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Seminar
on
Educational Planning in India:
Legal and Constitutional Implications.

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ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND
THE STATES AND EDUCATIONAL PLANNING

by

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A federal constitution implies the existence of dual governments, division of powers and arrangements for their administration. Both the federal and the state governments create their own agencies for the administration of laws and subjects allotted to or retained by them under their constitutions.

But it is not so in India. The reason is mainly historical; considerations of continuity and economy are secondary

India was administered by a highly centralised form of government till 1919, the provinces deriving their authority by devolutions from the centre. Though the 1935 Act had erected the facade of a federation, demarcating the authority of the federation and the federating units providing also a concurrent list, it retained in reality the essentials of a unitary form of government. The reservation of unusual powers to the governors and the over-riding authority of the governor-general over the entire field of India's administration did little to change the centralised features of administration. It was claimed that without these reservations provincial autonomy would give full play to powerful centrifugal forces and disrupt the unity of India.

In this basically unitary form of government, there were common agencies both for legal and administrative purposes. Law courts at various levels in the provinces, each with a high court as the appellate authority, administered central and provincial laws. A federal court was, however, constituted as the highest appellate authority both in regard to central and provincial laws; it had the additional function of interpreting the Act in a dispute on authority between the centre and the provinces.

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When the Constitution came to be drafted the existing system of common judiciary was found both convenient and economical. There was hardly any consideration other than a theoretical one for introducing a dual system. The Constitution did not disturb this position except that it made provision for the establishment of additional courts for the better administration of the Union and the existing laws.

Judicial power thus continues to be exercised by a single set of courts, civil, criminal and revenue, whether they deal with disputes in respect of laws made by Parliament or state legislatures. The exercise of the executive authority of the Union or the states and rights and obligations arising therefrom are subject to the jurisdiction of the courts on a territorial basis where the cause of action arises.

Though the Union has agencies with quasi-judicial functions for administering certain levies such as central excise, income-tax, etc., their decisions are nevertheless justiciable and it is against the state courts of law that redress and remedy have to be initially sought.

The permissive provision for the establishment of additional courts has not so far been acted upon nor is there any possibility of its being invoked. As the state legal apparatus is used for administering Union laws, Article 256 confers on the Union the right to issue directions. In view of this dual quality of function, it has also been provided that the appointment of high court judges would be made by the President after consultations with the Chief Justice and the governor of the state concerned.

In the administrative field, however, certain central services had been formed for administering purely central subjects. Similarly, provincial services existed for administering provincial subjects. But these provincial services were supervised by All-India services recruited and controlled by the secretary of state and after the enactment of the Constitution by the Union government jointly with the state governments.

With the grant of autonomy to the provinces in 1935, recruitment to All-India services with the exception of the Indian Civil Service and the Indian Police had been discontinued. The Constitution provided for the retention of these two residuary All-India services and also empowered Parliament to create other All-India services.

Though the purpose for constituting the All-India services was to provide avenues of employment for British personnel and to retain authority in British hands at different administrative levels, a different set of circumstances has arisen for the retention and expansion of all-India services.

It is obvious that in any administration, the services should have the best talent available in the country as a whole. All-India basis alone provides this. Secondly, the all-India composition of the services with personnel drawn from all the states emphasises the unity of India and encourages the development of a national point of view. Equally, it ensures that the administration of every state has a leavening of officers from outside whose vision and outlook are not circumscribed by a parochial horizon. Thirdly, control of these officers vests jointly in the Union and state governments. This provides for a measure of remote control which, by its very nature, is more objective. The officers are thus able to fulfil their responsibilities without being subjects unduly to the stress and strain of local influences. Fourthly, all-India recruitment provides for the attainment of a minimum uniform standard in the administration of the country as a whole. Unusual though the arrangement is, there is justification enough for its retention and its extension to wider fields of India's economic and social administration.

The connotation all-India is somewhat misleading. The officers of these services are permanently assigned to different provinces, the centre 'borrowing' officers at all levels for manning its secretariat. The central secretariat is thus divided into two parts, an impermanent directing staff controlling a permanent subordinate establishment. The genesis of this lies in conditions peculiar to India's earlier unitary administration. The officers coming from the provinces brought administrative experience and practical knowledge of subjects with which the central government was concerned, and when their tenures were completed, they returned to the provinces with a deeper insight into those subjects and a better understanding of the purpose of their administrative duties.

