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**GENEALOGICAL AND ANALYTICAL CRITIQUE OF THE NATIONAL
EDUCATION POLICY, 2020: The Rich Heritage of Indian Knowledge, Social
Traditions, and the Problem of Social Order**

Chanchal Kumar Singh & Mritunjay Kumar

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GENEALOGICAL AND ANALYTICAL CRITIQUE OF THE NATIONAL EDUCATION POLICY, 2020: The Rich Heritage of Indian Knowledge, Social Traditions, and the Problem of Social Order

Chanchal Kumar Singh & Mritunjay Kumar***

[Abstract: Access to education in ancient and medieval India was not premised on any doctrinal theory of equality or liberty but allocated through the principle of non-exclusion. Latter had not only the status of a principle of practical law but also it was an integral part of the moral and social psyche of the community. The NEP obviates even the mere possibility of that imagination in favor of market-driven access to education. The prominent leaders of the education policy in contemporary India lack the inventive imagination to bring renaissance in Indian education system. The potentiality of renaissance is ready to sprout if historical and social visions are activated to reinvent the ancient Indian past, which was destroyed by epistemic violence deployed by British colonialists.]

Keywords: *New Education Policy, Social Good, Non-Exclusion, Access, Philosophy of Education, Ambani-Birla Report, equality, Legal Education etc.*

I

Introduction

The National Education Policy, 2020, (hereinafter, referred as 'NEP') is a victim of predatory practices of the market, which find its expression in the Ambani-Birla report on education. The NEP is certainly a victim unaware of its own direction, destined to dismantle even the reminiscences of the Indian knowledge-traditions and civilization. Moreover, it appears to be a by-product of the modernists' *infinite regressivism*; hidden in the idea of agency, which is nothing but the dark matter in organizing the nation state and the societies thereof.

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Institutions, things, norms, and conceptual categories of the present can be understood in the context of their history. For instance, one may take the Darwinian theory of biological evolution,¹ which is, essentially, a summary of the conclusions of historical accounts of biological species, containing logical prescriptions for the present and future, both. Modernism, in social sciences and the practices of the art of government, abhors the historical perspective and constructs a system of social order in which the diachronic history of institutions, norms, or conceptual categories of societies has little or no place.² Even though, history is taught and researched, yet, it is absent in the most vital arm of modernism, the Westernized³ education system. The paradigm of so-called post-modern studies is not different. Technology and scientific methods contribute to the construction of a new system of social orders but only through relegating the past.⁴ The pioneers of modern public law, Jean Bodin, Montesquieu, Gandhi, and David Thoreau, etc., established, therefore, that one set of institutions, norms, or conceptual categories cannot be suitable or adaptable for the other communities or people.⁵

The concept of knowledge and education, as social good, are certainly those amongst such conceptual categories. In the Western habitude, apart from a few exceptions, knowledge has been conceived as the greatest power whose possession is advantageous in acquiring other social and natural resources. Isaiah Berlin warned, 'not to underestimate the power of ideas: 'philosophical concepts nurtured in the stillness of a

¹ See, *Generally*, Charles Darwin, ON THE ORIGIN OF SPECIES (1859).

² See, Martin Loughlin, THE FOUNDATIONS OF PUBLIC LAW Ch. 2 (2010).

³ 'The West' is not a homogenous category. We have used 'the West' in a specific sense in which academic scholarship and practices of art of the ruling are found in the USA and the UK excluding the most of the continental Europe.

⁴ See generally, Martin Heidegger, *The Question Concerning Technology and Other Essays* (1977).

⁵ Jean Bodin, METHOD FOR THE EASY COMPREHENSION OF HISTORY (1566): ('Bodin, argued that the universal law cannot be contemplated in abstraction without pursuing the historical and comparative analysis of various societies' laws and customs); See also, Martin Laughlin, FOUNDATIONS OF PUBLIC LAW 56 (2010); Montesquieu in 'The Spirit of the Laws' made the comparative study of many societies to understand the actual origin and growth of law without relying upon the universalized abstractions developed by social contractarian in the name of natural law or law of nature. He found that the origin and growth of law could not be separated from the social, cultural, and climatic conditions of the societies. See, Montesquieu, THE SPIRIT OF THE LAWS 182, 365 (Thomas Nugent trans.,1900). See also S.N. Agarwal, GANDHIAN CONSTITUTION FOR FREE INDIA 11 (1946) ('To manufacture for her a mixture of Western Constitutions, which are yet in the melting pot, will be not only a great insult to India but will also betray gross ignorance of sociological science. For, constitutions are always in the nature of organic growth; it is most unscientific to foist on country a system of administration foreign to its own genius, Administrative systems cannot and should not be transplanted. In the words of Sir John Marriott, constitutions are not exportable commodities. Each nation has its unique culture and civilisation which may be called its Soul. This uniqueness must be evolved and preserved in all phases of national life. Virile and natural diversity is life; dull and imitative uniformity is death'). *Id.*

professor's study could destroy a civilization'.⁶ Studies in 'orientalism' have documented⁷ the fact that colonial domination and enslavement of one community over the other were not accomplished, merely, with brute force but ultimately achieved through the mechanism of controlling the epistemic practices and education system.⁸ In the twenty-first century, the modern category of education as power is to be seen as the most potent weapon in the hands of capitalism, i.e. market.⁹ It appears, at the first instance, quite puzzling to talk of market and the managers of market in terms of colonial powers. The puzzle may be solved through psycho-analysis of the contemporary human's sentiment of ordinary men and women, excluding the so-called elite and socialite class but including the academicians and their academic-habitude. The psycho-analysis excavates that a unique kind of self has got upstretched over the period of 250 years with extreme form of alienation from the self. In fact, human species have made their life subservient to the state and the market.¹⁰

Not surprisingly, education is treated as possession of power and vocational skills, similar to wealth, resources of production, and material profits,¹¹ and the NEP, in India, carries forward the agenda of Neo-liberalism. In the similar vein, the managers of

⁶ Isaiah Berlin, *Two Concepts of Liberty* in *FOUR ESSAYS ON LIBERTY 1* (Isaiah Berlin ed., 1969).

⁷ *See generally*, Edward W. Said, *ORIENTALISM* (1978).

⁸ Edward W. Said, *ORIENTALISM* (1978, 1994). Said, beautifully records, "Oriental lived in a different but thoroughly organized world of his own, a world with its own national, cultural, and epistemological boundaries and principles of internal coherence. Yet what gave the Oriental's world its intelligibility and identity was not the result of his own efforts but rather the whole complex series of knowledgeable manipulations by which the Orient was identified by the West. Thus the two features of cultural relationship I have been discussing come together. Knowledge of the Orient, because generated out of strength, in a sense creates the Orient, the Oriental, and his world. In Cromer's and Balfour's language the Oriental is depicted as something one judges (as in a court of law), something one studies and depicts (as in a curriculum), something one disciplines (as in a school or prison), something one illustrates (as in a zoological manual). The point is that in each of these cases the Oriental is contained and represented by dominating frameworks. Where do these come from?" *Id.* at 106. *See generally*, Antonio Gramsci, *SELECTIONS FROM THE PRISON NOTEBOOKS* (Quentin Hoare & Geoffrey Nowell Smith ed. & Trans, 1971); *See also*, Krishna Chandra Bhattacharya, *Swaraj in Ideas* in *FOUR INDIAN CRITICAL ESSAYS 6* (Krishna Chandra Bhattacharya & Sisir Kumar Ghose eds., 1977).

⁹ Market and capitalism have received many interpretations. Interpretations differ depending on what basis is taken for understanding the connotations. If one takes market and its relations with the modern state into consideration, the result is that market dissolves the very meaning of sovereignty. *See* Michel Foucault, *THE BIRTH OF BIOPOLITICS* {Michel Senellart (ed.), 1987, 2008}.

¹⁰ *See generally*, Erich Fromm, *TO HAVE OR TO BE?* (1976); Giorgio Agamben, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller Roazen trans. 1998).

¹¹ *See generally*, Charles Taylor, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* (1992); C. B. Macpherson, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* (1962).

market of education, unhesitatingly, talk about public function, social good, social justice, or welfare state, which seem to be utterly obscene and paradoxical.¹²

Interestingly, neither extent of power nor ownership of vast wealth is conducive to a happy and peaceful human life.¹³

In the Indian knowledge-traditions, in pre-modern India, education was never equated with the idea of political power, or possession and ownership of wealth. An educated (Gyani, ज्ञान; Vedanam, वेदानम्, संवेदानम् or अवगमः) person was believed to be a dwijaya, (द्विज), which means 'twice born'. The first birth was considered to be biological but the second birth was believed to be spiritual, which was possible through study, contemplation, or *Vedanam*. Knowledge, as power, imbibed in the Western traditions,¹⁴ on the contrary, promotes an ego-centric culture, devoid of spiritual imaginations. Education, under the heritage, was intended to bring the individual to the status of selflessness: humbleness, or humility (विद्यां ददाति विनयं). The second birth was meant to bring selflessness as an indelible objective of education, leading to the idea equivalent to 'liberation, freedom, or emancipation', मोक्ष, or विमुक्ति, which, in the modern English language, may appropriately be translated into 'Platonic 'theory of Form'¹⁵ as self-development or attainment of the individual.

Accordingly, in pre-modern India, education or the acquisition of knowledge had the unique status of 'social good', distinct from the private or household goods. The things falling into the category of social goods, such as, education, health, access to justice (in corrective sense), and natural resources, such as water, air, etc. were governed by the principle of 'non-exclusion', while goods belonging to the households and the private sphere of life, were distributed through the standards of inheritance or succession.¹⁶

Non-exclusion from the access to the general education system entailed preserving education truly in form of social good. There was absence of any special privilege to a class to monopolize education for their own private interest. The most important consequence of the principle of non-exclusion was that it did not allow social goods, open for access to all, to be converted into private good of the individual or a thing of market. Inheritance or succession did not play any significant role in the access of social

¹² C. Raj Kumar, *A University is not supposed to be Profit Driven corporations* (Indian Express 3-4-2021). Available at: <https://indianexpress.com/article/opinion/columns/university-governance-social-organisation-profit-driven-corporation-7256427/> (last visited, 22 June 2022).

¹³ E.g., Bhutan even being amongst the poorest countries is believed to be the happiest country in South Asia.

¹⁴ *Supra* note 6.

¹⁵ See, Plato, *REPUBLIC* Books VI-VII (Robin Waterfield trans., 376 B.C., 1993).

¹⁶ This theme has elaborately been developed by the author in a previous volume of this Journal, see, Chanchal Kumar Singh, *State and Equality from Sadācār(a) to Bazaar: Searching Alternative Impressions in Light of the Sanskriti Litigation*, Vol. 1 SML. L. REV. 7 (2018).

good of education. During none of the periods of ancient and medieval Indian history, acquisition and distribution of school education was dependent on or conditioned by the rule of inheritance or succession. There was absence of barriers such as economic filters on which, essentially, the NEP has been crafted.

Education enjoys, in the twenty-first century, unprecedented significance for every individual. Education has also become the most potent source to obtain and exercise social and economic power. Attainment of education makes one capable and enables access or control over the sources of wellbeing throughout her lifetime and for her future generations as well. Education also facilitates control over the wealth of community and functions as catalyst in acquiring social and political power. On the contrary, the principle of non-exclusion, in pre-modern India, did not affect the social and political power rather maintained and preserved social good such as access to education that helped in creating and sustaining a society in harmony with the nature and the nature of man.

Accordingly, the paper is intended to investigate the historical issues and philosophical questions related to knowledge and education-system, which enabled in sustenance of social values such as the principle of non-exclusion, the idea of subject, state, law and their functions in organizing the social institutions. Thus, the subject matter of this paper comprised of the question of social and spiritual values the ancient and medieval Indian societies developed to thwart the possibility that education may become merely a plaything of market and the state.

Accordingly, the work is going to be comparatively longer than usual Indian academic practice, and somewhat incoherent and fragmentary. It is divided into seven sections. We will outline, first, under section II, the brief methodological issues to study the indigenous practical principle of non-exclusion or access as opposite to non-discrimination, anti-discrimination or classification, as constitutional principles developed in post-colonial India, and how these technological-principles have facilitated the unjust distribution of social good such as education? Section III briefly records the underlying principles of NEP. Section IV investigates the parallelism between Bombay Plan, 1943 and Ambani-Birla Report on Education, 2000, which decisively controls the NEP. When we talk about history, we usually have in mind the history of civilization, society, people, or institutions. In this paper, we have used history to find out the parallelism between Bombay Plan, 1944 and Ambani-Birla Report on Education, 2000, and how the institutional imagination vis-à-vis education will be shaped in future in context of similarity one finds between Ambani-Birla Report on Education and the National Education Policy, 2020. Section V is devoted for the discourse on state of legal education, exclusion, and the question of access as well as law in post-colonial India. We believe that the true purpose and philosophy of education have been forgotten and lost in the postmodern age. The policy makers as well as academicians sincerely need to reflect on these issues. Accordingly, section VI of the

paper is devoted to reinvent the philosophy and purposes of education. Lastly, section VII concludes the study.

