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Legal Uncertainties of Equity in Higher Education

By: P. Puneeth

The UGC's controversial 2026 Equity Regulations, now kept in abeyance by the Supreme Court, contained ambiguities and provisions for stringent sanctions without clear safeguards. The debate narrowed down to whether upper-caste students can be recognised as victims of caste discrimination.

The University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026 have become the subject of intense debate and criticism, and have also led to protests in some parts of the country. It appears that no one had foreseen that a regulation aimed at eradicating discrimination and promoting equity in higher educational institutions would attract so much criticism and backlash.

These Regulations were based on the recommendations of an expert committee set up by the UGC to examine and propose a framework of anti-discrimination regulations for higher education institutions.

The 2026 Regulations are largely being denounced as prejudicial to the interests of upper-caste students in institutions of higher education in India. They were notified by the University Grants Commission (UGC) at the instance of the Supreme Court of India, which has now ordered that they be kept in abeyance. The Court has also used its extraordinary power under Article 142 of the Constitution of India to bring back into operation the earlier Regulations—the UGC (Promotion of Equity in Higher Education Institutions) Regulations, 2012—which had been superseded by the 2026 Regulations.

The new Regulations have their genesis in judicial proceedings initiated in 2019 by the mothers of two students who died by suicide because of the caste-based discrimination they experienced in the institutions where they were pursuing their higher studies.

A perusal of various orders passed by the Supreme Court in *Abeda Salim Tadvi v. Union of India* [Writ Petition (Civil) No. 001149 of 2019] reveals that the UGC, one of the respondents in the case, officially informed the Court on 3 January 2025 that it had formulated a new set of Regulations. These Regulations were based on the recommendations of an expert committee set up by the UGC to examine and propose a framework of anti-discrimination regulations for higher education institutions.

The Court directed the UGC to notify these Regulations as per the prescribed procedure and to place them on record for its consideration. Subsequently, on 28 February 2025, the Court was informed that the draft Regulations had been displayed on the UGC's website, seeking suggestions from all stakeholders. The Court directed that the petitioners, intervenors, and others submit their suggestions to the UGC, which would duly consider them.

Further, in its order dated 24 April 2025, the Court clearly indicated that there was no need to wait for the recommendations of the National Task Force constituted by a coordinate bench in *Amit Kumar v. Union of India* [Criminal Appeal No. 1425 of 2025, order dated 25 March 2025] to create a "robust, comprehensive, and responsive mechanism to address the various factors which compel certain students to resort to taking their own lives". It accordingly directed the UGC to finalise the draft and notify it for operation. It also opined that "these Regulations... will operate in addition to what may be recommended by the National Task Force".

On 15 September 2025, the Court was informed that the suggestions received by the UGC and the opinion of the expert committee on them were under consideration. The Court also took note of the suggestions made by Indira Jaising, the lead counsel for the petitioners, and forwarded them to the UGC for its consideration. It directed that "the UGC may take a final decision as it deems appropriate and notify the Regulations as early as possible". On 15 January 2026, the Court was informed that the Regulations had been notified on 13 January 2026 and made operative with immediate effect.

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It is, however, not clear from the various orders whether the Court had the opportunity to peruse the contents of the final draft before directing the UGC to notify it. Probably it did not, or the same bench would not have expressed such strong opinions on the new

Regulations while hearing the petitions challenging their validity. It said that its provisions are vague, capable of misuse, and have the potential to take the country backwards. It therefore ordered, by an interim order dated 29 January 2026, that the Regulations be kept in abeyance with immediate effect.

The new Regulations have two stated objectives—first, the eradication of discrimination, and second, the promotion of full equity and inclusion among all stakeholders in higher education institutions. Under the Regulations, "stakeholders" include all students, faculty members, staff, and members of the managing committee, including the head of the higher education institution.

They provide for the establishment, in every higher education institution, of Equal Opportunity Centres, Equity Committees, Equity Helplines, and Equity Squads, and for the designation of one stakeholder as an Equity Ambassador in each unit of the institution. The Regulations enumerate the functions of these bodies and specify the measures to be taken to eradicate discrimination and to promote equity.

They specifically require institutions not to permit or condone any form of discrimination. The Regulations also prescribe the procedure to be followed in the event of an incident of discrimination and contain provisions for appeal by any person aggrieved by the report of the Equity Committee on a reported incident of discrimination.

Further, the Regulations require the UGC to constitute a national-level monitoring committee to oversee their implementation and stipulate the consequences that will follow if institutions fail to comply with the Regulations.

The main grounds of objection raised by detractors are fourfold. First, the Regulations do not explicitly include stakeholders belonging to upper castes as possible victims of discrimination. Second, they are said not to contain adequate procedural safeguards. Third, some of their provisions are described as vague. Fourth, it is argued that the Regulations are likely to be misused, and that they contain no provision to deal with false complaints. Each of these criticisms needs to be considered.