Though the spheres of responsibility and authority of the Union and the states are demarcated in the Constitution, the practice of 'borrowing' officers from the states for the higher echelons of the Union secretariat has been retained to preserve a close and intimate link between the administrations of the Union and the states.

The concept of a welfare state and the acceptance of the imperative of planning for national reconstruction have given a new meaning and purpose to the administration. It underlines the necessity for retaining the century-old practice of bringing officers on a tenure basis from the states so that there is greater realism in the formulation of policy. Unfortunately, the tenure rule is falling into disuse. Officers are disinclined to forsake the glamour, power and prestige which Delhi alone can give and similarly ministers are disinclined to part with

officers who comply with and even anticipate their wishes. This is reacting on the efficiency of the administration both at the centre and the states. The officers at the centre are losing touch with the realities of life and are unable to give an appreciation of the impact of a policy on the 'governed'.

As a direct consequence of the unusual arrangement of having common services and the provision of using the states as agents for Union purposes, the central executive has been empowered to issue directions to the states. It has been specifically provided that the executive power of a state in regard to a state subject must be subordinated to the executive power of the Union in regard to a Union subject.

The Union is empowered to issue directions to the states for protection of the railways. There is a similar provision relating to the construction and maintenance of means of communication considered by the Union to be of national or military importance.

As a corollary to the powers given to the Union to issue directions to the states, it has been provided that if any state fails to comply with or give effect to any direction issued, the President may supersede the state government and its legislature. The administration of the state thereafter becomes a Union responsibility.

Secondly, the Constitution empowers the transfer of a subject from the state list to the Union list by a special parliamentary process should it be considered necessary or expedient in the national interest to do so. Apprehensions have been expressed that this provision might be invoked should a few of the smaller states come to be controlled by opposition parties and embark on economic and social policies which though within their legal competence conflict with those of the party in power at the centre. There being an inequality in the representation of the states in the Rajya Sabha this possibility cannot be wholly ruled out.

Thirdly, there is the provision for the reservation of a state bill for the consideration of the President. This provision also, it has been suggested, may be abused to thwart the policies of a state controlled by an opposition party.

Fourthly, on a report by a governor or on his own, the President may hold that there has been a breakdown of the constitutional machinery in a state and assume himself the responsibility for the administration of the state.

Fifthly, in an emergency, actual or apprehended, the Union can assume full and complete authority over the entire field of administration and function as a unitary state. The Constitution envisages also the possibility of a financial emergency and makes provision for restricting the financial authority of the states when such an emergency arises.

The provisions authorising the Union to legislate on subjects in the state list wholly in an emergency or on specified subjects otherwise make the Indian Constitution unique and have led to its being dubbed 'quasi-federal'.

In addition to these unusual provisions, there are other provisions designed to resolve any dispute and disharmony between two or more states and to effect coordination of policy. The President has been empowered to constitute a Council to inquire into and advise on an inter-state dispute. Similarly, he may constitute councils to discuss matters of common interest to secure coordination of policy.

This power has been used to constitute a Central Council of Health and a Central Council of Local Self-Government. Both these are standing bodies in which all the states are represented at Minister level. The programme of community development has been the major contribution of the latter council towards the development of self-government at all levels throughout the country.

Since the enactment of the Constitution, the concept of a unitary state has been further developed by numerous constitutional amendments, some to neutralise the pronouncements of the judiciary. Conventions have also come to be established which concede the right of interference by the Union executive and Parliament in the affairs of the states. One party rule and the acquiescence of the states have undoubtedly facilitated their growth which largely nullify the federal contents of the Constitution. This was pointedly brought to notice by the unprecedented developments in the Indian political scene in 1963.

Alarmed by unexpected reverses in three key by-elections, the Congress party which controls the centre and all the states with comfortable legislative majorities awakened to the fact that the leaders were losing touch with the people and losing their confidence. The leaders of the party had long been ensconced in high offices both at the centre and the states and there had been persistent complaint against some of them of corruption and nepotism.