II

Singularity, Non-Exclusion, and the Idea of 'Social Goods'

Principle of Non-Exclusion

The NEP sans the indigenous principle of practice: non-exclusion or access. The existing institutional structure of education, both, school education and higher education, has acute asymmetrical features of the Indian political and social systems. The NEP is another milestone in the way of socialization and constitutionalization of the said asymmetry. However, neither the NEP as a text nor the present education-system in India could be understood through easy explanations. They are obviously quite puzzling, hence, these questions concerning the understanding are required to be meditated, on the foundational level, by a sound theoretical model developed on the basis of Indigenous normative concepts and practices evidenced by and insights drawn from its history. The absence of the appropriate paradigm leaves us in a state of illusion depending on the tutelage of the few. The may be the reason that these issues have attracted little substantive debates from the academicians.

The chief features of the NEP are: the withdrawal of state responsibility, progressive privatization of education, marketization of imparting of education, dissipation of education as a 'social-good' by bringing 'indistinction' between public and private, reducing education equal to acquisition of skills only, intriguing plot between the state and business based on Ambani-Birla Report of 2000, etc. These essential characteristics of the NEP need a new theoretical framework for informed and full appreciation. We will try to develop such a theoretical model for analysis of the text of the NEP.

When we talk of a principle, it connotes the idea of belief and commitment of people in it. Without believer of values, a principle cannot exist. A social principle presupposes the existence of believers in the society. It is the existential condition of the particular social order of a community. The social order in a society and the shared belief of the community are inseparably connected. Truth or existence of truths is impossible in a society unless the norm for and statements of the truth is believed and shared by the people.

For example, the modern constitutional principle proclaims that, 'all men and women are born free and equal'. Factually, this is not a truthful statement, but normatively, on a higher plane of abstraction, believers take it to be a truthful statement, which formed the foundations of, now leading towards a progressive death, *modernity*. The crisis of modernity in the late twentieth century precipitated the principle of uniqueness, which

forms the basis of *postmodernism*. The post-modernism asserts that 'each man or woman is a unique biological and social entity formed of her own set of experiences'. This principle seems to be the reversal of the basic principle of modernism. The principle of uniqueness seems to be antithetical to the principle that men are 'born equal and free'. In fact, the post-modernism is the brain-child of modernity, which does not transcend the its deterministic outlook.

Determinism or rather crude determinism was the hallmark of modernity, which subordinated the individual-social identities, experiences, practices, religion, and conventional loyalties (or values) through the determined norms of the Constitution and the positive laws. Allen Bloom, who has carried out an excellent research on the crisis of higher education in the US, observes:¹⁷

'Above all he (man in modernism) was to know the rights doctrine; the Constitution, which embodied it; and American history, which presented and celebrated the founding of a nation "conceived in liberty and dedicated to the proposition that all men are created equal." A powerful attachment to the letter and the spirit of the Declaration of Independence gently conveyed, appealing to each man's reason, was the goal of the education of democratic man. This called for something very different from the kinds of attachment required for traditional communities where myth and passion as well as severe discipline, authority, and the extended family produced an instinctive, unqualified, even fanatic *patriotism*, unlike the reflected, rational, calm, even self-interested loyalty—not so much to the country but to the form of government and its rational principles—required in the United States. *This was an entirely new experiment in politics, and with it came a new education. This education has evolved in the last half-century from the education of democratic man to the education of the democratic personality*' (emphasis added).

Postmodernism is believed to be the chief precursor which brought *infinite relativism*¹⁸ with respect to moral and political attitudes.¹⁹ It is credited for its sheer commitment towards dismantling the shared life-view or world-vision. Individuation, respect of difference, and uniqueness of experience are the chief goals of this school of thought. As

¹⁷ Allen Bloom, *THE CLOSING OF THE AMERICAN MIND: HOW HIGHER EDUCATION HAS FAILED DEMOCRACY AND IMPOVERISHED THE SOULS OF TODAY'S STUDENTS* 27 (1987).

¹⁸ 'Openness and the relativism that makes it the only plausible stance in the face of various claims to truth and various ways of life and kinds of human beings is the great insight of our times'. *Id.* at 26.

¹⁹ Allen Sokal, explains that relativism, whether cognitive, moral and aesthetic, are of three types: one, relativism about the truth and falsity of statements. This type can be termed *ontological relativism*, or more simply relativism about truth. Two, *epistemological relativism* or *relativism about justification* or relativism about epistemic standards which focuses on degree of truth or falsity. And the third, *methodological relativism of sociologists* of knowledge, which concedes that statements can be objectively true or false and objectively justified or unjustified relative to some specified body of evidence, but insists that sociologists should ignore (or "bracket") these properties when they attempt to explain why certain individuals or social groups hold certain beliefs'. See, Alan Sokal, *BEYOND THE HOAX SCIENCE, PHILOSOPHY AND CULTURE* 174 (2008)

a consequence, Constitution, law, religion and conventional loyalties are subordinated to the idea of her own uniqueness by postmodern outlook, which proves to be the death-nail to the coffin of modernism.

The development of legal and political principles, such as equality and its tension with liberty, for example, was agreed upon by most of the modern philosophers and jurists, including liberals and Marxists. The deterministic approach of modernity, based upon universalization of certain ideas, has crumbled down in the postmodern epoch once the very meaning of equality and liberty was reduced to infinite relativism, and thereby the project of modernity has failed in its own circularity of reason.

For instance, the legal concept of equality has varying meanings in the US and India. The 'set aside principle' is considered as one of the facets of equality in India, but it is considered unconstitutional in American jurisprudence. The divergence of opinions and committed liberal beliefs, yields a common agreement amongst the members of community. The objectivity in the equality principle, under Indian Constitution, was tentative since its beginning. In the end, the plurality of opinions with reference to its meaning and contents gives rise to the proliferations of innumerable sub-principles that, in turn, trivializes and neutralizes the concept itself.²⁰

Essentially a kind of Narcissism²¹ was inbuilt in the project of modernity, in a sense that, modernity was bound to annihilate its own core values. Postmodernism is nothing but a progeny of modernity, which has deconstructed every modern idea and has reduced them into caricature. Whether Narcissus in form of postmodernism is doing it autonomously, may be a question of least significance! But it may be said with certainty that the narcissism in postmodernism may be characterized by the extreme form of nihilism,²² displacing the objective world-view of modernity. This is, perhaps precisely, the reason that the pre-modern India (indigenous philosophical literature) did not develop any doctrinaire principle of equality. Rather, they relied on the social practices

²⁰ See, Boaventura de Sousa Santos, TOWARD A NEW LEGAL COMMON SENSE: LAW, GLOBALIZATION, AND EMANCIPATION 4, 448 (2nd edn. 2002). The traditional tool to operationalize equality under article 14 of the Constitution is 'legislative classification', followed, in sequence, by the tools of 'non-discrimination' or 'reasonableness' and, recently, by the theory of 'indirect discrimination' or 'anti-discrimination'. See, Lt. Col. Nitisha v. Union Of India A.I.R. 2021 S.C. 1797.

²¹ Narcissism is characterized by an inflated self-image and addiction to fantasy, by an unusual coolness and composure shaken only when the narcissistic confidence is threatened, and by the tendency to take others for granted or to exploit them. See, Britannica, available at: <https://www.britannica.com/science/narcissism>.

²² Nihilism encompasses a variety of philosophical and aesthetic stances that, in one sense or another, denies the existence of genuine moral truths or values, rejects the possibility of knowledge or communication, and asserts the ultimate meaninglessness or purposelessness of life or of the universe. See, BRITANNICA, available at: <https://www.britannica.com/topic/nihilism> (last visited 22 Sep., 2022).

and practical principles which we have conceptualized, here, as the 'principle of non-exclusion'.

The talk of the principle of non-exclusion is intelligible in a specific social environment. That presupposes, in turn, and determines the existence of certain 'social-goods'. Knowledge-creation, distribution, or the process of education, was among such social-goods, in addition to natural resources and other public/social goods.²³

Non-exclusion or access is different from now popular liberal-ideas, known as *non-discrimination*, *anti-discrimination*, or *classification*. Access, here, signifies the universal access, or access without distinctions as an immutable moral value. All the natural rights, initially, meant merely as the right of usufruct and they involved *not the dominion but access*.²⁴ The principle of classification, anti-discrimination, or non-discrimination is theorized, essentially, on the foundation of exclusion or qualified (non)-access. Classification or the principle of anti-discrimination does not exclude exclusion. They, rather, internalize the exclusionary project of modernity and raise it to the 'state of indistinction'.²⁵

Let us try to understand the indigenous idea of non-exclusion prevalent in pre-modern India. It was one of the constituent principles of the society that every member of the community was entitled to non-exclusion from the access of accumulated capital of the society, any social good. Education was the most important social capital having the status of first social good. By the term social good we mean a thing the production and distribution of which is not dependent on or conditioned by the rules of market. There were no barriers, economic filters, or tools of exclusion with respect to access of education. The access was only conditioned by the requirement that the person is a member of the community. The system of education, in pre-modern India, was organized for millennia, on the principle of non-exclusion, till British rule and the colonial project destroyed it.²⁶

²³ A thing, tangible or intangible, in a community occupies or has the status of the 'social good' the production or creation as well as the distribution of which is not dependent on or determined by the market or the rules of the market. Further, access to or entitlement to draw benefit from it is governed by the practical moral value of access and non-exclusion by any criteria. See, Chanchal Kumar Singh, *State and Equality from Sadācār(a) to Bazaar: Searching Alternative Impressions in Light of the Sanskriti Litigation*, Vol. 1 SML. L. REV. 36 (2018).

²⁴ See, Chhatrapati Singh, WATER RIGHTS AND PRINCIPLES OF WATER RESOURCE MANAGEMENT 22-23 (1991).

²⁵ See, Giorgio Agamben, HOMO SACER: SOVEREIGN POWER AND BARE LIFE 9, 25 (Daniel Heller Roazen trans. 1998); Carl Schmitt, POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY 5 (George Schwab trans. 1985).

²⁶ See, WILLIAM ADAM'S, (FIRST) REPORT ON VERNACULAR EDUCATION IN BENGAL AND BIHAR 18, 27, (1935) (Submitted to government in 1935, Second in 1936, and Third report in 1938), available at: <https://archive.org/stream/AdamsReportsOnVernacularEducationInBengalAndBeharcalcutta>

The process continued, in independent India, through the schemes devised in the Bombay Plan of 1943, which were first operationalized in the economic sector. For progressive relegation of the categories of social goods, the Constitution became handy to the state and the market, both.

The provisions relating to equality were created and interpreted in the paradigm of Western political philosophy. For instance, Article 14 was taken resembling the ancient Greek principle of distributive justice. The Aristotelian premise that 'justice means treating equals equally and unequals differently', anchored the provision.

The principle has been adopted by the modern nation states throughout the ages, since then, and justified by legal and political philosophy developed in the Western habitude. In modern age, John Rawls has used the Aristotelian premise in developing his 'A Theory of Justice'. Moreover, the premise plays a crucial role in developing the principle of preferring liberty over equality lexicographically. The genesis of the theory of classification is traced back to Aristotle. The problem of consensus in the political sphere and the problem of classification in the modern law need thorough analysis. The understanding needs to be developed in context of the category of the social good.

State of Singularity of the Positive Laws

After the Cartesian revolution and Newtonian mechanics, things, tangible and intangible, lost their inherent moral worth. Accordingly, the birth of 'equality theory of modernity' created the problem of 'singularity'. The practical problem of 'singularity' emerged from the progressive disappearance of 'social goods'. The tools of equality: classification, reasonableness or non-discrimination perpetuate the problem of singularity. A society where certain social goods occupies central stage, historically and conventionally, a triangular relationship of the subject, the law or the state, and the 'social goods', exists: 'the triangularity'.

The modern conception of subject is constituted as *homo economicus*, the economic man, who envisions salvation in the accumulation of property, conceptualized through commodification of self and of all that exists outside himself. Law or state furthers the *telos* of economic man and its egotistic project of accumulating private goods. Meanwhile, the idea of social good is reduced to nothingness and remains in memory as an object of museum, a lost collective memory, whose remembrance appears to be a nostalgic loss and wish of its recovery is relegated to a utopian hope.

