programmes for the reconstruction of educational system which can be said to be truly pursuing national goal.² These are :

2. *Id.* at 81-114.

- (1) Democracy
- (2) Secularism
- (3) Economic Development
- (4) Adoption of Science and Technology
- (5) Cultural Renaissance
- (6) National Integration
- (7) Socialism
- (8) Equality of Educational Opportunity
- (9) Pursuit of Excellence

Of the above nine principles, 1, 2, 3, 6, 7 and 8 are a direct concern of the law. Their concretization and actual implementation will largely depend upon the degree to which the legal profession in India comprehends them and is willing to observe them in its routine process of living.

Democracy : While it is difficult to define democracy almost everyone would agree that it is a way of life and a method of approaching situation of conflict of interests. It posits a general social preparedness to consider the claims of others while presenting personal claims and a habit of emotionally accepting resulting compromises and abiding by them once consensus has been arrived at. This presupposes a psychological buildup which can only be created through proper acquaintance with the legal method and its concern to find facts and adhere to some principles of natural justice. There is a responsibility upon the legal profession, particularly upon the legal educator and the jurist, not only to create popular literature to disseminate these values but also to exhibit their observance through their own behaviour.

Secularism : The seminar that The Indian Law Institute organized in collaboration with the Education Commission on "Secularism : Its Implications for Law and Life in India" was not able to arrive at any agreed definition of secularism.³ But whatever may have been the differences of opinion a clear consensus had emerged in that seminar that while emphasis on rational scientific humanitarian outlook was a part of the concept, in India it need not be opposed to or antagonistic to religious urges particularly such of them as form the core of a religious tradition of tolerance in the Indian community. The important problem before India today is how to isolate the peculiarly personal religious urges relevant to belief and faith from mere external rituals which have adhered to religion over centuries. It is only through this process of dissociation that effective steps towards achieving a secular society in India can be taken. The people belonging to different faiths will not be prepared to accept this process of dissociation from the political leaders but may be able to accept it from the judges who are said to be more impartial social guides. The long-standing tradition of impartiality of the judiciary and therefore of the entire-legal profession is in danger of waning because of some popularly

3. See *Secularism : Its Implications for Law and Life in India* (Sharma ed. 1966),

known instances of behaviour by the judicial branch of the profession and also because of non-utilitarian and unreal image of the Indian lawyer projected through poor legal education without a consistent theory. Secularism as an ideology ought to have a topmost priority in the country and it is only through a regeneration of the legal profession that it can be secured.

Economic Development : The problem of economic development in India today is basically the problem of coexistence of the public and private sector in industry, of graduating the uprooting effects of technological development, and of the redistribution of resources among the different classes and groups in the community in a far more reasonable and just manner. If there is any single area which calls for a major change in ideological thinking in Indian legal profession today, it is that of the relationship of man to property. In spite of years of national struggle and of fifteen years of hectic legislation to redistribute landed property, the legal profession, by and large, has adhered to outmoded vested interest theories.

Legal theory has, therefore, to produce a new approach to the question of the relation of man to property in India. This area of jurisprudence is challenging. Researches into the kinds of relationship existing between man and property in various historical eras in India and the possible perception of continuity of the traditional ideology, if any, may be fruitful. The theories of relationship of man to property will have to be adjusted with the incentive principle for increased production and development.

National Integration : Like secularism national integration also is a peculiarly post-independence Indian ideology and it is difficult to give any content to it. Integration is an emotional and psychological phenomenon and is generally deducible from mass behaviour. It is difficult to give to it a meaningful individual orientation. Educational policy and therefore legal theory can only provide a literature of approach. While it is difficult to secure national integration through laws and regulations and make people act in a positive manner through them, the task of the law may be to ensure that discriminatory techniques are not tolerated as a first step towards creating a climate for integration. The Constitution provides equal protection guarantees and the task of legal theory is to see that the political party in power in a particular state dominated by a particular group or interest does not get round the guarantees of equal protection under the mask of protecting special or minority interests. It is the function of legal theory to be continuously watchful and examine thoroughly and clearly the principles on which protective discrimination must be allowed even though it be for a limited period. Perhaps the outlook of Indian legal theory can be that protective discrimination as a

general rule is bad and uncalled for unless its needs have been open and clearly canvassed, accepted and understood. The entire legislation relating to backward classes and judicial decisions in this area would seem to indicate this.

