PROTECTIVE DISCRIMINATION AND EDUCATIONAL PLANNING

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I. INTRODUCTION

"Education is the most important single factor in achieving rapid economic development and technological progress and in creating a social order founded on values of freedom, social justice and equal opportunity. Programmes of education lie at the base of the effort to forge the bonds of common citizenship, to harness the energies of the people, and to develop the natural and human resources of every part of the country." This is how planning for education has been looked upon by the Planning Commission in the Third Five Year Plan.

The University Education Commission in its report rightly emphasized the need of clear knowledge of the social order for which the youths of the country are being educated. The social order, sought to be created by the Constitution of India, is an order based on equality and social justice. The preamble to the Constitution makes specific mention of "justice social, economic and political" and of equality of status and of opportunity. It also lays down that the sovereign democratic republic has to promote among all citizens the dignity of individual and the unity of the nation. These are the ideals which the fundamental law of our country has placed before the nation and all the branches of government have to work for the attainment of these ideals. The Constitution has further elaborated these ideals in the chapter on the fundamental rights and the directive principles of state policy.

All branches of the state—the legislature, the executive and the judiciary—are bound by these provisions and have to work in a manner that would enable the people of India to reach the goal. Planning in any sphere of human activity has to be consistent with this ideal, and planning for education is no exception to it.

Though the Constitution has emphasized the ideal of equality and social justice, it has made specific provisions for the weaker sections of the community. A constitution, if at all it has to meet the aspirations of the people for whom it is meant, must fit in the social structure of the country. It cannot be blind to the realities of life. The Indian society has many peculiar problems of its own. It has been divided into castes and certain sections of the community remained backward for no fault

of their own. If the ideal of social justice is to be realized, it is necessary to pay special attention to the weaker sections of the community. This is the need of the hour. Hence, the Constitution has made provisions for the backward classes in some of the articles. As this paper discusses the problem of protective discrimination in educational planning, only the relevant articles and the pronouncements of the Supreme Court of India with reference to these articles are being considered in this paper.

II. Constitutional Provisions

Article 15 (1) of the Constitution reads :

> The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Another article dealing with the topic is article 29(2), which reads as follows :

> No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

These are the fundamental rights guaranteed to citizens of India and educational planning has to take into account these rights. Any scheme violating these rights is bound to be unconstitutional.

The Constitution has also placed on the state certain obligations with respect to the weaker sections of the community. Article 46 refers to the promotion of educational and economic interests of the weaker section. The article reads :

> The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

This article is included in the chapter on the directive principles of state policy. These principles are, no doubt, fundamental in the governance of the country, but they are not justiciable. It means that a scheme of education that does not take into consideration the principles laid down in article 46 will not be struck down by the court as unconstitutional only on that ground. Planning for education includes planning for primary, secondary and university education. The problem of protective

discrimination has arisen in respect of university education only. For the Constitution itself provides in article 45 for free and compulsory education for all children until they complete the age of fourteen years.

III. The Decisional Law

After the commencement of the Constitution, certain states made special provisions for the education of the backward classes. The Madras Government regulated admission to medical and engineering colleges by an order which laid down the number of candidates to be admitted on considerations of religion and caste. The order was challenged as being unconstitutional as it violated article 29 (2). The defence of the Government of Madras was that such an order was essential, in order to promote the educational and economic interests of the weaker sections of the community. This defence was not accepted by the Supreme Court and it struck down the order as unconstitutional.[1] Hence Parliament amended article 15 by an addition of clause (4). The clause reads :

> Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Thus the Constitution now specifically authorizes the state to make special provisions for the socially and educationally backward classes. The ambit of protective discrimination is thus enlarged. However, the Constitution has not defined the expression "socially and educationally backward classes." The Supreme Court of India considered this phrase in two important cases. In the first case, *M. R. Balaji* v. *State of Mysore*,[2] Mr. Justice Gajendragadkar (as he then was) pointed out that in dealing with the question as to whether any class of citizen is socially backward or not it may not be irrelevant to consider the caste of the said groups of citizens. However, the importance of caste should not be exaggerated. Financial condition, the occupation of the citizen and even the place of residence may be taken into consideration for deciding the backwardness or otherwise of any section of the community. Caste alone cannot be made the sole or the dominant test in that behalf. Mr. Justice Subba Rao expressed a similar opinion in a subsequent case :

> The laying down of criteria for ascertainment of social and educational backwardness of a class is a complex problem depending upon many circumstances which may vary from State to State and even from place to place in a State. But what we intend to emphasize is that under no circumstances a "class" can be equated to a "caste" though the caste of an individual or a group

1. *State of Madras* v. *Champakam*, A.I.R. 1951 S.C. 226.
2. A.I.R. 1963 S.C. 649.