Inclusion of Upper Castes

The claim that the Regulations do not include stakeholders belonging to the upper castes in higher education institutions as possible victims of discrimination is not entirely true. It is only the definition of "caste-based discrimination" in Regulation 3(c) that excludes such stakeholders from its scope. The phrase "caste-based discrimination" is defined to mean discrimination only on the basis of caste or tribe against members of the Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

|| Can this limited definition be so strongly faulted and branded as regressive? Perhaps only those who remain oblivious to existing social realities can do so.

In India, there are many legislations that are similarly non-inclusionary. For example, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not include persons who do not belong to the SCs or STs as possible victims of discrimination or atrocities. All sexual offences under the Indian Penal Code/Bharatiya Nyaya Sanhita (IPC/BNS) are gender-specific and do not include men, and perhaps even transgender persons, as possible victims of sexual violence.

Likewise, provisions relating to domestic cruelty or domestic violence in the IPC/BNS and in the Protection of Women from Domestic Violence Act, 2005, do not include men as possible victims of domestic cruelty or violence. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, does not include men as possible victims of sexual harassment at workplaces.

All these laws make classifications that are reasonable, based on valid reasons, and constitutionally permissible. In the same way, there are valid reasons why the definition of "caste-based discrimination" in the new Regulations limits its application.

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If there is empirical evidence that persons belonging to the upper castes are also ordinarily subjected to caste-based discrimination in higher education institutions in India, then there would, of course, be a reasonable justification for revisiting the definition. In the absence of evidence suggesting comparable vulnerability, including them as possible victims of caste-based discrimination would amount to equal treatment of unequals, which is constitutionally impermissible.

It is also important to note that the new Regulations do not deal with caste-based discrimination alone. They require higher education institutions to eradicate discrimination based on other grounds as well—religion, race, gender, place of birth, or disability, or any of these. If stakeholders belonging to the upper castes are subjected to discrimination on any of these grounds, they are entitled to seek remedies under the new Regulations. In other words, the Regulations include them as possible victims of discrimination on such grounds.

Further, eradicating discrimination on the stated grounds is one of the two main objectives of the Regulations. The other objective is the promotion of equity, meaning the provision of a level playing field for all stakeholders with respect to their entitlement and opportunity for the enjoyment of all legitimate rights. This mandate covers all castes and communities without any exclusion.

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The new Regulations do not require that only persons from marginalised social groups be entrusted with various responsibilities. Under the scheme of the Regulations, the Coordinator of the Equal Opportunity Centre is an important officer. The Coordinator is the ex officio Member Secretary of the Equity Committee and chairs meetings of the Equity Committee if any complaint is made against the head of the institution. Any regular professor or senior faculty member who has an innate interest in the welfare of disadvantaged social groups may be appointed as the Coordinator. There is no bar on nominating a faculty member belonging to any upper caste as the Coordinator if he or she fits this description.

The Equity Committee is the second important body. It has the head of the institution as the ex officio Chairperson and the Coordinator of the Equal Opportunity Centre as the ex officio Member Secretary. In addition, it consists of eight other members nominated by the head of the institution from different constituencies. The only requirement is that the Committee must include representation of OBCs, persons with disabilities, SCs, STs, and women. Thus, only three out of 10 members need to be from marginalised social groups. Similarly, any stakeholder may be appointed as an Equity Ambassador, and Equity Squads may also have members from any community.

In the light of all this, the apprehension that the new Regulations promote discrimination against persons belonging to the upper castes appears to be unjustified.

Procedural Fairness

Regulation 8 sets out the procedure to be followed in the event of an incident of discrimination. An aggrieved person may report such an incident in any one of several ways. If the aggrieved person so requests, their identity must be kept confidential.

After receiving information about an incident, the Equity Committee is required to meet within 24 hours to take "appropriate action". However, the Regulation does not specify in detail what such appropriate action may be, except to say that, in suitable cases, the matter may be referred to other committees constituted under any other UGC Regulations or under any law.

What is important to note is that the new Regulations do not envisage any punitive action being taken directly on the basis of the report of the Equity Committee.

What is the Equity Committee expected to do in matters that it does not refer to other committees? It is required to prepare a report within 15 days and submit it to the head of the institution. A copy of this report must also be sent to the aggrieved person.

Should the person or persons complained against be heard at this stage by the Equity Committee? There is no explicit provision requiring this. The provision also does not explicitly state that a copy of the report must be sent to the person or persons complained against.

However, one may argue that these requirements are implied. The Equity Committee exercises quasi-judicial powers. Therefore, the procedure it follows must comply with the principles of natural justice.

Since Regulation 9 allows "a person aggrieved by the report of the Equity Committee" to file an appeal before the Ombudsperson within 30 days from the date of receipt of the report, it necessarily implies that the report must be forwarded to both sides. Without being served a copy of the report, the person or persons complained against cannot file an appeal. These procedural requirements ought

to have been stated explicitly and clearly in order to avoid any confusion or misunderstanding.