The modern form of singularity may be understood as the disappearance of social goods from the public imagination and transforming a social being, and her relations with all

1868/AdamsReports-ocr#page/n69/mode/1up (last visited Jan. 26, 2022); Hetukar Jha, *Decay of Village Community and the Decline of Vernacular Education in Bihar and Bengal in the Colonial Era: A Sociological Review* 38(1) *Indian Historical Review* (2011); Lajpat Rai, *UNHAPPY INDIA* 29 (1928); E. F. Keay, *ANCIENT INDIAN EDUCATION: AN INQUIRY INTO ITS ORIGINS, DEVELOPMENTS, AND IDEALS* (1918); *Report of the Indian Education Commission* by William Hunter 17 (1883).

other fellow beings, merely as an abstract individual entity annihilated of all social relations, positivised by the law on the basis of utility. These practices are treated as acts of autonomy and rational choices. The singularity is also achieved by epistemic-politics through which all categories of rationality are reduced to the focal point of instrumental rationality, to use Weberian paradigm, and from there only the one-dimensionality²⁷ of subject is established as the transcendental necessity, whose ramifications could be perceived in the loss of social imagination and public concern.

One such example may be given, *i.e.*, devising the criteria for issuing *Ration Cards*²⁸ under the National Food Security Act (NFSA), 2013. There are several kinds of ration cards issued on the basis of income, economic status, and other criteria. It is intuitive to realize that these cards are issued by state, through law, whereby a person becomes entitled to get certain benefits as private goods while excluding the other citizens to avail such benefits. In this case, it is law which allows the entitlement of private goods at the cost of excluding others on the ground of income and other conditions. It is an image of singularity: having two ends: law and the abstract commodified individual. The philosophical basis of its exercise is that 'the good' of the individual is the source of the policy of a beneficence state.²⁹ State plays an instrumental role in dismantling the principles and policies which sustained the social goods creating a zone of monopolizing the social goods by a few possessive individuals. One may take a more concrete example of Lawyers and doctors on the one hand; and the Auto Riksha-Taxi drivers on the other hand. How law treats them separately, in terms of freedom to determine fees/service charges for their services, compulsory requirements of serving the consumers through 'pre-paid booths', and legal consequences of violation, by them, of such freedoms/requirements. The tools of classification, anti-discrimination or reasonableness can only strengthen these kind of situations of singularity. The NEP

²⁷ Herbert Marcuse, ONE-DIMENSIONAL MAN 1-10 (1964).

²⁸ *E.g.*, APL (Above Poverty line) ration card - , BPL (Below Poverty line) ration card , AAY (Antyodaya) ration card etc., issued under the National Food Security Act, 2013. (The basic concept of food security globally is to ensure that all people, at all times, should get access to the basic food for their active and healthy life and is characterized by availability, access, utilization and stability of food. Though the Indian Constitution does not have any explicit provision regarding right to food, the fundamental right to life enshrined in Article 21 of the Constitution may be interpreted to include right to live with human dignity, which may include the right to food and other basic necessities. *See, National Food Security Portal*, Department of Food & Public Distribution, Government of India, *available at: <https://nfsa.gov.in/portal/nfsa-act>* . (last visited 25 Dec., 2022).

²⁹ Duties of beneficence, in moral and legal philosophy, is germane to charity. *See*, Joel Feinberg, Duties, Rights, and Claims, *AMERICAN PHILOSOPHICAL QUARTERLY* Vol. 3, No. 2 137 (1966); , Allen Buchanan, Justice and Charity Ethics 558 (April 1987); *See also*, Richard Wasserstrom, The Practice of Rights 5 (4) *Political Theory* 545 (1977).

brings permanently by creating a similar situation/problem for the world of education in the Indian society.

The Social Goods and the Images of 'Triangularity' of The Legal and Constitutional Problems

The image of law as singularity leaves law and the proprietor of the law free to determine not only contents of laws and policies but also surrender the problem of 'social order' into the hands of the former.

Intuitively, it is important to note that things having the status of social goods generates a triangular relationship between: Law, Subject, and the Social Good: An image of 'triangularity'. Such triangularity does not involve any technical rule of classification or anti-discrimination, devised as the constitutional principle of equality in modern age. The triangularity formed of the social goods imposes the absolute and non-variable duties on the individuals and state, grounded in the fundamental *constituting principles of the society*,³⁰ and has nothing to do with the idea of beneficence. Education, water, air, and various other kinds of natural resources as well as the principles to govern institutions are some of the examples of social goods. Accordingly, the Western principles, such as, Aristotelian or Rawlsian, allowed such predatory practices of monopolizing social goods by commodified individuals and the practices have got justificatory principles in Aristotelian premise of equality among equals and Rawlsian principle of preferring liberty lexicographically over equality and rationalizing the tension between two by difference principle. These principles have proved to be useful technologies to transform social goods into private commodities.

On the contrary, the indigenous principle of non-exclusion or access was based upon a triangular relationship among the socially conceived subject, law, and the accessibility to social goods without any condition or barriers. The modern creation of subject has swallowed all the institutions and has turned moral principles merely subservient to the abstract individuals and their egotistical journey of triumph over natural forces and social imagination.

The NEP has been developed in the direction of supporting the singularity with respect to access of education.

The already existing asymmetry in production and distribution of education, which had the namesake status of charity and social service,³¹ has been finally demolished. The state of singularity is the pre-condition for the functioning of education-market. In other

³⁰ See, John Austin, THE PROVINCE OF JURISPRUDENCE DETERMINED 257-258 (Indian Economic Reprint 2012).

³¹ See, *Unni Krishnan, J.P. v. State of A.P.* A.I.R. 1993 S.C. 2178 at para 98; *State of Bombay v. R. M. D. Chamarbaugwala*, A.I.R. 1957 S.C. 699; *Society for Unaided Private Educational Schools Rajasthan v. UOI* 2012 6 S.C.C. at paras 29-30; *Modern School v. Union of India* A.I.R. 2004 S.C. 2236 at Para 15.

words, annihilation of education as the social good represents the triumph of business. It has diverse material and practical consequences which the limited space available here does not permit us to discuss.

The only last point that we need to discuss, under this Section, is how this singularity is created or the annihilation of education as the social good is accomplished by the text of NEP? The objective has been achieved through obliteration of public-private division and fixing the dichotomy in a 'state of indistinction'. The privatization of education-system began with the 'exception' which became the general rule subsequently. For example, imparting higher education by private educational entities, according to the norms of the market, was conceived by a way of exception under Section 3 of the University Grants Commission Act, 1956. By the first decade of the twenty-first century, the exception, in India, became the general rule. For School-education, the legal tools of trusts and societies, during the period, were used to the same effect. The exceptions become the rule with the consequence that the majority of students in the higher education are enrolled in private colleges and universities. This state of affairs is captured by Giorgio Agamben in the following words:

'... the exception introduces a fourth figure, a threshold of indistinction between excrescence (representation without presentation) and singularity (presentation without representation), something like a paradoxical inclusion of membership itself. The exception is what cannot be included in the whole of which it is a member and cannot be a member of the whole in which it is always already included. What emerges in this limit figure is the radical crisis of every possibility of clearly distinguishing between membership and inclusion, between what is outside and what is inside, between exception and rule'.³²

Carl Schmitt's theory of the state of exception is translated and defined in the following terms:

'In the context of Schmitt's work, a state of exception includes any kind of severe economic or political disturbance that requires the application of extraordinary measures. Whereas an exception presupposes a constitutional order that provides guidelines on how to confront crises in order to reestablish order and stability, a state of emergency need not have an existing order as a reference point because *necessitas non habet legem*'.³³

The text of NEP normalizes the state of exception in the education system in India. It realizes that India's past and lost glory must be regained. Interestingly, it intends to catch up 'many growing developmental imperatives' of the country, transforming India into a knowledge society³⁴ and global knowledge superpower, and producing engaged,

³² See, Agamben, note 25 at 24-25.

³³ See George Schwab, *THE CHALLENGE OF THE EXCEPTION* 7, 42 (1970).

³⁴ See NATIONAL EDUCATION POLICY, 2020, (Ministry of Human Resource Development, Government of India). Available at:

Contd...

productive, and contributing citizens'.³⁵ The singularity of subject produced in this manner not only causes the annihilation of social goods such as education, but also operates effectively to exclude the majority from access to it. The indigenous practical principle of non-exclusion or access is being progressively displaced with the narrow rules of market. Market-managers are successfully exploiting the social-goods and converting them into private-goods. With respect to a relationship between human being and nature, the state of singularity has been achieved through transformation of nature into natural resources, which are bringing apparently numerous disasters. With respect to social goods such as education, the effects of such monopolization are visible everywhere, but its ramifications could be discerned only by visionary minds. The state of singularity has been achieved through inclusion by exclusion, *i.e.*, included exclusion. The existing education system, school and higher, both, are based on economic barriers and market filters. The epistemological scheme of the text of NEP enshrines the tools of inclusion by exclusion in terms of openness, equity, and, social justice. Substantively, the principle of non-exclusion or access has no place in the NEP. The process may be understood by in context of Kafkaesque; *you cannot enter the door which is already open*. Franz Kafka in his classic, *The Trial*, identified the paradox of the constitutional principle of equality:

'In front of the law there is a doorkeeper. A man from the countryside comes up to the door and asks for entry. But the doorkeeper says **he can't let him in to the law right now. The man thinks about this, and then he asks if he'll be able to go in later on. That's possible, says the doorkeeper, but not now. The gateway to the law is open as it always is,** and the doorkeeper has stepped to one side, so the man bends over to try and see in. When the doorkeeper notices this he laughs and says, 'If you're tempted give it a try, try and go in even though I say you can't. Careful though: I'm powerful. And I'm only the lowliest of all the doormen. But there's a doorkeeper for each of the rooms and each of them is more powerful than the last. It's more than I can stand just to look at the third one'.³⁶ (emphasis added).

Barriers, filters, exclusion, and doorkeepers signify the death of social-good, the demise of triangularity. The citizen, in the absence of the third point of the triangle, is bound under the shackles of state or law. The space of solace and life is gone. There is no chance of even a bare life beyond the business!

The only principle that has the potential to address the problem, is the conventional principle of non-exclusion or access, reviving and re-establishing the lost social goods at the centre of law and policy making. Additionally, the principle of non-exclusion, psychoanalytically, has the prospect of rediscovering individual subjects as social being as opposed to *homo economicus*.

https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf at pages 5, 6 (last visited 25 Dec., 2022).

³⁵ *Id.* at 46.

³⁶ Franz Kafka, *THE TRIAL* 254 (David Wyllie trans. 1925).

Access to Education: Paradigmatic Shifts

As previously reiterated, access to education was one of the primary social goods and the access to it was not premised on any doctrinal theory of equality, but allocated through the principle of non-exclusion. The latter had not only the status of a principle, but also it was integral part of moral and social psyche, which ensured, in great measures, absence of events, such as hunger death, enumerable varieties of suffering, and non-fulfillment of basic needs. The principle of non-exclusion, in its practical legal reality and the psychic fabric of social organization, ensured the existence of a just and equitable society. However, the modern liberal legal system has destroyed them all, by swaying each of them, and by creating the artificial division of law and life: public and private.

In the sphere of education, the public-private division of law, the main premise of new economic policies and now NEP, has worked as a powerful tool for facilitating the invasion and conquest by the market. Unfortunately, it is also the greatest attack on the soul of Constitution and ancient Indian heritage. The conquest is almost complete. According to the UGC annual report, more than fifty percent of students in the higher professional education are enrolled in private educational institutions,³⁷ run on the 'logic of market'.³⁸ The percentage will be much higher if we take into account the fact that the principles of market have also been given entry into the so called state run professional educational institutions, from the back doors. National Law schools/universities fall under the latter category ensuring the legitimization of the former.

The educational enterprises are open for all as per the principles of Articles 14, 15, and 16 of the Constitution (again the epitome of public-private dichotomy is inbuilt into them).³⁹ The institutions, which are allowed by the legal system to extort up to Rupees 1 million, and in some cases higher than Rupees four-six million fees, for securing the education of so called first-degree (course in law), too repose faith in the said principle of access. Neither the lower-class nor the so-called middle class (a capitalist way of articulation) can arrogate to itself any meaning of that access or equality, because of the presence of 'economic filter or barrier'. *The upper class does include judges of higher courts, senior bureaucrats (such as secretaries), etc., apart from the proprietors or CEOs of big business*

³⁷ University Grants Commission, *Annual Report* 126, 133 (2017-2018).

³⁸ Michael Sandel, *WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS* 1-50 (2012).