This had hitherto hardly raised a ripple in the complacency of the party. Mr Kamraj, the then Chief Minister of Madras, suggested shock treatment as a cure and proposed that all the central and state ministers should resign and the ministries should be reconstituted to release leaders for organisational work.

The acceptance of the Kamraj plan led only to a minor reconstitution of the Union Cabinet but involved the replacement of six chief ministers. Though allegedly the late Prime Minister accepted the resignation of these chief ministers in his capacity as the party chief rather than as the Prime Minister, the manner in which these resignations were accepted and announced clearly established that this was little less than central intervention in the affairs of the states.

The discussion on the conduct of the late Chief Minister of Punjab and the subsequent Commission of Inquiry also indicate the overriding powers the Union exercises over the administration of a state.

The emergence of the Planning Commission has further complicated both union - state relations and the relations between the ministries and the legislatures. In a parliamentary democracy the determination of policy and the objectives which it has to fulfil is the primary function of the cabinet accountable to the legislature. Equally the unhampered execution of accepted plans and programmes is the responsibility of the ministries concerned. These functions can hardly be shared with any other authority. But this accepted principle has been disturbed by the concept of planning as it has gradually developed.

In a planned economy, a measure of centralisation and even regimentation is inescapable, but it is important that the States should not feel that their autonomy is being unduly frustrated. The pontifical attitude of the Commission and the ecumenical character of its fiat deprive the states of initiative and flexibility. They do not bring to the states a feeling of partnership in a national endeavour. It is against this background that the relations of the Union and the states in the evolution and execution of educational policies have to be viewed.

Education is a state subject and rightly so, in a country so vast, diverse and variegated, needs differ from one state to another and even from one region to another. It is only the states which would be in a position to evolve and adjust policies and practices to accord with the needs of a local community. For example, conventional methods may not be wholly suitable for a tribal area. There was perhaps another consideration which weighed with the Constitution-makers in making 'education' a state subject, namely, they should have freedom and flexibility to make necessary financial allocations to fulfil the directive in the Constitution regarding primary education.

It is unfortunate therefore that conditional grants and the financial inducements they provide have made states embark on schemes which they themselves consider relatively unimportant to their economy and social conditions and even unsuitable to their environment. There is little merit in inducing a state to continue to incur expenditure on objects however desirable when the rest of its resources is insufficient to meet the minimum requirements of its administration and the more pressing needs of its other basic responsibilities.

While it must unhesitatingly be accepted that there should be a co-ordinated national educational policy, it is open to question whether the determination of priorities should be surrendered by the states to an authority which is unaware of regional needs, disparities and problems. It should undoubtedly be for the central authority to lay down targets such as eradication of adult illiteracy, introduction of compulsory primary education, standards of university education, etc., and prescribe a time-table for their attainment offering necessary financial support for these purposes, regulating assistance on performance. But it should be left to the states to adjust and execute the programmes, accelerate the pace of some and moderate that of others in accordance with their specialised needs.

On this analysis, the questions which merit discussion are:

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- i) In an all important matter like education on which the future development of the country rests, is it/necessary that there should be a central policy but having regard to regional disparities is it possible to prescribe a uniform inflexible policy and make financial assistance dependent upon its acceptance? For example, should basic education be imposed uniformly and given priority when the need for spreading primary education is paramount? It is in evidence that lured by central assistance some states embarked on the scheme though they had little faith in its efficacy committing some of its own resources which would have been much better utilised in extending primary education.
- ii) Is it possible to hold that the central ministry as it is organised today is the repository of all wisdom and should continue to be entrusted with the responsibility for evolving an all-India educational policy? Would it not be advisable to constitute a high-level council

of distinguished educationists with a leavening of officers from the central education ministry to consider education in its broader aspect embracing adult literacy, school education, technological education, etc., and draw up a plan which should be binding on all the states?

iii) How best can a massive educational programme be financed? Is it feasible to levy an educational cess, say, of one per cent of the gross profits of business and other undertakings and if necessary from those assessed to super tax in addition? Would it offend against morality to organize sweep-stakes on the lines of Irish sweep stakes for educational purposes?

iv) Should radio and television be harnessed for educational purposes and methods devised for financing this added responsibility without demands on the resources of the union and the States?

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