What is important to note is that the new Regulations do not envisage any punitive action being taken directly on the basis of the report of the Equity Committee. They require the head of the institution to "initiate further action as per the rules of the higher education institution within seven working days" from the date of receipt of the report.

This suggests that the Equity Committee is required to conduct only a preliminary enquiry. Any detailed enquiry that may lead to punitive action against a wrongdoer must be conducted separately, in accordance with the other rules of the higher education institution, after the report of the Equity Committee is received.

Three further points need clarification here. First, there is no timeline prescribed for concluding this subsequent process. Second, the principles of natural justice must be followed at this stage as well. Third, contrary to what some critics have claimed, the Regulations do not provide for any presumption of guilt.

Guilt must be established through a process that is just, fair, and reasonable, failing which the entire proceedings may be struck down by a court. Procedural safeguards rooted in the fundamental rights guaranteed under the Constitution cannot, in any circumstances, be denied.

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There is another aspect that has also been a bone of contention. Regulation 8 requires that information regarding discrimination be forwarded to the police in two situations. First, after receiving information on the Equity Helpline "if, prima facie, a case under the penal laws is made out". Second, after the report is prepared by the Equity Committee, "if a case under the penal laws is made out".

These are not drastic provisions. Even without such provisions, a person can file a complaint directly with the police if a case under the penal laws, whether prima facie or otherwise, is made out.

There are, however, a couple of other problems that need to be flagged. Regulation 8 requires that the report of the Equity Committee, which is headed by the head of the institution, be submitted to the head of the institution himself or herself to initiate further action. This does not make much sense.

The composition of the Equity Committee under Regulation 5(6) needs to be revisited to avoid overlaps and conflicts of interest. Another problem is that the Equity Committee, which consists of eight members nominated by the head of the institution, is not well suited to deal with complaints made against the head of the institution himself or herself. These inadequacies and shortcomings need to be addressed.

Vague Provisions

The new Regulations have also been criticised on the ground that some of their provisions are vague. The Supreme Court has taken a similar view. However, it has not been clearly indicated which provisions are, in fact, vague.

Critics are probably referring to the procedural inadequacies discussed above and to the definition of "discrimination". The definition is, in one sense, broad, and some might even justifiably call it vague, since it refers to any explicit or implicit act of unfair, differential, or biased treatment of any stakeholders. Yet, if the term is interpreted in the overall context of the Regulations, its meaning may become clearer.

Moreover, some degree of vagueness is unavoidable in any legislative drafting. Even when provisions are relatively clear, some people try, sometimes deliberately, to misunderstand them. It may be instructive to recall what Lord Cave, Lord Chancellor, once observed: "No form of words has ever yet been framed ... with regard to which some ingenious counsel could not suggest a difficulty."

In India, it is a well-settled principle of law that "a duly enacted law cannot be struck down on the mere ground of vagueness unless such vagueness transcends in the realm of arbitrariness". The validity of the definition therefore needs to be examined in the light of this principle.

Possibility of Misuse

It is also true that the Regulations do not contain an explicit provision to deal with cases of misuse. This is also the position with many other laws enacted for the protection of vulnerable groups. Although the possibility of misuse of such laws cannot be ruled out, legislation ordinarily does not include such provisions.

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Whether such laws should contain explicit provisions to deal with misuse is a matter of debate. The apprehension is that a clear prescription of sanctions for misuse might weaken the protection such laws accord to vulnerable groups, since the powerful can sometimes manage to turn these provisions against them. Legislatures are therefore generally reluctant to include such clauses.

Some argue that, in order to prevent misuse of such laws, the focus should instead be on strengthening procedural safeguards for the person or persons complained against. It is not as if there are no personal consequences for those who file false complaints. If an enquiry finds that the allegations are false, it would damage the image and social standing of such complainants. Institutional records of false complaints would continue to haunt them.

In appropriate cases, provisions under the general criminal law dealing with false, malicious, or frivolous complaints, as well as perjury and defamation, can also be invoked against persons who file false complaints.

Conclusion

The new Regulations are not perfect. There are gaps to be filled, and there are doubts, ambiguities, and inadequacies that must be addressed. Under the Regulations, the prohibited grounds of discrimination are limited. The Regulations also impose onerous responsibilities on higher education institutions and prescribe very stringent sanctions for non-compliance, if such non-compliance is established by an enquiry committee set up by the UGC.

The Regulations do not clarify what amounts to non-compliance that can attract sanctions ranging from debarment from participation in UGC schemes to debarment from offering degree programmes. It is not clear whether non-compliance with any single specific requirement can attract such sanctions. The Regulations also do not lay down the procedure to be followed in such cases and contain no provision for appeal or review. In such circumstances, approaching the judiciary seems to be the only option.

These are important concerns that need attention. Because of the protests, however, the focus has shifted to only one issue, namely that stakeholders from the upper castes are not recognised as possible victims of caste-based discrimination.

P. Puneeth is Professor of Law at the Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi.