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PROTECTIVE DISCRIMINATION AND EDUCATIONAL PLANNING

by

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In democratic societies, adopting pragmatic approach on the problem of nature of knowledge, as well as on that of ultimate human weal, there is not only full scope for proceeding to organise individual and common life of the community by recourse to the empirical method of trial and error, but what is more, there is a strong demand constantly voiced in its support by the intellectual section thereof on the plea of its being the only scientific method. In such a pragmatic set up, the general notions and attitudes in respect of social objectives, and the means of attaining them, are open to change in response to changes in the tentatively held ideas of right and wrong, good and evil, or just and unjust. And even when the commonly held views on such fundamental values have not altered over some length of time, if, in the meanwhile, changes have taken place in peoples' minds concerning the relative importance of essential social needs and functions, these are bound to result in the assignment of different priorities at different periods of time (even although these periods may be relatively very short in their duration) to different social tasks belonging either to public or to private sectors. Thus in democratic societies, with emphasis on philosophy of pragmatism, the general climate is not congenial to long term social planning. It is inevitable that in such societies, the members would have cultivated attitudes of permanent ambivalence with regard to the direction of national effort over any specified period of time. Planning under such conditions can be short-term planning only, and is more or less experimental in its nature. The national drive

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towards its working would be necessarily, a diluted and weak one.

The important place accorded in the constitutions of countries organised on the theory of political liberalism to the doctrine of individual liberty (of thought and expression), obviously impels each of their citizens to place high value on his own conceptions of right, wrong, duty, responsibility, justice, etc. These in their turn help develop his consciousness and attitude in regard to rendering obedience to law. The principle of freedom of association (as an aspect of individual liberty) enables him to form large or small groups, that tend to create in the society unofficial, and deviating in various degrees from the nationally approved standards, patterns of right, obligations and sanctions. Thus the total picture of the aggregate social set up, in the environment brought about by liberal philosophy, will usually comprise of an incalculable number of groups, one among which may have adopted the official standards of rights, obligations and responsibilities (which itself is admitted to be open to changes from time to time) on the one side, and an assemblage of variegated and unnumbered groups having developed unofficial (and perhaps even unapproved) law consciousness on the other, competing with each other, and striving for obtaining separate recognition. The constitutionally recognised activities of the members of such groups, normally cause, and bring into existence, a permanent state of tension that is ordinarily obtaining in the careers of such social organisations. This state of tension constitutes an essential part of liberal democratic societies.

As I understand it, planning is an integrating social element. It is dynamic in the sense that its working is designed to lead the people from a lower level of social and economic attainments to a higher level, and after reaching the targetted goals within a specified period, the unified national effort is again directed from the higher level that is reached by the community, to the attainment of a further higher level on its march towards the ultimate weal of the people. Thus

planning seems to be that aspect of the social process which is concerned with the maximum utilisation of all available social institutions and resources together with the human element also bundled in the supreme effort towards the attainment of national objectives. Law which has guaranteed personal rights of individual citizens on the other hand, seems to be that aspect of the social process which is concerned with the structuring and enforcing of a policy of stabilisation of communal mores and practices where the rights of individual citizens are accepted to be of paramount value, and the state and its administration are encumbered with specific duties arising from the official recognition accorded to such rights. The reconciliation of these interdependent but conflicting functions and the establishment of an institutional framework which be found suitable for the smooth working of the plan, is an extremely difficult task in societies organised on liberal democratic philosophy. Planning demands a positive and categorical attitude of the generality of the people towards the beneficial character of successive national plans. Those who have to put in concentrated effort to work it out should have absolute faith in its efficacy to bring about the desired results. Where there is only half-hearted attachment to be come across, or where there is constantly present a feeling that in the working out of the plan, the individual citizen is not being given full opportunity to develop his own personality in accordance with his own aptitudes and desires, or where there is a feeling that the plan itself is not satisfactorily drawn up, and there are doubts concerning its utility or wisdom, the national effort is bound to suffer from the resulting, half-hearted, or enforced working of the plan.

The aim of all educational planning should be to build up a national endeavour for making available, by appropriate processes of continuous training to the community, suitable classes of young men and women in adequate numbers, possessed of appropriate qualifications and attitudes, for being entrusted with essential social functions and responsibilities in a planned economy. Its other, but equally important aim, should be to bring together on one plane, all the intellectual

elements in the community, so that they would be made to shed off their separate antagonistic or indifferent stances, and would begin to appreciate the significance of having a homogeneous and sympathetic perspective of officially accepted objectives and norms. Thus it is through the means of educational planning, the blending together into one integrated whole of the diverse and variegated groups and individuals in the total social set up, is sought to be achieved. It should be plain to all, that an all out success of national effort in this direction would be possible only when different pockets of competing social values and preferences get eliminated and the whole economy becomes fully integrated through an intensive process of rationalised education. The areas covered by the moral and social consciousness of the generality of the members of the community, and the consciousness and attitudes towards obedience to law of those representing them as their intellectual leaders should coalesce and be identical to each other. This will be achieved when the habits and standards of individual members will conform completely with the stabilised mores of the society. Educational planning, in my view, should aim to bring about this result.