³⁹ Articles 14, 15, and 16, *The Constitution of India, 1950*. Article 14 provides for equality before the law and equal protection of laws, article 15 prohibits discrimination and article 16 mandates equality of opportunity. However, none of these articles have been interpreted and operated to cover innumerable instances of exclusion. Equality in the sense of non-exclusion is different from non-discrimination. See Chanchal Kumar Singh, *State and Equality from Sadācāra to Bazaar: Searching Alternative Impressions in Light of the Sanskriti Litigation*, 1 *SHIMLA LAW REVIEW* 7-47 (2018). Available at: <https://www.hpnlu.ac.in/PDF/e7a521d0-fa17-4d63-82d8-0ec19d558d2f.pdf> (last visited 10 Jul., 2021).

concerns. Even the first two cannot, living a life of honesty, practically avail such education for their children, given the lawful sources of their income. On the other hand, the government cannot accede to allegations that these institutions are meant only for the children coming from the fraction of percentage: bourgeois parents. It is an accepted truism about the human nature that the parents care for their children, bring them up in an environment of love and warmth, and even make spontaneous sacrifices, therefore, are tempted to provide all the good facilities available in the society. And of course, good education is one of them. Can we accept that the law encourages and generate, impliedly, corruption? Is the law asking them all to become corrupt? This line of arguments, inescapably, leads us to attribute 'immoral motive' to the law!

The philosophy of suffering, basic needs, and equality/liberty/constitutionalism conceived and theorized within the Western academic habitude, in practice, represent reincarnations of the bygone hierarchical society. The latter has been characterized by rules of exclusion, disabilities, liabilities, and disenfranchisement against a person or class by virtue of birth. These are now befallen upon every single citizenry through the medium of law and economic filter. When one sees little deeper, the basis one discovers is none other than the accident of birth. If a kid, for example, is disenfranchised to access the good of education, because her parents cannot afford to spend one to two million rupees, or when a young citizen is disqualified to acquire her first degree in a professional discipline (law, engineering, and medical, etc.), since she cannot pay rupees two to five million as fee. Of course, it is not her fault, but the sheer fate, the accident of nature. Her only *existential sin* is that she chose to be born to parents who are incapable to crack the nut of the economic barrier!

The privatization of social goods, such as education is not an isolated one. The same is true of all aspects of public life and governmental structures. It has become a well-accepted fact and a new norm of governance and social administration. The transformative rationale for this singularity includes: cost-effectiveness, efficiency, incentivization of talents, and excellence. What objective is hidden underneath it, but the exclusion of many Indian citizens from the entitlement of education, and consequently from the power structures, privileging a few who qualifies through the standards of market. Traditional university system, nowadays, is nothing more than a cog in the wheel. Not surprisingly that the law professors, such as Gyan Swaroop Sharma, Upendra Baxi, and M.R. Madhava Menon conceived the idea of National Law University, which was implemented with the support of Governments, Courts, and Bar, starting with NLSIU, Bengaluru. The NEP reinforces the sporadic reminiscences at the national level in all the disciplines.

Same is true with respect to basic principles underlying the NEP. It has direct and permanent effects on the character of state and society. The state is losing its social character. Policy makers are required to learn from the Scandinavian countries and continental Europe about the management of education and prioritizing access over exclusion. Exclusion is synonymous with powerlessness, primarily, in social and

political sense. The Principle of Access must be used to achieve the objective of empowerment instead of relying upon the technique of exclusion *vis-à-vis* social goods.

III

Principles Underlying the NEP

Epistemological Features

All is not well with modernity and postmodernism. Neither the renaissance nor enlightenment was free from self-consecrated contradictions and regressive progressivism. Positivism, the child of renaissance, as a method of thinking and writing guide the making of such documents where metaphysics, historical insights, or cultural continuity has little or no place at all.

The NEP is fond of expressions, such as competition, competitive, profession, professional, private, excellence, and their derivative words. The word competition has its comparative synonyms, as envy, jealousy, rivalry, strife, battle, conflict, skirmish, struggle, tug-of-war, etc. Competition is the very life-breath of neo-liberal market. Profession or professionalism, as a practical conceptual category, constitutes the life-blood of, what Foucault calls, 'anarcho-capitalism'.⁴⁰ Max Weber, Karl Renner, and Karl Polanyi have demonstrated the historical evolution of professionalism as a rational instrumentality of modernism. The goal of policy, in a utilitarian way, is to build a happier and enlightened nation! The NEP does not emphasize to conceive education as a mechanism and process to create pluralistically sensitive citizens, who are contemplative and just.

The structural and ideological framework of the NEP reminds the Saussurean linguistics. In Saussure's analysis, signifier and signified are separate and sometimes remain in opposition to each-other, but they create the whole structure of reference and meaning. According to him, linguistic sign, is a two-sided psychological entity that confirms to the (existing) reality and to its mirror image, and disregards whatever else (alternative) might be imagined'.⁴¹ The text of NEP does not allow any other imagination to flourish except the profit driven education system coupled with the symbolic revivalism of past.

⁴⁰ Michel Foucault, THE BIRTH OF BIOPOLITICS 104 (Michel Senellart *ed.*, 1987, 2008).

⁴¹ Ferdinand de Saussure, COURSE IN GENERAL LINGUISTICS 66-67 {Wade Baskin (*trans.*), 1959, 1987}.

State of Higher Education in India: Statistical Analysis

A plain reading of the National Education Policy, 2020 gives the impression that it is aimed at achieving the noble objectives of free education, full development of human personality, just and equitable society, preserving India's past heritage, and adopting a liberal approach to the higher education. A deeper reading, however, suggests that it is a dogmatic and canonical document, to the extent of being rhetorical. It anchors education as an instrumentality of livelihood and producing body and mind useful for the state, by countenance to the already established commerce in education. The NEP declares that 'higher education is a critical contributor to sustainable livelihoods and economic development of the nation'.⁴² It further proposes to promote 'holistic and multidisciplinary education'.⁴³ The Gross enrolment ratio in higher education institutions has increased in 2019-2020 to 27%, which was 21% in the period of 2012-2013. The UGC Annual Report⁴⁴ further throws light that there are 44077 colleges recognized by it in the country. The Majority of Colleges (78.6%) in the country are privately managed; 65.2% are Private Unaided and 13.4% are privately aided; and the remaining 21.4% are Government colleges. In these colleges/institutions there are nearly four crore students enrolled in the Academic Year.

The UGC Annual Report 2017-2018 records that of the total enrolment of students, there are 47% in private-unaided colleges, 21% in private-aided and only about 32% students were enrolled in the Government Colleges.⁴⁵ The statistics shows how much realistically the access to education can be achieved in the name of holistic education, since the state-run educational institutions are already becoming symbolic and irrelevant, and the private schools and universities are running on the principle of market. Without access to education, the holistic education cannot be achieved. The policy is advocating for the increase of budget of education, but the proposed expenditure is too meager in comparison to other developed and developing countries to fructify the substantive transformation of education system in India. In words of NEP, 2020:

'The Centre and the States will work together to increase the public investment in Education sector to reach 6% of GDP at the earliest. This is considered extremely critical for achieving the high-quality and equitable public education system that is truly needed for India's future economic, social, cultural, intellectual, and technological progress and growth'.⁴⁶

⁴² *Supra*, note 34 at 33.

⁴³ *Id.* at 36.

⁴⁴ University Grants Commission, *Annual Report (2019-2020)*. Available at: https://www.ugc.ac.in/pdfnews/5789724_UGC_AR_2020-21_FNL.pdf (last visited 15 Dec., 2022).

⁴⁵ University Grants Commission, *Annual Report (2017-2018)*. Available at: https://www.ugc.ac.in/pdfnews/5595965_UGC-ANNUAL-REPORT-English-2017-18.pdf (last visited 15 Dec., 2022).

⁴⁶ *Supra*, note 34 at 61.

India is investing 'only 0.69% of GDP in research and innovation as compared to 2.8% in the United States of America, 4.3% in Israel and 4.2% in South Korea'.⁴⁷ The neglect of research and innovation ossify a society in a changing world of reality. The policy does not give any commitment to increase the funding for research and innovation, which is really desirable to make India as a knowledge super-power or 'a leading knowledge society'⁴⁸.

The policy proposes to adopt 'light but tight regulatory approach',⁴⁹ so as to 'mandate full public *self-disclosure of finances*, procedures, course and programme offerings, and educational outcomes; the substantial investment in public education; and mechanisms for good governance of all institutions, public and private'.⁵⁰ This statement reflects the desire to provide sufficient autonomy to the educational institutions. Policy also outlines the importance of giving autonomy to teachers. As per the policy, 'teachers will be given more autonomy in choosing aspects of pedagogy, so that they may teach in the manner they find most effective for the students in their classrooms'.⁵¹

Autonomy is a value-loaded concept which is required to be deconstructed. In a neo-liberal paradigm of education-system, autonomous educational institutions may be understood as bodies whose funding is not strictly supplied by state rather it is dependent upon the law of demand and supply between business concerns and consumers. Schools and universities, in this paradigm of thought, are conceived as business concerns, whose motives are to earn profit, and students are considered as consumers, who are supposed to use their rational choice with respect to earning a degree.

Teachers, in this structure, have become the supplier of consumer goods as per the demand of consumers, and their pedagogical imaginations are restricted as well as disciplined. The autonomy for a teacher to choose what to teach is a noble ideal, whose realization is possible in a transformed institutional structure and cultural imagination, whereas, they are not severely controlled by technology driven bureaucracy. Nowadays, the CCTV cameras are being installed in the class-rooms of public and private-educational institutions, so that teacher's autonomy to teach with freedom and responsibility may be severely curtailed.⁵² They are asked to be engaged in the record-keeping process so much so that most of their academic time is consumed in non-teaching and non-research activities. This culture severely affects the autonomous

⁴⁷ *Id.* at 45.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 21.

⁵² Express News Service, *Installation of CCTVs in Classrooms without Consent Violates Right to Privacy: PIL before Delhi HC*, (THE INDIAN EXPRESS, 23 Feb., 2022). Available at: <https://indianexpress.com/article/cities/delhi/installation-of-cctvs-in-classrooms-without-consent-violates-right-to-privacy-pil-before-delhi-hc-7785982/> (last visited 18 Oct., 2022).

choices of teachers to pursue the holistic adventure of research and teaching. Absolute autonomy does not exist anywhere in the world. We are talking about responsible freedom, which may be exercised by the teachers as well as the educational institutions. Autonomy for the educational institutions with respect to funding and pedagogical innovation has restricted around two exclusive choices: either to choose state or rely upon the mechanism of market. The policy proposes, in the name of autonomous educational institutions, to promote latter over former. The Higher Education Commission of India (HECI) has been proposed to be established by the policy whose objective would be to oversee the process of regulation, accreditation, funding, and academic standard setting.⁵³ The policy has emphasized to establish the Higher Education Grants Council (HEGC). The objective of the Council would be to:

‘...carry out funding and financing of higher education based on transparent criteria, including the Institutional Development Plans prepared by the institutions and the progress made on their implementation. HEGC will be entrusted with the disbursement of scholarships and developmental funds for launching new focus areas and expanding quality programme offerings at Higher Educational Institutions across disciplines and fields’.⁵⁴

The policy is proposing to set up the campuses of 100 Foreign Universities in India and they ‘will be given special dispensation regarding regulatory, governance, and content norms on par with other autonomous institutions of India’.⁵⁵ The policy objective seems to facilitate the competitive environment in India with respect to promoting the market of education. The idea is that it will also help in making Indian universities more efficient and robust. Behind this policy, the reality is that Indian universities do not find a dignified place in the Global ranking of the universities. Such exposure for Indians may improve the Indian universities vis-à-vis research, innovation, and teaching. But such universities would be sustainable in India is a question required to be addressed. Since the most of Indian population have not enough economic resources to pay their fee. Such universities would be proved as viable for a few elites who are concerned with the sign-value of education rather than learning and unlearning activities. Such universities will definitely pose the challenges against the current private sector of higher education prevalent in India. Indian private universities, which have created an aura in Indian market, have mostly imitated the pedagogical form and funding patterns from these so called excellent universities of the world.

In the glorified narratives of autonomy, excellence, and efficiency developed by National Education Policy, 2020, the idea of public university has not been envisioned vigorously, which is progressing towards its slow death. Instead of importing the foreign universities in India and developing the full fledge market of education

⁵³ *Id.* at 47.

⁵⁴ *Id.*

⁵⁵ *Id.* at 39.

governed by the meta-ethics of global capital, India might have imagined in reviving the vibrant pedagogical culture of public university. As Avijit Pathak reminded:

‘If, as a nation, we are really eager to resist the process of asymmetrical distribution of cultural capital, and the resultant reproduction of social inequality, we have to nurture creative, sensitive citizens through an environment of life-affirming teaching and an egalitarian practice of socialization. And for this, we have to keep the dream of public university alive’.⁵⁶

Life affirming teaching means awakening the sensitivities towards the ‘humanism of nature and naturalism of humans’,⁵⁷ to borrow the phrase of Marx. Ironically, Mohan Das Karamchand Gandhi, whose year of birth centenary is being celebrated as a flagship project by the Government, endorsed that ‘one had liberal education, if he is in harmony with nature. He will make the best of her and her of him’.⁵⁸ In fact, the liberal education in modern India is promoting an alienated world-view of life, which is numbing the sensitiveness towards nature.