> of individuals may be considered along with other relevant factors in putting him in a particular class.[3]

The Constitution uses the expression "socially and educationally backward classes," thus pointing out that the protective discrimination is to be made in favour of classes that are backward both socially and educationally. The backwardness is not either social or educational, but it is both social and educational. It is for the state to decide which classes would come under this category. The court will not undertake the task of laying down the categories of the socially and educationally backward classes. Mr. Justice Gajendragadkar observed as follows :

> The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way. This is the function of the State which purports to act under Art. 15(4).[4]

Further,

> It is because the interest of the society at large would be served by promoting the advancement of the weaker elements in the society that Art. 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Art. 15(4). It would be extremely unreasonable to assume that in enacting Art. 15(4), the Constitution intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored.[5]

Hence, the Supreme Court struck down the sub-classification made by the order of the Mysore Government, between backward classes and more backward classes. For, the result of the method adopted by the order was that nearly 90 per cent of the population of the state was treated as backward. The Court characterized the executive order of the government as a fraud on the Constitution.

The Court pointed out that reasonable reservation would be up to 35 per cent as conveyed by the Central Government in its letter to the Secretary to the Education Department of the Government of Mysore. It referred to the observations of the University Education Commission, which laid

3. *Chitralekha* v. *State of Mysore*, A.I.R. 1964 S.C. 1822, 1834,
4. *Supra* note 2, at 659.
5. *Id.* at 662,

down that the reservations for backward classes for the purpose of admission to technical institutions may be 30 per cent. It also recommended other means for implementing the provisions of article 15(4) in a manner that would be consistent with the Constitution. The Court observed :

> It appears that the Maharashtra Government has decided to afford financial assistance, and make monetary grants to students seeking higher education where it is shown that the annual income of their families is below a prescribed minimum. . . . [I]f any State adopts such a measure, it may afford relief to and assist the advancement of the Backward Classes in the State, because backwardness, social and educational, is ultimately and primarily due to poverty. An attempt can also be made to start newer and more educational institutions, polytechnics, vocational institutions and even rural Universities and thereby create more opportunities for higher education.[6]

These observations would be of great help in educational planning under which the interests both of backward classes and the advanced classes would be secure and a social order based on social justice and equality of opportunity can be created.

In the second case, *Chitralekha* v. *State of Mysore*,[7] the question was raised as to whether the state government has power to prescribe a machinery and also the criteria for admission of qualified students to medical and engineering colleges run by the government and with the consent of management of the government-aided colleges, to the said colleges also. The facts of the case are as follows : In the State of Mysore there are a number of engineering and medical colleges – most of them are government colleges and a few of them are government-aided colleges. The state government appointed a common selection committee for settling admissions to the engineering colleges and another common selection committee for settling admissions to medical colleges. The government by an order dated July 26, 1963, defined backward classes and directed that 30 per cent of the seats in professional and technical colleges and institutions shall be reserved for them and 18 per cent to the scheduled castes and scheduled tribes. The government also decided that 25 per cent of the maximum marks for the examination in the optional subjects be taken into account for making the selection of candidates and shall be fixed as interview marks. It also laid down the criteria for allotting marks in the interview. The selection committee fixed the maximum marks for interview at 75.

This order of the government was challenged on various grounds. The most important ground was that the government had no power to appoint a selection committee for admitting students to colleges on the

6. *Id.* at 664.
7. A.I.R. 1964 S.C. 1822.

basis of higher or different qualifications than those prescribed by the university and therefore the orders of Mysore Government were illegal. The argument was based on entry 66 in list I of schedule VII, which lays down that Parliament has power to legislate on coordination and determination of standards in a university. As state legislature has no power to legislate on this matter; the state government cannot have any power to issue an order and constitute a selection committee which, in effect, was aiming at coordination and determination of standards in a university. Reliance was placed on the reasoning and the decision of the Supreme Court in *Gujarat University* v. *Shri Krishna*.[8] However, the Supreme Court which accepted the reasoning in the *Gujarat University* case did not do so in the *Chitralekha* case, and no solid arguments were advanced for not accepting the reasoning. Mr. Justice Subba Rao, who delivered the majority judgment, brushed aside the reasoning only by pointing out :

