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NEP AND THE AUTONOMY QUESTION

Relevant for: Developmental Issues | Topic: Education and related issues

The National Education Policy 2020 (NEP) is a charter not only for pedagogical and academic reforms but for various legislative and administrative measures to give effect to those reforms, and a bunch of ideas, plans, and recommendations to guide the education sector in the next 20 to 30 years.

The question is has the NEP been preceded by any legal and constitutional vetting and audit, particularly with respect to the occupational, educational and cultural rights (FR) of people. The policy-makers should have before putting the policy on the anvil taken cognisance of the various legal and constitutional problems that have engaged the country in the past, consulted constitutional experts. On matters ruled on by the Supreme Court of India (SC), the policy-makers had an obligation either to be guided by the court's decisions or to state boldly that they disagree with them and get them reviewed, either by legislative action or by the judiciary itself.

The NEP has paid very little or no attention to the most sacred constitutional values and binding decisions of the SC. Several NEP recommendations are likely to face serious challenges in courts of law, which may deter the smooth and effective implementation of the policy. For instance, the regulation of self-financing private unaided institutions (PUIs).

In TMA Pai (2002), a special 11-judge bench of the apex court declared that PUIs stand on a totally different footing from government-aided institutions (GAIs) because PUIs have a fundamental right of "occupation" to autonomy under Article 19 (1)(g) of the Constitution. The "light but tight" regulation regime of NEP is completely at loggerheads with the principle of "maximum autonomy" and "no bureaucratic or government interference" propounded for PUIs in TMA Pai.

In TMA Pai, the court had overturned an earlier five-judge judgment in Unnikrishnan (1993), which had proposed a progressive socio-economic and egalitarian agenda with a government-operated scheme for PUIs in matters of admission and fixation of fees. The 11-judge Bench found that scheme to be amounting to "nationalisation" of education, a concept wholly antithetical to the fundamental right of PUIs. Some of the principles enunciated in TMA Pai are:

a) "There, necessarily, has to be a difference in … PUIs and … GAIs. Whereas in the latter case, the government will have greater say in the administration, including admissions and fixing of fees, in the case of PUIs, maximum autonomy … has to be with the PUIs. Bureaucratic or governmental interference in … such an institution will undermine its independence. …

b) One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money… We live in a competitive world today … Economic forces have a role to play. The decision on the fee …must necessarily be left to the PUIs.

c) In… PUIs… autonomy and non-regulation … will ensure that more such institutions are established.

d) Appropriate machinery can… ensure that no capitation fee is charged and that there is no profiteering… All over the world… those who seek professional education must pay for it."

The socio-economic philosophy in TMA Pai has been re-iterated by SC in several later

judgments. But the NEP finds that there is “asymmetry” between PUIs and GAIs, unabashedly obliterates the distinction and brings them on par under the same regulatory “light but tight” regime for both schools and the higher education institutions, hitting them hardest in the fixation of fees.

While the NEP proceeded on a suspicion against PUIs, the policy-makers had no representation from PUIs. The NEP provides for not just a bare regulator to weed out capitation fee and profiteering in PUIs, but under the euphemistic slogan “light but tight” regulation, unleashes a stifling regime. It enables all “stake-holders” to complain although the only person who has real stakes in a PUI is its founder-promoter. All others are bystanders and beneficiaries with nothing to lose. Invariably, they can serve as pawns in the hands of vested interests, including rival institutions, and the ruling and political class always willing to exploit and stoke the constituency of fee-paying parents under the guise of students’ welfare.

Ultimately, a PUI will be able to keep its promise of excellence only if it is permitted to breathe easy. But the NEP not only encourages but virtually instigates complaints by the so-called “stakeholders” for adjudication by a government-appointed regulator. It does not even ensure minimum safeguards in the form of an independent, legally trained and judicially qualified tribunal acting as the adjudicator. Such a policy is sure to sound the death-knell of autonomy in the internal and financial matters of PUIs.

As far as GAIs are concerned, they barely involve any friction between the government and citizens’ rights. But the PUIs will hardly be able to focus on the improvement of standards under the NEP. They will have to spend time, resources, manpower, and funds in making constant and unrelenting public disclosures and running all the time to the regulator-cum-adjudicator for defending themselves against reckless complaints.

The new “licence raj” will defeat citizens’ rights and result in high-handedness, harassment and corruption. The authors of NEP have almost deliberately ignored the contradiction between the two principles of autonomy and regulation.

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