Howsoever desirable this may seem to be, there are presented at every stage of planning of education on national scale, quite a sizeable number of difficulties raising their heads from all sides, and affecting all aspects of the national endeavour. Our Constitution, federal as it is openly vouched to be, has declared, Education to be a subject-matter of the jurisdiction of States, the several units of federation. Thus the responsibility of enunciating and laying down educational policies over different regions of the country, is primarily vested in State administrations. This decentralisation has given rise to the recognition and operation of not-too-conformable-to each-other policies even in adjacent geographical areas resulting in startlingly divergent standards of intellectual attainments among the products of educational institutions belonging to the various State units. Educational planning must have generally suffered some sort of setback through such unco-ordinated policies introduced at the three different stages

of education, viz. the stages of the primary, the secondary and the higher education respectively.

Besides this, the general organisation of social life as envisaged by our Constitution, looks to the individual citizen as the basic, and more or less self-contained, unit of the whole national fabric. It is the individual citizen who is, as if facing the state and government on the opposite side, endowed with several fundamental rights which cannot be intruded upon by the administration of the state (except under the abnormal conditions of a national emergency) even with the object of achieving acclaimed national goals. In a broader sense, it may be said that even the provisions of Articles 14 and 19 may be held to serve the purpose protecting the claims of individual citizens (based even on the strength of their uncoordinated inclinations and desires), against legislation or executive action of state authority, to the extent to which the contents of these provisions help him to do so.

When individual men and women are specially endowed with inalienable and imprescriptible rights, limiting the authority of the state, and its planners and administrators, and favouring their personal dignity and liberty, it should be considered to be but the natural consequence of this situation, that narrow and individualistic attitudes become deeply rooted in human character. Instead of being ready for subserving the national cause and devoting himself completely to some unified national effort undertaken officially, each individual citizen begins to place inflated value on his own notions of his personal and national welfare. And inasmuch as formulation of a common policy takes place as the result of compromises, arrived at from the resultant of different kinds of pressures arising out of divergent competing claims of various groups and individuals, the ultimate operative national policy comes out to be a dilute and practically ineffective formula which helps very little in advancing the national cause within the targetted period of time. It is with reference to this kind of half-hearted effort that the Education Minister of the Government of India speaking recently observed (in his speech on the work of Education Commission) that a stage has now been reached in the various aspects of educational development of the national

community, where quality should be the prime consideration. He further observed that perhaps immediately after independence tremendous expansion was considered necessary, but now there was a growing realisation that the poor quality of education imparted did not meet the national demand. It was in the same vein that Sir Jahangir Cawnahy, speaking a few days earlier at Bhubneshwar, addressed himself in very disparaging terms about the products of the nationally sponsored institutions where education in engineering courses was being imparted. He said their performance was of such an alarmingly low standard that it was generally felt risky to entrust them with construction works of complex character and national importance.

Upto now I was dealing with such difficulties and obstacles as are met with by organisers of a planned economy both, in their endeavours towards general social and economic planning, or particular planning in the sphere of education, when the societal common life happens to be shaped (as is sought to be done by our Constitution for the national common life of an independent country) by a liberal philosophy with emphasis on individualism. But further, when such a society finds its historically developed common plan of life, shaped by rigid hierarchical classes (or castes) and when these class divisions are, by testing the propriety of this common life in the crucible of their newly formulated ideas of social justice, attributed to the perpetration of a perpetual wrong by ruling classes on the members of despised classes continuously over hundreds of generations, it is but natural that the members of these down-trodden groups should demand for themselves (and the State should concede their demands to them), positions of special privilege on diverse matters affecting their day to day life. By the backing of law they would thus be getting they are bound to be protected, and their positions (or more particularly the positions of the members of their future descendants), by the removal of injustice, are expected to be equalised with the positions of the members of other classes in the social organisation.