> It is not possible to hold that if a State legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to the colleges, it would be directly encroaching on the field covered by entry 66 of list I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law.[9]

Mr. Justice Subba Rao, who always supports his conclusion with convincing arguments, has not found necessary to advance any argument for brushing aside the reasoning accepted by Supreme Court in the *Gujarat University* case. Mr. Justice Mudholkar, who delivered his dissent in the *Chitralekha* case, dwelt upon this aspect of the argument in detail and came to the conclusion that

> This Court has emphatically laid down that where the question of coordination and determination of standards in certain institutions like a medical college is concerned, the power is vested in the Parliament and even though Parliament may not have exercised that power the State legislature cannot step in and provide for the determination and coordination of standards. It seems to me that by requiring the Selection Committee to add to the marks secured by the candidates at the P.U.C. Examination the marks awarded by the Selection Committee for the interviews and prepare a fresh order of merit on the basis of the total marks so arrived at, the State would be quite clearly interfering with the standards for admission laid down by the University. It seems to me that the standard of any educational institution would certainly be affected by admitting to it candidates of lower academic merit in

8. A.I.R. 1963 S.C. 703.
9. *Supra* note 7, at 1830.

> preference to those with higher academic merit by using the devious method of adding to the qualifications of less meritorious candidates marks at the discretion of the selectors on the basis of interviews.[10]

This, however, is a minority view. The majority view is the one laid down by Mr. Justice Subba Rao. The majority view is the law. It is for consideration whether the majority view is consistent with basic principles of any sound system af education and particularly in India where the Constitution aims at securing to all citizens of India equality of opportunity and social justice. If it is admitted that the majority view, if allowed to remain as it is, would be a hindrance in the path of equality of opportunity and social justice, an amendment of the Constitution would be necessary. Entry 66 of list I of schedule VII may be amended by inserting the words "including the constitution and powers of selection committee for admission to such institutions." The amended entry would read as follows :

> Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, including the constitution and powers of Selection Committees for admission to such institutions.

It is also for consideration whether a uniform policy for determining the backwardness of classes should be laid down. Under the Constitution, it is for the states to decide which classes are backward. It would be desirable to lay down the test of economic condition for determination. For as a result of successful working of five year plans, the economic and social structure of Indian community has changed. Certain classes which were socially and educationally and economically backward before independence, have now considerably progressed economically. On the other hand, certain erstwhile advanced classes have fallen on evil days. Planning for education has to take into account this change. If the ideal of social justice and equality of opportunity is to be realized, educational planning must be based on a new outlook.

Caste and religion as the basis of discrimination are prohibited by the Constitution. Both the above mentioned judgments of the Supreme Court have laid down that backwardness of a class is not to be determined in the light of caste alone. Recently a commission that was constituted in the State of Kerala for considering the question of reservations of seats in colleges, unanimously recommended that caste must not be the sole basis for such reservation. Besides caste, economic backwardness of the candidates should also be taken into consideration. The test suggested

10. *Id.* at 1839-40.

by the Commission is that all those with an annual income up to Rs. 4,200/- should be considered backward. Though these recommendations are consistent with the law laid down by the Supreme Court, they do not go too far. In the opinion of this writer, caste and religion should not have any place in the determination of backwardness of a community. The only deciding factor should be economic backwardness. Educational planning for protective discrimination should be based on this consideration. That alone would be consistent with the ideal which the Constitution has kept before the nation—the ideal of equality of opportunity and social justice.

IV. Conclusion

Protective discrimination is necessary in India for a few years more. However, it is necessary that there must be a uniform policy throughout the country in this respect. This can be achieved by providing in the Constitution itself the maximum percentage of seats that may be reserved for candidates belonging to backward classes. It is also necessary to amend entry 66 in list I of schedule VII, if the majority judgment in the *Chitralekha* case is not to be the law of land. Education must foster "a sense of belonging and a sense of oneness." National integration cannot be a reality if there is the denial of opportunities for education to any section of the community.