IV

Parallelisms between Bombay Plan and Ambani-Birla Report on Education

Political Economy in India

At the outset, let us introduce the Bombay Plan, 1943.⁵⁹ The plan was conceived by a group of then leading business houses of India in the wake-up of eminent independence. It was devised to control the entire economy of India with the help of a new independent government. There is an excellent analysis, which has established that the various industrial resolutions of Indian Government in Independent India, and the formulations as well as adoption of planned economic strategy, in the first six decades, were only mooted by the Bombay Plan. Pranav Bardhan in his book⁶⁰ has concluded that the handful of big business concerns succeeded in operating the economics system of India in their own business interest. For example, foreign direct

⁵⁶ Avijit Pathak, *The Threat to the Idea of a Public University*, THE HINDU (Nov., 20, 2019, 12:15 AM IST). Available at: <https://www.thehindu.com/opinion/op-ed/the-threat-to-the-idea-of-a-public-university/article62108904.ece> (last visited on 22 Oct., 2022).

⁵⁷ Karl Marx, ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844, 43 [Martin Milligan (*trans.*), 1932, 1959].

⁵⁸ M.K. Gandhi, HIND SWARAJ OR INDIAN HOME RULE 77 (1938).

⁵⁹ The Plan was formulated as the Bombay plan (titled- *A Brief memorandum outlining a plan of Economic Development for India*), in 1943 by J.R.D. Tata, G.D. Birla, Ardeshir Dalal, Sri Ram, Kasturbhai Lalbhai, John Mathai, and A.D. Shroff.

⁶⁰ Pranav Bardhan, THE POLITICAL ECONOMY OF DEVELOPMENT IN INDIA 40 (1982).

investment (FDI) was restricted and prohibited in most of the important sectors of the industries and economy so much so that the Monopolies and Restrictive Trade Practices Act, 1969 was brought to operate in favor of a few industrialists who devised the Bombay Plan.

As early as 1931, the resolution on fundamental rights and Economic programme adopted at the Karachi session of Indian National Congress declared that in independent India, the state shall own and control key industries and services, mineral resources, railways, shipping and other means of public transport. Interestingly, the session was presided over by Sardar Patel, the resolution was drafted by Jawaharlal Nehru, and moved in the open session by Mahatma Gandhi.⁶¹ To promote planning as an instrument of integrated and comprehensive development, Congress sponsored in 1938 the national planning committee, while the Indian industrialists formulated the Bombay Plan in 1943. The reasons for substantially following the policy of Bombay Plan and paying lip services to Karachi declaration could be discerned in the fact that the political economy of that time was led and controlled by a dominant group of industrialists.

Looking at the size of Indian economy, population, market of education,⁶² the legal status of educational-institutions as service provider,⁶³ and students as consumers, the Ambani-Birla Report was devised by a few industrialists to make education a profitable business in the country. The report recommended to bring Foreign Direct Investments in education-sector in India, which has also been proposed by NEP, 2020, including allowing the foreign universities to establish their campuses in India. Interestingly, as far as the recommendation of the Report regarding foreign investment in the education-sector is concerned, one big private player in the education sector has protested against such initiative.⁶⁴

⁶¹ B Chandra and M Mukharjee, *et.al.*, INDIA AFTER INDEPENDENCE-1947-2000, 24 (2002).

⁶² See *T.M.A. Pai Foundation v. State of Karnataka*, A.I.R. 2003 S.C. 355; *P.A. Inamdar v. State of Maharashtra* A.I.R. 2005 S.C. 3226.

⁶³ The following points needs to be noted: the size of private players in education, the proportion of students in private educational institutions that all run on the basis of demand and supply norms of the market. The Central government has directed all state higher educational institutions to raise funds upto 30% of their budget requirements, which is clear adoption of the User Pays Principle, UPP. See also, *SC agrees to examine whether education is service within Consumer Protection Act* (THE HINDU, New Delhi, 03 Nov., 2021), available at: <https://www.thehindu.com/news/national/sc-agrees-to-examine-whether-education-is-service-within-consumer-protection-act/article37318125.ece> . (Last visited, 10 Dec., 2022).

⁶⁴ Government announced the proposal to permit and invite Foreign Direct Investment by Foreign Universities through setting up of their branches or campuses in India. The policy has attracted the protest from the education capitalist. See C. Rajkumar, *UGC proposal: Why India should not outsource higher education to foreign universities* (INDIAN EXPRESS, Jan., 10, 2023). Available at: <https://indianexpress.com/article/opinion/columns/ugc-proposal-why-india-should-not-outsource-higher-education-to-foreign-universities-8371425> (last visited on 12 Jan., 2023).

It is a historical coincidence that the Report on *A policy frame work for reforms in education* by Mukesh Ambani and Kumar Mangalam Birla was submitted in 2000 to the government.⁶⁵ The Report was prepared under Prime Minister's council on trade and industry, Government of India. *The report was prepared under the special subject group on policy framework for private investment in education, health and rural development.* Intuitively, one may recall that the NITI Aayog has also devised a similar scheme for the health sector applicable for the entire country.⁶⁶

Servility of NEP

New Education Policy Document, 2020, does not beget any new principle for the education sector in India. NEP, like the Bombay plan and the planned economic reforms in India, borrows all the fundamental principles and strategies, which the Ambani- Birla Report, 2000 prescribed to the Government of India. The Report acknowledges that education in India is highly skewed and encompasses many worlds that coexist. 'One world includes only a fortunate few with access to modern institutions, computers, internet access and expensive overseas education'.⁶⁷ 'A second world wants to maintain status quo-teacher, administrators, textbook publishers, students all have reasons to prefer things to remain as they are or change only gradually'.⁶⁸ 'The third world struggles with fundamental issues such as no books, wrong books, teachers desperately in need to training, teachers with poor commitment, rote learning of irrelevant material,

⁶⁵ See, Mukesh Ambani & Kumarmangalam Birla, *Report on A Policy Framework for Reforms in Education, 2000*, 15 (4) JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY, 840 (2003). (The Report was prepared by the Special Subject Group on Policy Framework for Private Investment in Education, Health and Rural Development, PRIME MINISTER'S COUNCIL ON TRADE AND INDUSTRY GOVERNMENT OF INDIA, 2000).

⁶⁶ See, Draft Policy Document of NITI Ayog, Government of India, Public Private Partnership for Non-Communicable Diseases (NCDs) in District Hospitals PPP Project Guidelines. Available at: https://niti.gov.in/writereaddata/files/document_publication/Draft%20Guidelines%20on%20PPP%20in%20NCDs_0.pdf (last visited 10 Jan., 2022); Policy Guidelines of NITI Ayog, Government of India, Public Private Partnership in Medical Education Concession Agreement: Guiding Principles, (December 2019). Available at: <https://niti.gov.in/sites/default/files/2019-12/ModelConcessionAgreement-forSetting-upMedical-Colleges-under-Public-private-PartnershipDraft-for-Comments.pdf> (last visited 10 Jan., 2022). (it is interesting to note that this 250 pages Policy Guidelines proceeds on the assumption that, the proposed PPP model of privatization of Medical Education and that of District Hospitals, are to be, "based on the international best practices, and similar PPP arrangements that are operative in the States of Gujarat and Karnataka. Under this envisioned model, the Concessionaire shall design, build, finance, operate and maintain the medical college and also upgrade, operate and maintain the associated District Hospital."). *Id.* See also, Maitri Porecha, Niti Aayog frames PPP guidelines for district hospitals (Oct., 17, 2018 THE HINDU BUSINESS LINE, Delhi). Available at: <https://www.thehindubusinessline.com/economy/policy/niti-aayog-frames-ppp-guidelines-for-district-hospitals/article25249012.ece> (last visited 10 Jan., 2022).

⁶⁷ See note 65 at 841.

⁶⁸ *Id.*

classrooms with hundred students, dirty floors, and no toilets'.⁶⁹ The report does not suggest any innovative mechanism to bridge the gap of these different worlds existing in the same nation-state. The report invents a new category: *Information-poor*.⁷⁰ The report presents a narrow and parochial understanding vis-à-vis education, since it treats education nothing more than information.

Symbiosis of NEP and Birla-Ambani Report

NEP, 2020 has substantially incorporated the recommendations of Birla-Ambani Report. For example, the report focuses on the development of human capital and creation of a competitive yet co-operative knowledge based society. This is to be achieved, as per the report, by providing universal, compulsory, and free primary education by the state, by fostering a healthy mix of state supported education with private initiatives.⁷¹ Costs of education must be affordable to the under-privileged sections of society.⁷²

For the first time in India, on the line of *Polluter Pays Principle* developed in Environmental Law (PPP), the report prescribes for the firm adoption and implementation of the *User Pays Principle* (UPP), to be enforced strictly for the higher education, supported by loan-schemes as well as financial grants for economically and socially backward sections of the society. It rationalizes the UPP in view of the projected expenditure on education. The report concludes that 'there are basically three mutually reinforcing methods that could overcome the problems in financing education. The first method is to recover the public cost of higher education and reallocate government spending on education towards the highest social returns, i.e., in primary education.⁷³ The second method is to develop a credit market for education.⁷⁴ The third one is to decentralize the management of public education and encourage the expansion of private and community-supported schools.⁷⁵

The strategies devised in the report carry several prescriptions⁷⁶ for the government, which are as following:

- a. The government is advised to only focus on primary and secondary school-education;
- b. The higher and professional education must be left to the private sector;

⁶⁹ *Id.*

⁷⁰ *Id.* at 842.

⁷¹ *Id.* at 843.

⁷² *Id.* at 840.

⁷³ *Id.* at 844.

⁷⁴ *Id.* at 842.

⁷⁵ *Id.*

⁷⁶ *Id.* at 843-845.

- c. The state should introduce a common national system for educational content at the school level, after providing for regional and local variations, especially with respect to languages, history and culture;
- d. The government should decentralize education management. Devolve to the Panchayat level financing and management of education at the primary and secondary level as well as literacy programmers;
- e. The central government should institute a common system for admissions to professional courses based on national standardized test on the lines of SAT, GRE and GMAT. Concurrently, abolish the system of migration certificates and allow students to move from one institution to another based on a system of transfer of professional credits;
- f. The state should progressively reduce funding for universities and make them adopt the route of *self-sufficiency*;
- g. In the new scheme, the role of governments must be limited to providing financial guarantees for student-loans;
- h. Institutions not depending on government for funding or having low levels of funding must be given operational freedom and flexibility to innovate;
- i. The state should allow and promote foreign direct investment (FDI) in education; and
- j. The state must make special endeavors by appropriate policy and schemes to concurrently develop a credit market for higher education to finance the cost of education.

All these prescriptions of the Ambani-Birla Report have not only been recognized by the NEP but extended them further. For example, the regulation of the professional education in law and medicine has been kept out of the proposed mega regulator's ambit that will replace the present system of regulation of the higher education. The Bar Council of India (BCI) and The Medical Council of India (MCI) shall continue to govern and determine the respective professional education.⁷⁷ Looking at the political and economic powers the two professions share and the position they occupy, it may safely concluded that their hegemonic powers are equivalent to the education-capitalists, which are guiding the fate of education system in India. The pathos of Indian education system could be discerned in the fact that almost all the doyens of Business, Law, or Medicine are primarily trained as professional, away from Indian traditions of Knowledge. In context of professional education in law, it is noteworthy that even, in the West, H.L.A. Hart warned that 'law is too important to be left to lawyers alone'.⁷⁸ The professionals and professionalism in law, therefore, must change along with the

⁷⁷ *Supra*, note 34 at 47.

⁷⁸ H. L. A. Hart, *ESSAYS ON BENTHAM: JURISPRUDENCE AND POLITICAL THEORY* 192 (1982); (Hart asserts that, 'Law is however too important a thing to leave to lawyers even to constitutional lawyers; and the ways of thinking about rights common among serious critics of the law and social theorists must be accommodated even though they are different from and may not serve any of the specific purposes of the lawyer').

law making and its interpretation. This change is possible through transformative changes, required to be brought in Indian Legal Education System.

V

State of Legal Education in India

Legal Education and National Education Policy

NEP proposes to make legal education globally competitive as well as it proposes to teach the students the constitutional values of justice so that they may be 'directed towards national reconstruction through instrumentation of democracy, rule of law, and human rights'.⁷⁹ NEP's proposal to make education globally competitive indicates either to make the legal education vibrant enough to bring all the good education practices from the world, which are also socially relevant for the present generation or it suggests making legal education a means to nurture young minds, so that they may be useful for the corporations, NGOs, and other commercial entities. Certainly, in an age of globalized meta-ethics of market, competitiveness symbolizes the instrumental values, without which legal education would be considered far behind in comparison to global practices. If the purpose of legal education is to prepare young minds for the professional excellence only, in that case, global competitiveness is the appropriate language of its policy. But legal education cannot be conceived as a training program for the professionals. It is meant to educate the young minds in holistic sense, to prepare them to perform the citizenry duties with utmost responsibility, so that, as the second objective of policy proposes, democracy, rule of law, and human rights could be meaningfully actualized.