Socialism : Socialism as an ideology and value, though vaguely understood, is difficult to be implemented in specific situations. No two views as to when to categorize specific principles are likely to be the same. Like democracy this again is an ideal of approximation and is largely a way of life. In India, however, the vast degree of difference between extreme poverty and extreme wealth would pose a more acute problem for socialism. The question is how to bridge this gap and do it in such a manner that the resultant psychology is a habitual correlation of rewards with hard work. This is an area where educational theory has some relevance.

Legal theory should endeavour to provide justifications for schemes of redistribution of resources. One basic area would be an examination of the nature and extent of theories of nationalization to be adopted as ideals and their reconciliation with principles of fairplay and justice. A good deal of rethinking is going on today both in international law and comparative jurisprudence in this area. With the issue of nationalization is basically related the issue of compensation for acquiring property and the principles upon which compensation should be based in a civilized society.

Equality of Educational Opportunity : The Constitution has already provided in the fundamental rights chapter for equal opportunities in the field of education. The basic questions for legal theory in India would be :

- (i) how far special admission guarantees to certain classes are relevant to this equality of opportunity;
- (ii) what type of selective techniques should be permitted and to what extent;
- (iii) is it just and appropriate for the states or the union to determine the fitness of a person for a particular type of education and training and to compulsorily divert him into that area;
- (iv) is such a right of the state compatible with democracy and principles of natural justice;
- (v) how far can the state provide a continuing check upon the quality of teachers in various fields in its pursuit of excellence and how far the judicial interference in the right of the state to determine the so-called autonomy of educational institutions be permitted ?

In regard to other ideals such as adoption of science and technology, cultural renaissance and pursuit of excellence, legal theory can only have indirect relevance. For instance, the question of the extent to which efforts at cultural renaissance may be permitted, even though they may be less conducive to the development of the essential democratic values of scientific spirit and tolerance, will be a question for law and the courts to examine. Cultural components of a particular religion, sect or culture have to be picked up in such a way that inter-culture-conflicts are avoided. In a society wedded to the uniform civil code but still suffering from the lags of religious superstition and bigotry the task of creating a climate for rational appreciation of different cultural contribution which the renaissance involves would still be that of legal theory. It could be safely asserted that but for the *Saifuddin Saheb* case⁴ judicial review in India has performed this task well.

Educational policy depends upon the legal system and its techniques for implementation and enforcement. Any implementation and enforcement can be rendered meaningless if the machinery of implementation and enforcement is not able to comprehend the ideals and values which it is seeking to implement. The question, therefore, which has to be squarely faced is that unless legal education which produces lawyers and provides necessary equipment in some form or other for all legislators, judges, and administrators is made more comprehensive and serious, even the best of educational schemes and plans are likely to be frustrated, for they will yield poor results.

The use to which writs and other legal techniques are put by teachers and others in educational institutions is the single greatest impediment in the pursuit of excellence. The best of teachers may be prevented from producing results either because their life is made miserable in an atmosphere not conducive to hard work or through lack of appreciation by an indifferent student community unwilling to participate in a communication of minds which all good education necessarily involves. Ideas flourish to achieve meaningful results.

In group living conflicts of interests are to be expected. It is also expected that a person will try to interpret and twist rules to suit his convenience but the authorities of the institutions have the responsibility to interpret the statutes and ordinances and other rules in a reasonable and just manner. Ideas or reasonableness and justness are always drawn from the prevalent quality or juristic thinking or legal theory that a country presents.

Legal theory, moreover, is like philosophy, a discipline which tries to give a purpose and manner to a legal system which is in itself an

4. *Saifuddin Saheb v. State of Bombay*, A.I.R. 1962 S.C. 853.

effort at organizing individual and social behaviour by the state in the interest of the community. The best interests of the community cannot be fixed and laid down once and for all; they require continuous examination and reevaluation. Legal theory, therefore, must present a dynamic and progressive outlook.

It is true that in no country can this task of reevaluation, re-examination and relating rules of law to fundamental principles of knowledge and life can be that of every lawyer or judge. This is the task of a few devoted, highly knowledgeable individuals belonging to the profession. It is equally true that educational experts, are also a few devoted individuals whose continuous rethinking can provide background knowledge and the basis upon which plans can be drawn, evaluated and redrawn to suit the needs of Indian society.