With this object in view our Constitution has laid down in the Third, as well as later on, in the Sixteenth Part, a certain number of special provisions with the avowed object of conceding their demands. Some of these are aimed at providing special facilities in the matter of educational advancement to the members of (a) Scheduled Castes, (b) Scheduled Tribes, (c) Backward communities; and (d) even to members of Anglo-Indian Community, for one or two special purposes. Out of these provisions, those which recognised the privileged position of the Anglo-Indian community, in respect of securing to their educational institutions the same amount of State aid, which they used to receive in pre-independence days, are already run out by the efflux of time, and therefore it is not necessary to consider them any longer, although the Supreme Court had occasion to consider their effect when their advice was sought by the President on the issue of the Kerala Education Bill of 1957. (see A.I.R. 1958 S.C. 956).

In contrast with the provisions included in Part Sixteenth of the Constitution, the provisions included in Part Third which give recognition to the privileged position of certain groups within the society, are more or less permanent character. Their effect on the national policy of educational planning is bound to be of somewhat retarding nature in respect of the speed, or the standard, of its satisfactory execution. The decisions of different State governments in the matter of castes or groups coming under the heading of the specially protected category of Backward Communities are neither uniform, nor free from objectively just criticism. It is known that certain States have proceeded to declare as many as ninety-five percent of their total population as belonging to backward classes, and have proceeded to provide an elaborate schedule to their communal G.O.'s in this respect, giving exact details of percentage which each of such backward group or caste, may claim, as regards the admissions of their children to aid-receiving educational institutions, intended to impart instruction in its various branches. Some of these communal G.O.'s have recently been the subject of severe criticism by superior judicial tribunals when their validity was challenged therein (See A.I.R. 1960 Mysore 338; A.I.R. 1964 S.C. 649; etc).

It is obvious that these provisions openly clash with those incorporated in the Fourth Part of the Constitution, intended to serve as the Directive Principles of State Policy. There have been numerous occasions when courts in the country have been called upon to examine the cumulative effect of the provisions incorporated in these two parts, and which are apparently incompatible to each other. The courts have, where the issues were in direct conflict with each other, usually held, that though the Directive Principles cannot override Fundamental rights, they may not entirely ignore these principles in determining the scope and ambit of the fundamental rights, but should adopt the principle of harmonious construction so as to give effect to both the provisions as much as possible. (Sec. Hanif Quareishi vs. State of Bihar, A.I.R. 1957. S.C. 731; and the Reference in the Kerala Education Bill, 1957. A.I.R. 1958 S.C. 956).

The Supreme Court have in their opinion on the Kerala Education Bill, 1957, clearly enunciated the extent of authority and power possessed by legislatures in implementing the provisions of the Constitution contained in Part IV although they may be supposed to possibly come in the way of full exercise of rights, even including the rights conferring discriminatory protection on certain classes of citizens, guaranteed in Part III. The Court observed: "There is always a presumption in favour of the constitutionality of an enactment, and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is found to be the clearest, and finally that in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times, and may assume every state of facts which can be conceived, existing at the time of legislation."



On perusing the above, it becomes plain that in interpreting the obviously conflicting provisions of Parts III and IV, the courts will go to the farthest length in upholding the constitutionality of any law or executive order by showing all possible consideration to factors in favour of the action of the government. But yet in some very well-publicised decisions the highest courts in the land had to strike down government orders extending unconstitutional protection to certain special classes.

In the case of Champakam vs. State of Madras ( A.I.R. 1950 Mad. 120) the Supreme Court had to strike down as unconstitutional the C.G.O. This decision gave rise to the 1st Amendment of the Constitution, and the addition of sub-clause (4) to Article 15 was made as the result of this Amendment. Even after the Amendment, in some later cases, the Courts had, (as noted above, A.I.R. 1960 Mysore 338, and Balaji vs. State of Mysore A.I.R. 1964 S.C. 649), to declare as unconstitutional executive orders of Mysore State government on account of their palpably discriminatory contents.

The exercise of rights assured to sections of citizens because of their special language, script or culture, intended for their conservation, has not given rise to serious difficulties upto now, although these provisions have received consideration (and interpretation also) at the hands of courts.

When all these decisions are considered together, the over-all impression which one carries about them, is that courts in the country are not likely to stand in the way of the legislatures, or the executive authority, when they proceed to implement the policy of a smooth working of Educational Planning on national scale as implied by the Directive Principles. The attitude of courts in interpreting the provisions of Part III of the Constitution vis-a-vis those of Part IV has generally been constructive and helpful to the advancement of national cause. The real difficulties in the working of successive development plans, including educational planning, lie in the uncoordinated attitudes (which are themselves constantly open to change) cultivated in the minds of the intellectual representatives of the community, by their adherence to the philosophy of individualism, with emphasis on a pragmatic approach to the organisation of common life. Further, the difficulties are presented by the non-homogeneous working of different State governments, and by a continuing climate

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of tension between diverse groups of citizens each trying to push its own favourite theory of proper or improper policy of educational planning held by it for the time being.