The policy longs for developing the curriculum by falling back on our own culture, tradition and history of (indigenous) legal institutions. Accordingly, it prescribes for the universities to include 'history of legal thinking, principles of justice, practice of jurisprudence' in teaching curriculum.⁸⁰

Over the period of time, historical imagination has lost its relevance in the legal studies, since the dominant mode of jurisprudential thought prevails in the contemporary India is Legal Positivism, which relies upon the analytical mode of analysis and emphasizes to use authorities to support the justification. But this school of thought negates the importance of history and society and creates a zone of its own thinking. This was suitable for the colonial masters to disconnect India from its past. By this way, they

⁷⁹ *Supra*, note 34 at 50.

⁸⁰ *Supra*, note 34. ('The curricula for legal studies must reflect socio-cultural contexts along with, in an evidence-based manner, the history of legal thinking, principles of justice, the practice of jurisprudence, and other related content appropriately and adequately').

created the institutions and laws, which were useful for the exploitation of colonial subjects. The colonial continuity vis-à-vis laws and institutions in post-colonial India is quite puzzling for the citizens. In this background, historical thinking in jurisprudence is warranted, so that India could move towards a future without forgetting its legal history and cultures.

Further, the policy suggests adopting bilingual mode of legal education, 'in English and in the language of the State in which the institution is situated'.⁸¹ This is one of the most important steps required to be taken, so as to facilitate access to justice without any linguistic barriers. Since the policy declares the goal of legal education, which is to provide access to timely justice through embracing new technologies.⁸² Insensitivities towards local languages in the legal institutions, such as courts, alienate the citizens from the participation in the institutions. Non-participation or passive-participation in the process of adjudication or governance is antithesis to human agency, which is believed to be the substratum of liberal democracy.⁸³ In the end, it may be concluded that the seriousness of NEP with respect to legal education could be perceived in context of the fact that the policy hardly devotes two pages on legal education.⁸⁴

As a mechanism to establish a system, the policy document, such as NEP, is more vital than the normative provisions of Constitution. The former predetermines the latter by pouring specific substance and contents in it. The policy becomes the practical law, belying the pure one contained in the Constitution. This is attained by the professionalization of liberal law. The expression, such as profession or professional, finds additional emphasis in the NEP. Max Weber established in his monumental work that the spirit of professional work along with techniques of capitalist enterprise supply 'expansive energy' to capitalism.⁸⁵

Education is the new territory for capitalism to expand and legal education is not immune from it. NEP with its excess signifiers is facilitating the triumph of market over social-goods. Its language is not signaling any hope to connect India with its past in meaningful way. In the last century, India witnessed some great thinkers, who had integrity in their thoughts and actions. Upendra Baxi, a leading thinker of our age, admires Mohandas Karamchand Gandhi and Baba Saheb Ambedkar. He even designates Ambedkar as 'Aristotle of India'.⁸⁶ Gandhi and Ambedkar were profound thinkers, who transformed their intellectual lives with action-oriented scholarships.

⁸¹ *Supra*, note 34 at 50

⁸² *Id.*

⁸³ Chanchal Kumar Singh and Mritunjay Kumar, *et.al.*, *Decolonising the Language of Law*, INDIA LEGAL 28-31 (Dec., 16, 2022).

⁸⁴ *Supra*, note 34 at 50.

⁸⁵ Max Weber, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 28, 148 {Talcott Parsons (*trans.*), 1930, 1992}.

⁸⁶ Upendra Baxi, *Restoring Title Deeds to Humanity: Lawless Law, Living Death, and the Insurgent Reason of Babasaheb Ambedkar*, AMBEDKAR MEMORIAL LECTURE (2013).

Gandhi learned and unlearned (from the West) a great deal and changed the theory of *Satyagrah* from impractical ideal to a practical possible path. Their pursuit for unity of thought and action was not realized in a day. They constantly struggled to understand the world and exercised their agency to change it in a direction required for the sake of justice. Their activism culminated not from a desire to be professionally successful or commercially viable, rather they experienced the suffering in the world and out of compassion, both the thinkers chose a public life for the humanity. It was a great success of education that it nurtured such sensitive souls. However, in the contemporary world, virtue has got replaced with 'virtue-signal'.⁸⁷ In this brave new world, thought and action have a deep chasm, impossible to be filled with the truth. The experimentation of the truth has been replaced in 'Post-truth age' with the production of signs and symbols, designated as truths. The policy through its normative language has failed to connect the ethical paradigm of education prevalent in pre-modern India, rather it is responding to the demands of market to produce efficient-skillful employees, who are rarely contemplative about the meaning and purpose of life. Surprisingly, many scholars of eminence in India are joining the private universities after their retirement from the public university. Many young scholars are attracted to handsome salary and other perks over the opportunity to serve in public university. The change of attitude could be understood in context of the triumph of market forces over the social-good, for which they cannot be blamed. It is important to remember the proclamation of Marx, quoted by Karl Popper, 'we are all caught in the net of social system. The capitalist is not a demoniac conspirator, but a man who is forced by circumstances to act as he does; he is no more responsible for the state of affairs than the proletarian'.⁸⁸ When lives on the planet earth are creeping for the 'will to life',⁸⁹ corporations are already privileged with the 'will to power'.⁹⁰ Not surprisingly, most of the business houses, groups, petty or big, own, run, or are associated with the educational institutions: the so-called public schools, colleges, or universities. Naturally, in a consumer society like ours, very few have courage to stand with stoic calmness amid storms for nothing, and far less have courage to reject an 'alienated life'.⁹¹

'Access to education is proportionately related to the access to law and the access to justice'. It is a general belief that educated class can access the law courts and avail remedies available under the law easily. In other words, denial or (in)access to education is inversely correlated to exclusion from the reach to the law and law courts and political-administrative power. The nation needs, therefore, an education policy which can

⁸⁷ Neil Levy, *Virtue Signalling is Virtuous*, 198 SYNTHESIS 9545-9562 (2021).

⁸⁸ Karl Popper, *CONJECTURES AND REFUTATIONS: THE GROWTH OF SCIENTIFIC KNOWLEDGE* 460 (1963, 2002).

⁸⁹ Arthur Schopenhauer, *THE WORLD AS REPRESENTATION AND WILL* 351 {E. F. J. Payne (ed.), 1819, 1948}.

⁹⁰ Friedrich Nietzsche, *WILL TO POWER* 37 {Walter Kaufmann (ed.), 1901, 1968}.

⁹¹ Akeel Bilgrami, *SECULARISM, IDENTITY, AND DISENCHANTMENT* 129 (2014).

address these problems and desirable objectives. Now a long term educational policy which is built on the basis of exclusion, does not , consequently result into exclusion from education but from other foundational social goods too.

Question of Access and Law

Legal philosophy and scholarship in India, hitherto, have failed to capture the true character of famine and its relations to hunger deaths, an everyday phenomenon in contemporary India. Famine, as a socio-economic catastrophe, has not occurred in the recent times. Non-occurrence of famine in post-colonial India is a proof for many public philosophers, including Amartya Sen, for privileging the Indian legal system over Chinese and other post-colonial communities. However, hunger deaths have been, throughout India, a usual spectacle to eyes and ears of the liberal legal system. *The Jurisprudence of hunger deaths holds the key, in particular, to the understanding of socio-legal philosophy, Indian Constitutionalism, and the legal system in general.* The two phenomena are not to be confused with each-other. Ancient, medieval, and colonial periods have several records of famine. But only the modern history accounts for innumerable hunger deaths with seamless continuity and increased frequency in globalizing India. In other words, neither the ancient nor the medieval Indian history has any significant record of frequent hunger deaths which are often witnessed in present-day India.

The phenomena of famine had its causes and sources largely outside the socio-legal structure of the time. However, in a unique sense, hunger deaths, including suicides out of socio-economic distress, are the by-product of policies created by law, legal philosophy, and economic as well as socio-psychological fabrics of the society. Situations of hunger deaths are produced through carefully crafted web of access-barriers; inclusion-exclusion; and privilege-denial of ones' reach to the enjoyments of socially produced goods. This complex web works as a modern technology. The exclusion, denials, and barriers ensure seamless continuity of such deaths. Since last seventy five years, the Indian legal system has perfected this technology. The perfection of technology consists mainly in its accomplishment of destroying, progressively, what has historically been regarded as social good as explained in the previous sections.

VI

Philosophy and Purposes of Education

Education and Normative Transformation

Education has proved to be a mechanism to cultivate and nurture certain habits and etiquettes. As Aristotle believed the virtue truly means developing good habits in life. Habit may be consciously or unconsciously developed. Aristotle emphasized upon the

conscious adoption of habit, which creates equilibrium between the soul and action.⁹² Good habits or bad habits are the substratum upon which a culture progresses or regresses. Culture is the artefact of the human's interactions within the realm of time and space, history and society. Culture does not happen like a miracle; it develops like a living organism, whose growth is hardly perceptible by the ordinary experiences phenomenologically created by the conditioned minds. The relationship of education with culture is similar to the association between mind and experience. No culture can move on of its own unless education is used as a means to ensure its communicability.

Education may be understood as a process to transfer wisdom and skills from one generation to another, especially in an impressionable age, schooling has great effects over the thoughts and practices of children. Education itself is a value neutral concept; it is a formal category, whose usefulness lies in its abilities or potentialities to generate and sustain values. Values are the fundamental building-block of society, created and sustained through social conditioning and under the influence of natural environment. Values remain in flux like thoughts. They are historically determined, socially generated, and geographically shaped. Education remains in the background as the catalyst in normative-generation and its sustenance. Just like gene is a carrier of information, likewise education is a medium to create and transmit values. In the history of human civilization, education has been used far more an efficient instrument to discipline the human's behaviors than the traditional form of power often used by 'repressive apparatus of state'.⁹³ It has always been misused and abused by totalitarian state to make people believe in absurdities and creating unmatched cruelty. Education is the underrated apparatus of power, whose ontological-generis capacity is used or abused by benevolent rulers or cruel tyrants.

Education and Discursive Enunciation

Human beings are able to create social and cultural realities due to their ability of meaning making out of signs and symbols. The sophisticated form of language proved as a useful tool to raise epistemic, moral, and aesthetical questions and to develop discourse on them. Mathematical language was used to discern the pattern of natural phenomena and it became a great medium of expressing the structural reality of known universe. All the discursive formations happened under and through languages and their communication from society to society and from generation to generation has become possible only through education. One may perceive the object but its identity is understood through language. As *Nyaya* philosophy of ancient India raised this question if the knowledge of external world is possible without language?⁹⁴ What is the

⁹² Joe Sachs, *Aristotle: Ethics*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY. Available at: <https://iep.utm.edu/aristotle-ethics/> (last visited on 12 Nov., 2022)

⁹³ Nicos Poulantzas, *The Problem of the Capitalist State*, NEW LEFT REVIEW 77 (1969).

⁹⁴ Bimal Krishna Matilal, THE COLLECTED ESSAYS OF BIMAL KRISHNA MATILAL, Vol. 1, 114-132 {Jonardon Ganeri (ed.), 2002}.

relationship of language and the world?⁹⁵ What is significance of education without understanding the relationship between language and the external reality?⁹⁶ These questions have been answered in ancient Indian philosophy with multiple perspectives and insights, especially in context of dialogical conflicts between *Nyaya* and *Buddhist* philosophy, ancient India witnessed the pluralistic discursive enunciations vis-à-vis mind, language, and the world.⁹⁷ Somewhere similar approach could be witnessed in rise of logical positivism in western philosophical tradition, which enriched the tradition of understanding the world in context of linguistic structuralism.⁹⁸ Ludwig Wittgenstein in his early philosophical oeuvre exemplified the limit conception of human cognition within the structure of language.⁹⁹ Without language, every deep insight is either too mystical or inexpressible in clear term. Particularly, indigenous language in which a child grows is more useful in learning and creating discourse in idiosyncratic way in comparison to a language which is learned in a later stage of life. Every language is the cultural code in which wisdom is transmitted from one generation to another. Death of language, even if shared by only two people in an island, is the loss of unimaginable kind, whose repair is hardly possible.