This paper would, therefore, emphasize the urgent necessity of jurists and educational experts getting together and looking to the problems of India as a whole. Law and education both are outstanding systems of social control and in a modern society both have greater importance than that of religion which used to be for a long time the main method of social control. Education as a system of social control has broader coverage than that of the legal system insofar as its training processes begin perhaps immediately after the birth of the individual in society. From the cradle to the grave it is all one long and involved process of education; the human being adjusting to his environment in an effort to transcend the limitations in which he finds himself in an ultimate search for a universal reality which abolishes distinctions between man and man. The ultimate purpose of education, therefore, is a kind of *sadhana* or a creation of conscience towards that end. Legal theory is a continuous assessment of the rules and techniques and institutions that society sets up for implementing its values and ideals through educational planning and thus works towards the same end.

The following would be the tasks before legal theory in India in regard to educational planning:

- (1) To provide fundamental thinking on how far the ideal of equality of educational opportunity can be adjusted with the needs of:
 - (i) protective discrimination in favour of certain under-privileged classes;
 - (ii) pursuit of excellence in educational institutions and production of high quality experts;
 - (iii) preventing continuous but indifferent and wasteful education;
 - (iv) religious and cultural education;
 - (v) development of regional languages.

- (2) To provide a continuous rethinking on the concept of democracy relevant to Indian needs. In particular, legal theory must provide an answer to the question of how can democracy be maintained in a country which is said to have an authoritarian tradition. The task can be partially tackled by taking up studies of selective groups and classes in India in terms of educational exposure and indicating the extent to which the new values of open and free discussion, tolerance and compromise have been imbibed by the group under study. This would be a preparatory study leading to other and more deep and involved studies.
- (3) To conduct seminars for the purpose of giving content to the concept of secularism.
 - (i) Studies of other countries which tend to show that popular acceptance of rule of law and general acquaintance with legal method is itself a secularizing process may be examined and their relevance tested.
 - (ii) Ways and means of securing qualities which may help the development of a secular approach. These qualities being:
 - (a) rationality and emphasis on cognition;
 - (b) scientific spirit;
 - (c) individuation and individualism;
 - (d) universalism and freedom from particularistic loyalties of caste, kinship, region, religion, etc.;
 - (e) achievement ethics;
 - (f) economic growth and structural differentiation; and
 - (g) recognition of the politico-philosophical concept of the state as an institution of positive value in its own right and not as a mere justification for some other ends.

To perform these tasks efficiently a new literature of legal theory in India has to be created. The present practice of imparting knowledge in this field through foreign textbooks has to be modified. With this ideal in view the writer has undertaken a project on preparing two books on legal theory in India. The first—a short textbook on Indian jurisprudence—will have the following parts:

- (1) Indian Heritage of Legal Theory
- (2) Jurisprudence in the West
- (3) The Meeting of East and West Law—Studies in Legal Theory up to 1960
- (4) Post-Constitutional Ideologies and Juristic Tasks of Adaptation and Creation
- (5) Legal-Philosophical Presentation on Some Important Judgments of the Supreme Court of India as Indicative of the Kind of Juristic Writing Needed for India.

This textbook would be followed by a more elaborate book on cases and materials on Indian law and Indian society. This book will attempt to relate extra-legal material to legal processes and thus emphasize the social purposes of the law in India.

Part I. Social Tasks of the Law

- (1) *Human Individual*
 - (a) Individual and Society
 - (b) Individual Interest and Personality
 - (c) Individual Interest and Substitution
- (2) *Social Groups and Associative Institutions*
 - (a) Family and Kinship Tie
 - (b) Habitational Tie (Village)
 - (c) Habitational Tie (City)
 - (d) Religious Communities
 - (e) Caste
 - (f) Economic Tie (Contract)
 - (g) Economic Tie (Trade Unions)
 - (h) Economic Tie (Corporations)
 - (i) Intellectual Elite and His Roles

Part II. Legal Facilities for Social Tasks

- (a) Legislature as an Institution
- (b) Legislation as a Legal and Social Instrument
- (c) Courts as an Institution
- (d) Judicial Process as an Instrument of Law

- (e) Administrative and Bureaucratic Institutions
- (f) Administrative Discretions as an Instrument of Law
- (g) Village Panchayats
- (h) Role of the Lawyer
- (i) Role of the State

It is hoped that within the next three years the first textbook of about three to four hundred pages will be made available and the companion volume on cases and materials will follow in another two years after the textbook has appeared. It is expected that through the perspective that these books will give to the problems of law and society in India, legal theory will suitably equip itself for social and educational reconstruction.