It is believed that India has almost 19500 dialects and 780 languages out of which only 22 languages have been recognized by Indian Constitution.¹⁰⁰ In 2013, Hindustan Times reported that in last 50 years, 250 languages have already died in India.¹⁰¹ This process will continue since the official recognition and protection are negligible with respect to promotion and protection of languages. Globalization has changed the priority of the respective governments to make citizens employable as the global market demands employees, who are well versed in English and some other European languages. This may be one of the reasons most of the education policies in India have ignored the promotion and preservation of local languages. English has become a tool and technology to establish domination, a colonial hangover, which has remained a malaise to be cured by sensitive state. Colonial continuity in India with a narrative of post-colonial discourse has not benefitted the citizens. The break from past requires the

⁹⁵ Bimal Krishna Matilal, *Id.*

⁹⁶ Bimal Krishna Matilal, *Id.*

⁹⁷ Bimal Krishna Matilal, *Id.*

⁹⁸ Gustav Bergmann, *THE METAPHYSICS OF LOGICAL POSITIVISM* 1-16 (1954).

⁹⁹ Ludwig Wittgenstein, *TRACTATUS LOGICO-PHILOSOPHICUS* 68 (2002); ('The limits of my language mean the limits of my world').

¹⁰⁰ HT Correspondent, Kolkata, *780 Languages spoken in India, 250 died out in last 50 Years*, (HINDUSTAN TIMES, Kolkata, Jul. 17, 2013, 12:02 PM IST). Available at: <https://www.hindustantimes.com/books/780-languages-spoken-in-india-250-died-out-in-last-50-years/story-y3by8ooybXRA77xP2AEWKN.htm> (last visited on 20 Oct., 2022). See also PTI, *More than 19500 mother tongues spoken in India: Census*, THE INDIAN EXPRESS (Jul. 1, 2018, 14:13 IST). Available at: <https://www.google.com/amp/s/indianexpress.com/article/india/more-than-19500-mother-tongues-spoken-in-india-census-5241056/lite/> (last visted 22 Oct., 2022).

¹⁰¹ HT Correspondent, Kolkata, *Id.*

alternative imagination, an inventive mind-set and not merely to discover the ancient past,¹⁰² to recreate the Indian minds as per the local necessities and pluralistic sensitivities, so that they may understand its ancient ethos of dialectics and dialogue. New Education Policy, 2020 has emphasized to prioritize the local languages and mother tongues in imparting education.¹⁰³ It will be interesting to witness in upcoming years, whether government invest sufficient resources to achieve this goal. Particularly, it may be understood in context of neo-liberal shadow over the policy, which asks to make education as a private good to own and exclude others.

Freedom and Education

The NEP, proclaims to promote free and compulsory education. Free education as a desire emerges out of contemporary culture, which promotes education as a good to be monopolized like resources. In such culture, the question is to be asked that what may be the relationship conceived between freedom and education? This relationship may be understood in context of following concepts: Freedom to Education, Freedom for Education, Freedom from Education, and Freedom by Education.

Freedom for education and freedom to education: One of the fundamental characteristics of 'constitutionalization' is that it is institutionalized under the baffling ecology of paradoxes. Freedom to education, as a Constitutional entitlement, falls in the circular life of paradoxes. Its open texture provides the hope for all, but the wings of hope are not sufficient enough to open the door of law, which is, in reality, open for a few Very Important Persons. Constitutional rights are, in that sense, exhibiting the Kafkaesque paradox,¹⁰⁴ whose premise is based upon certain pre-supposed principles, as explained by Robert Alexy.¹⁰⁵ Further, the Constitutional courts bring plethora of tests and techniques to determine and apply the Constitutional rights over resourceful and subaltern on the basis of certain rationalized technologies, and these tools blur the distinction between moral principles and practical techniques. Article 14 of the Constitution of India is a classic example of such mystical approach, which makes the wants of access an urgent necessity. The freedom to education for the children of a migrant manual worker and a successful professional lawyer cannot be the same,¹⁰⁶ when education is nothing more than a private good, sold and purchased in so-called open market. Out of necessity, a poor person is either compelled to send his children for work to survive the daily-struggle or chose to send in a government school, whose functionality is merely symbolic in many of the states in India. Such liberty of education

¹⁰² Upendra Baxi, *How to Avoid the Massacre of Ancestors: Tracing Gyan Swaroop Sharma's Many Splendored Contributions to the Future of Indian Jurisprudence*, G.S. SHARMA MEMORIAL LECTURE DELIVERED AT THE NATIONAL LAW UNIVERSITY, JODHPUR (2002).

¹⁰³ *Supra*, note 34 at 13.

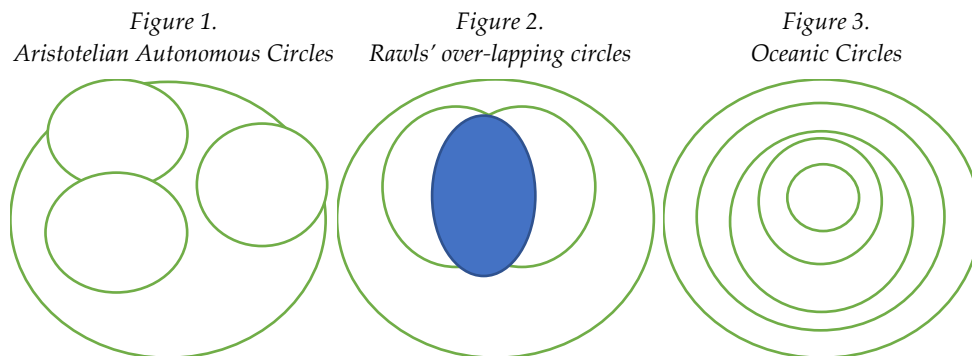
¹⁰⁴ Franz Kafka, *THE TRIAL* 157(2009).

¹⁰⁵ Robert Alexy, *A THEORY OF CONSTITUTIONAL RIGHTS* 9 (2010).

¹⁰⁶ *See generally* Christopher Caudwell and John Strachey, *STUDIES IN A DYING CULTURE* (2013).

is as good as asking a hungry person to create paintings and compete with a man, who has chosen painting as a choice.¹⁰⁷ For such person, it is absurd to talk about freedom to education. It is better, in that case, to think about freedom for education, which may be secured, only if the basic needs of the impoverished persons are secured. 'Freedom to' is after all secured once the humanity in person is preserved by the fulfilment of basic necessities, in that sense, the principle of 'freedom for' must be actualized in order to progress towards the essence of 'freedom to'.

Historically and socially, human beings are not equals and have never been equals.¹⁰⁸ But to compartmentalize each class as alien to each-other is the worst sin imaginable. The Aristotelian principles of justice¹⁰⁹ have taken seriously even by the modern states and their constitutions, because they were conducive to establish many autonomous circles out of mega-circle, and each circle is governed by law and policy of its own. These hierarchal autonomous circles create many life-cultures in a nation-state, created and sustained by the institution of law and state. Out of perpetual conflicts between these autonomous circles, the modern liberal philosophy advanced the idea of 'over-lapping consensus'¹¹⁰ as a meeting point of convergence between many conflicting autonomous circles. But such convergence is questionable in context of hegemony the liberal paradigm of education creates over the mind and spirit of the citizens. The idea of free consent fictions as 'ideological apparatus' in an asymmetrical society with respect to control over information. In this background, law facilitates separate but equal doctrine to allow equality among the privileged equals in their autonomous circle. And the constitutional principle such as equal opportunity for all remains a normative or declaratory statement without the realization of its substance.



Such paradoxical-affair was not warranted in a pre-modern society, which guaranteed access on the principle of non-exclusion, based upon the institutional imagination of

¹⁰⁷ Christopher Caudwell and John Strachey, *Id.*

¹⁰⁸ Jean-Jacques Rousseau, DISCOURSE ON THE ORIGIN OF INEQUALITY 1-50 (2012).

¹⁰⁹ Aristotle, ARISTOTLE'S NICOMACHEAN ETHICS 270-280 {Robert C. Bartlett and Susan D. Collins (trans.), 2012}.

¹¹⁰ John Rawls, A THEORY OF JUSTICE 340 (1999).

'oceanic-circle'.¹¹¹ In such circles, the relationship of one circle with other was a symbiotic one. Just like a pattern of wave, pre-modern India was organized as the society of multiple societies, growing on the principle of non-exclusion. Starting with individual, family, tribe, clan, and village to the state, every institution was autonomous,¹¹² yet there was a mutual-recognition and adjustment with respect to administration. The idea of social good and its access were neither restricted to any institution nor exclusively monopolized by the state. Social institutions were autonomously functioning not to supplant the state's machinery, but to supplement the process of just administration.¹¹³ In Modern society, state has emerged as the only institution, which has imperium and dominion over every aspects of life, including religion, culture, language, family, and social-relationship, etc. In such a society, the autonomous circles, based upon the Aristotelian principles of justice, are only a viable option, rooted and progressing in the constitutional cultures of modern-liberal states, including India.

Freedom from Education: Freedom from education may be a normative demand to realize authenticity¹¹⁴ in a society, which creates a culture of conformity towards certain abstract ideals, for which the freedom of individuality is severely compromised. This reality persists in socialists as well as liberal states, so much so that individual feels lost in the totalizing narratives created by the state and media. Whether it is Hitler's Germany, Stalin's Russia, Thatcher's Britain, or Reagan's United States of America, education has often been misused as a process to create docile second-class citizens, whose roles are reduced around the participation in a formalized politics and routinized political discourse, hence the existing order successfully sustains the *status quo*. Education in a Foucauldian paradigm of disciplinary society¹¹⁵ proves to be a disciplining apparatus, whose efficiency is often underrated in creating a less-noisy political order. Education, if it is used as an ideological machine, is the most useful mechanism, either to make people useful as decent employees or turning them into sensitive citizens. Antonio Gramsci exposed the use of cultural power of education in creating hegemonic liberal order, which is perpetuated by civil society consisting of organic intellectuals.¹¹⁶ Education as a tool is also used for civilizing people, for example, European societies while colonizing the Asian, African, and American societies, also colonized the minds and hearts of native people, and rationalized the colonization under the grand-narrative of civilizing the savages.¹¹⁷ Just like British colonialist in India

¹¹¹ Arun Kumar Patnaik, *Gandhi, Oceanic Circle, and Participatory Democracy* in A. Behera and S. Nayak, (eds.), *GANDHI IN THE TWENTY FIRST CENTURY* 19-36 (2022).

¹¹² Henry Maine, *VILLAGE-COMMUNITIES IN THE EAST AND WEST* 192 (1876).

¹¹³ A.S. Altekar, *STATE AND GOVERNMENT IN ANCIENT INDIA* 41, 305 (2002).

¹¹⁴ Charles Taylor, *THE ETHICS OF AUTHENTICITY* 26 (2018).

¹¹⁵ Michel Foucault, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 1-50 (2012).

¹¹⁶ Antonio Gramsci, *SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI* 161, 207-208, 245 {Geoffrey Nowell-Smith and Quintin Hoare (eds.), 1971}.

¹¹⁷ Ashis Nandy, *THE INTIMATE ENEMY: LOSS AND RECOVERY OF SELF UNDER COLONIALISM* 78 (1988).

claimed that they gave to the superstitious Indians the scientific rationality in order to fulfill the civilizing mission the White Men received this burden from the God!¹¹⁸ It was education along with epistemic practices which helped the European colonies around the world to establish and sustain the exploitative regimes without much opposition.¹¹⁹ Norbert Elias in *Civilising Process* enunciated about the role of education in transforming the natural tendencies and animality of the masses into the polite and peace loving subjects or citizens. As Voltaire claimed in context of Louis XIV, 'king succeeded in making of a hitherto turbulent nation a peaceful people dangerous only to its enemies...Manners were softened'.¹²⁰ Elias exemplified how the modern state emerged through monopolization over the use of violence, which was earlier persisting in the unruly masses. Education has proved to be an efficient mechanism in civilizing the masses by the ruling class.

In context of education as ideological machine, the question may be raised if subject's authentic voice could be discovered or recovered in an ideological character of education either provided by state, religious institutions, or facilitated by neo-liberal order of market through private schools and universities? Would not the demand be just to pursue the task of unlearning, so that the authentic voice of humanity could be accessed through authenticity of subject? These are the questions perhaps attracted Ivan Illich to develop the masterpiece work, *Deschooling Society*. In which he writes:

'A second major illusion on which the school system rests is that most learning is the result of teaching. Teaching, it is true, may contribute to certain kinds of learning under certain circumstances. But most people acquire most of their knowledge outside school, and in school only insofar as school, in a few rich countries, has become their place of confinement during an increasing part of their lives'.¹²¹

Freedom from education, in these contexts, appears to be a desire to realize freedom as authenticity, a necessity to save humanism from becoming merely an echo-chamber of ideas.

Freedom by Education: Education, as explained earlier, is an important process to perpetuate the traditions, thrived since time immemorial. One of the tasks of education, as understood by various religious traditions, is *mukti* or liberation. Upanishads exemplified the desire of mystics and poets to lead from ignorance to truth and from darkness to light. Sankara in *Brahma Sutras* explained the root cause of *maya* (illusion) in the world is *avidya* (ignorance). In his words:

'Owing to an absence of discrimination, there continues a natural human behaviour in the form of I am this or this is mine; this is *avidya*. It is a superimposition of the

¹¹⁸ Ashis Nandy, *Id.*

¹¹⁹ Amitav Ghosh, *THE NUTMEG'S CURSE: PARABLES FOR A PLANET IN CRISIS* 249-251 (2022).

¹²⁰ Norbert Elias, *THE CIVILIZING PROCESS: SOCIOGENETIC AND PSYCHOGENETIC INVESTIGATIONS* 42 (2000).

¹²¹ Ivan Illich, *DESCHOOLING SOCIETY* 7 (1973).

attributes of one thing on another. The ascertainment of the nature of the real entity by separating the superimposed thing from it is *vidya* (knowledge, illumination)'.¹²²

Matilal explains the vision of Sankara in these words:

'...what we call knowledge-normal, knowledge that gives us information about the world we live in, knowledge that is derived from such means of knowing (*pramana*) as perception, inference and scriptures, is to be down-graded as *a-vidya*, which translate (consistently with the dictum of the Sanskrit grammarians regarding the various meanings of the negative particle) as bad knowledge'.¹²³

Patanjali in *Yoga Sutras* described *Avidya* as the first of five *kleshas* (the knots of affliction).¹²⁴ Ignorance is the significant premise upon which the Buddhist phenomenology discerned the cause of suffering in *Samsara*.¹²⁵ Thus, the goal of education, as reflected by various religious traditions, has been liberation from the bondage of attachment from which *samsara* is formed. This sort of education is meant to perceive the ultimate reality, as Aurobindo conceived two alternative concepts of knowledge perceived either by identity or contact. In words of Aurobindo, 'A knowledge by identity, a knowledge by intimate direct contact, a knowledge by separative direct contact, a wholly separative knowledge by indirect contact are the four cognitive methods of Nature'.¹²⁶ It is through knowledge by identity one may reach to the ultimate truth. On the other hand, scientific knowledge is perceived through direct or indirect contact. Matilal categorizes the pure-intuitive knowledge as 'knowledge-special' and knowledge gained through perception (*praman*) as 'knowledge-normal'.¹²⁷

Education can lead towards freedom or bondage; it depends on the vision of education. European society gave special place to freedom. One vision of freedom is the fulfilment of desire and other one is to restrict it. Utilitarian thinkers conceived it in terms of worldly gratification.¹²⁸ On the contrary, Kantian freedom was conceived as autonomous exercise of choices without getting affected by the law of nature.¹²⁹ Kantian vision of enlightenment was conceived as 'freedom to make public use of one's reason' and emergence from self-incurred tutelage or minority, for which he developed critical

¹²² Chittaranjan Naik, *A Realist view of Advaita*, Part III, ADVAITA VISION. Available at: http://www.advaita.org.uk/discourses/chittaranjan/preamble_chittaranjan.htm (last visited 10 Jan., 2023).

¹²³ Bimal Krishna Matilal, *THE COLLECTED ESSAYS OF BIMAL KRISHNA MATILAL*, Vol. 1, 90 {Jonardon Ganeri (ed.), 2002}.

¹²⁴ Mini S. Rajarshi, *YOGA: A SYNTHESIS OF PSYCHOLOGY AND METAPHYSICS* 89 (2006).

¹²⁵ Surendranath Dasgupta, *A HISTORY OF INDIAN PHILOSOPHY*, Volume I, 50-110 (2020).

¹²⁶ Aurobindo, *THE LIFE DIVINE* 280 (1949).

¹²⁷ Bimal Krishna Matilal, *THE COLLECTED ESSAYS OF BIMAL KRISHNA MATILAL*, Vol. 1, 84-94 {Jonardon Ganeri (ed.), 2002}.

¹²⁸ John Stuart Mill, *ON LIBERTY* 88 (1978).

¹²⁹ Immanuel Kant, *GROUNDWORK FOR THE METAPHYSICS OF MORALS* 50 (2019).

pedagogy.¹³⁰ Kantian vision was to free the human's cognition from the enslavement of authorities. As he put, 'One age cannot bind itself and conspire to put the following one into such a condition that it would be impossible for it to enlarge its cognitions, and to purify them of errors'.¹³¹

The eastern way of enlightenment could be visualized in the dialogue of Buddha and Ananda when Buddha was nearer to his death. Buddha consoled Ananda:

'Enough Ananda! Do not let yourself be troubled; do not weep! Have I not told you that it is in the very nature of all things most near and dear unto us that we must divide ourselves from them, leave them, sever ourselves from them'?'¹³²

Avijit Pathak, explains the Eastern approach of Enlightenment in these words:

'The material/phenomenal world is temporal; but our attachment to it leads to ignorance; we tend to equate the temporal with the eternal. No matter, how much we seek to hold or possess the phenomenal reality, it is bound to wither away; and that is why, his ignorance leads to *dukkha*, pain, or suffering. Salvation, enlightenment, or *nirvana* lies in deep realization of this profound truth, and leading a life characterized by the middle path'.¹³³

This vision of enlightenment is possible only through holistic education, which allows a student to wander in nature and to be sensitive towards the ultimate questions of life. As Jiddu Krishnamurti put it, 'Education is not only learning from books, memorizing some facts, but also learning how to look, how to listen to what the books are saying something true or false'.¹³⁴

VII

Conclusions

The NEP, takes the Western idea of self-interested, egotistic, and mutually suspicious Individuals¹³⁵ as the basis for formulating the basic tenets of education policy. Such education policy will only perpetuate the illusion of subjectivity, while the individuals will keep sharing the commodified and objectified rationality, established by

¹³⁰ Immanuel Kant, ANSWER THE QUESTION: WHAT IS ENLIGHTENMENT? 2-3 {Daniel Fidel Ferrer (trans.), 1784, 2013}.

¹³¹ Immanuel Kant, *Id.* at 6.

¹³² Avijit Pathak, TEN LECTURES ON EDUCATION: PEDAGOGIC AND SOCIOLOGICAL SENSIBILITIES 1-50 (2021).

¹³³ Avijit Pathak, *Id.*

¹³⁴ Sujatha A. Krishna Rao, WIDENING HORIZONS: FOR EDUCATING THE GIFTED AND GENERAL EDUCATION 179 (2010).

¹³⁵ Bhikhu Parekh, *The Modern Conception of Right and its Marxist Critique* 13 (3/4) INDIA INTERNATIONAL CENTRE QUARTERLY 1-22 (1986).

modernity. The policy has only cosmetically used the revivalists' sentiments with respect to 'India's traditions and value systems',¹³⁶ and the 'rich heritage of ancient and eternal Indian knowledge and thought',¹³⁷ without suggesting any concrete measures to connect India with its ancient heritage.

The Policy and ensuing public discourse do not reflect on the ideas and traditions of social goods, principle of non-exclusion or access, and the moral-social fabric of pre-modern societies. Perhaps, the devastation by the conquest of market goes to its roots, *i.e.*, civilizational values. The devastation is of irreparable kind, so much so that the primal energy has burnt till its last ounce, and has eliminated all the possibilities of its regeneration. If, this is true, there has not been witnessed, in the entire known history, a greater war and a more complete conquest than that of market over the social goods and civilizational values in India. The conquest has brought the paradigmatic transformation of education, which has relegated it as monopolized private good from its social and public origin, and Indian legal education is no exception to this change. Education is now being distributed on the basis of User Pay Principle (UPP), recommended by Birla-Ambani Report on Education, 2000, which has been adopted by the Government in letter and spirit. NEP has been introduced to allow the logic of market to play its substantive part in creating and sustaining a profit-driven education system in India.

It is not a hearsay that it wants to produce a certain kind of human being. The objective is intended to be achieved by institution of 'singularity' as the organising norm for the society, through positive laws.¹³⁸ It does not appear to substantially view education as having status akin to that of air or drinking water of fundamental practical norms that govern our family system, 'a foremost social good'. The root causes lay in the political economy of the so called globalised Indian economy rationalised by myopic Western philosophical habitude. Thus, the institutional structures and educational curriculum, both, are controlled and determined by the similar elements: that is, by the type of the government of the time. Interestingly, in his classic work Allen Bloom observes:¹³⁹

'In some nations the goal was the pious person, in others the warlike, in others the industrious. Always important is the political regime, which needs citizens who are in accord with its fundamental principle. Aristocracies want gentlemen, oligarchies men who respect and pursue money, and democracies lovers of equality. Democratic education, whether it admits it or not, wants and needs to produce men and women who have the tastes, knowledge, and character supportive of a democratic regime'.

¹³⁶ *Supra*, note 34 at 3.

¹³⁷ *Supra*, note 34 at 4.

¹³⁸ *See*, section III above.

¹³⁹ Allen Bloom, *THE CLOSING OF THE AMERICAN MIND: HOW HIGHER EDUCATION HAS FAILED DEMOCRACY AND IMPOVERISHED THE SOULS OF TODAY'S STUDENTS* 26 (1987).

And the states controlled by anarcho-capitalism requires singularity by annihilating and obviating the practical and normative practices of 'triangularity', where 'existence of a social good entails massive duties, obligations, and limitations for the former.

John Rawls developed the political mechanism to bring a zone of 'over-lapping consensus' to solve the crisis emanating from the conflicting and hierarchal 'autonomous circles'. Over-lapping consensus has become a rationalizing tool to justify the disparities persisting among the different classes in the name of free consent, and rational choices. It is obvious from the Rawls' analysis that free consent is impossible to achieve in a society, whereas people have unequal resources, power-positions, education, and information. In such an inequitable condition, over-lapping consensus only represents the voice of elites, though subalterns are included to be excluded. Aristotelian or Rawlsian principles are necessitated only in those societies, which are organized on the principle of exclusion, and thereby creates a 'state of singularity' on the premises destroying the character of social goods, and allowing the predatory practices of monopolizing them as private goods through law by way of economic filter and barrier.

Genealogical analysis explains the character of ancient and medieval Indian societies, which were based upon 'oceanic-circles'; from individual, family, caste, clan, tribe, village to *Janapadas* (State) had symbiosis, so much so that autonomy of each unit was unaffected from the bigger circles. Such societies developed a 'bond of triangularity' between subject, law, and social goods. In that bond, law had a social origin instead of being reliant upon the political authorities, which allowed organizing the society on the 'principle of non-exclusion', in such a way, that law was the facilitator of non-exclusion *vis-à-vis* social goods like education, access to justice, and health. That relationship went into oblivion with the emergence of modern life, whose premise was to elevate subject as the 'possessive individuals', fighting against all odds throughout life to quench the insatiable desires for the law and the state.

The ancient Indian wisdom conceived the idea of education as a means of emancipation, liberation, or *nirvana*. They visualized freedom in context of the ultimate reality contemplated by mystics, philosophers, and poets, and established the education system without creating any barrier or filter. Principle of non-exclusion developed through social practices allowed every member of the community to access social goods, such as education and good health without getting affected by the dichotomy of inclusion-exclusion. The doctrine of reasonable classification emerged only in the modern period, once the concept of social good almost disappeared from the social imagination and transformed into private good. In this context, Aristotelian distributive justice based upon the reasonable classification has become the slogan of the most societies around the world, which has only allowed the existence of conflicting and hierarchal autonomous circles in a mega-circle, i.e., many conflicting life-cultures in a nation-state.

The occasion of framing the new education policy offered the best opportunity for academicians, philosophers, social activists, and the Central and State governments to revive, regenerate, and preserve the social character of education in general, and legal education in particular. NEP to the contrary, appears to facilitate the *Shiksha-Bazaar*, though it aspires to make India a *Vishwa-Guru* (World's Teacher). Without inventive imagination, this goal is as true as any beautiful dream. India can be a knowledge-power, if it allows the adventurous journey of teaching and learning through critical pedagogy, which was a unique achievement of ancient India. United States and other European societies have witnessed many 'public intellectuals'¹⁴⁰ like Jean-Paul Sartre, Michel Foucault, and Noam Chomsky, etc. in the last century, since they have allowed the academic freedom to do so. India, on the other hand, is struggling to allow the sufficient autonomy to the thinkers, scientists, poets, and teachers. Schools and universities are wasting their energies in record-keeping and disciplining the young minds. Under these conditions, the excellence in teaching and learning is a good wish. Every wish has to transform into a hope in order to its realization. As Roberto Unger said, 'Hope is not the condition or cause of action. Hope is the consequence of action. Those who fail in hope should act practically or conceptually, so that they may hope!'¹⁴¹

¹⁴⁰ Edward W. Said, REPRESENTATIONS OF THE INTELLECTUAL: THE 1993 REITH LECTURES 8-9 (1994).

¹⁴¹ Roberto Unger, *Free Classical Social Theory from Illusions of False Necessity*, BIG THINK. Available at: <https://www.youtube.com/watch?v=yYOOwNRFTcY> (last visited 25 Nov., 2022).