

Constitutional Amendment to Make Education a Fundamental Right

Issues for a Follow-up Legislation

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Constitutional Amendment to Make Education a Fundamental Right

*Issues for a Follow-Up Legislation**

Introduction

A number of recent efforts have been initiated in India to make elementary education a fundamental right of every child. With the passing of the 93rd Constitution Amendment Bill by the Lok Sabha, the lower house of Parliament, on 27th November 2001, and then by the upper house, the Rajya Sabha, on 14th of May 2002, a major stride was witnessed in the evolution of the 93rd Constitution Amendment Bill into the 86th Constitution Amendment Act. With this Act, for the first time since the framing of the Constitution, was a Fundamental Right added to the Constitution of India. Befittingly, for India, with the largest number of illiterates in the world, this first addition to the Fundamental Rights list relates to education. The Indian Constitution, now guarantees eight years of elementary education to each and every child in the country.

How this shall be implemented and by whom, and in what manner, shall be decided by a legislation that is to be drafted as a follow-up to the Constitutional Amendment. Subsequent to the amendment, the following article shall be inserted after Article 21 of the Constitution, namely:

“21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.

Article 45 will not, as was being considered earlier, be deleted. Instead, the content of the Article 45 of the Constitution is being substituted by:

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“45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.

In Article 51A of the Constitution, after clause (j), the following clause is being added:

“(k) who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years”.

Therefore, as may be noted from above, the provisions of Article 21 -A itself state that they are to be implemented *in such manner as the State may by law determine*. As such **the legislation that would give effect to the provisions to this clause would play a determining role in the future of Indian education .**

The question before the country at this juncture is – **how should this all-important piece of legislation be framed in order for it to ensure that every child is assured of the right to education?** Can one learn from the existing state legislation on compulsory education, or does compulsory education not fit in with the present ‘rights’-based perspectives, in which education is a ‘Right’, and not a compulsion on a person.

Can we draw inspiration from compulsory education laws from other parts of the world, and from recent UN documents on the rights of the child?

India is a signatory to the Convention on the Rights of the Child (CRC), and is, therefore, committed to bringing its internal legislation in line with the agreements in the ratified CRC. One of the major articles in the Convention commits India thus:

“State parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular: (a) Make primary education compulsory and available free to all”.

The Amendment to the Constitution and the proposed legislation to follow it are in consonance with this commitment also. But the question remains one of framing the law appropriately. There may be many predicaments that we may need to confront in this context. For example, some of the questions that immediately come to mind, in this context, are:

- Why does the right to education need to be shifted from Part IV of the Indian Constitution (Directive Principles of State Policy) to Part III (Fundamental Rights).
- Why is new legislation needed for giving this right an operational meaning when almost every State already has a Compulsory Education Act?
- Should the 'State' make Central Legislation or should the federal state governments draft their own legislations for ensuring to every child, free and compulsory education?
- Should the legislation relate to only the new article 21 -A thus restricting itself to the 6-14 year old child, or, should it relate to the entire content of the Amendment and include legislative provision for early childhood care and education (the new Article 45) as well as the fundamental duty of parents (Article 51k)?
- Whom should the legislation empower? The parents - to demand education from the 'State'? *Or*, the 'State' - to compel parents to send their child to school? *Or*, the Centre - to compel the federal state governments to provide educational facilities and attendance authorities? Secondly, how should this be done?
- Who will implement the provisions of the legislation? Can Central legislation be made for the third tier bodies to implement, since Panchayati Raj Institutions (PRIs) are a State subject?
- What should be the role played by Panchayati Raj Institutions in the provision and effective implementation of fundamental rights? Should the follow-up legislation define their role? Who should define this role? What authority and resources need to be given to these institutions? What capabilities do they have/need to have in order to play a meaningful role?

- When free and compulsory education becomes a fundamental right – what should be ‘free’? Should education in private schools also be free? Should the central legislation specify what should be free?
- How can parents be brought on board? What should be their role? What should be our position regarding penalties for non-implementation of the provisions of the Act?
- Should private institutions have a role to play in this national endeavour? How can they be brought in?
- A ‘demand’ has been vocalized in the popular literature and in seminars and workshops for “education of satisfactory quality”. Can ‘Satisfactory Quality’ be defined in more specific terms?

As one may see, the issues can run quite deep and, for the uninitiated, this whole debate can be somewhat bewildering. An attempt has been made in four sections of this paper, therefore, to present happenings related to the right to education in their conceptual and historical perspectives, before returning to intricacies of the issues that we need to address in framing the follow-up legislation.

Section I discusses briefly the concepts of: (i) compulsory education; and (ii) the right to education, and also the relationship between the two. It introduces the existing constitutional provisions for the child, in India, as well as the existing acts in force, for making education compulsory.

Section II provides historical background of compulsory education in India, in order to understand the previous attempts in this direction, and to understand some of the problems that one can encounter in attempting to provide education for all children.

Section III outlines some of the recent developments, in the past decade or so, that have served to resurrect the concern for providing a legislative grounding to mass education, and to pave way for the 93rd Constitutional Amendment Bill.

Finally, Section IV discusses issues related to the present follow-up legislation to the new Article 21-A of the Constitution of India. It also discusses why our existing Compulsory Education Acts no longer serve and why a new legislation is needed today.

Put together, these sections may make the reader painfully aware that the legislation may, by no means be sufficient. Rather, it is a necessary first step, and, therefore, deserves to be taken with all seriousness and sincerity.

The underlying concern running throughout is that what is needed today is not just legislation in the old compulsory education mould (which only lays down what facilities are to be provided and dictates what will happen to those who do not avail of them), but a legislation that will enforce the rights of every child to quality education.

Section I

The term ‘compulsory education’ tends to elicit different meanings and interpretations from different people. Most often, compulsory education is interpreted in terms of mandatory attendance requirements, or, as the first stage of education. Not very often, it is connected with the right to education, and, even then, to most people compulsory education and right to education mean, more or less, the same thing. However, there is a slight but important difference. The “Right to Education” could also be applicable to adults. Hence, while systems exist in several countries to force parents to send their children to school, adult education is not, as a rule, compulsory since adults can choose whether or not they want to take advantage of the facilities provided to them for education. The aim of compulsory education is to *protect* children’s right to education because children have no way of asserting that right for themselves when through neglect or ignorance, no attention is paid to this need.

Compulsory education is also used synonymously and interchangeably with the first stage of formal education, which, in most countries, is congruent with the years in which education is also ‘compulsory’:

“Compulsory Education: That which must be attended or undertaken by the law of a particular country or state. The legal requirement may be education from a certain starting age or it may be education up to a certain standard.”

International Dictionary of Education, London, (1977)

Another meaning of the term tends to refer to the requirements from children and governments in relation to this stage – the requirement being that the children must attend school and that the government must provide these schools. The following definition of compulsory education refers to these mandatory conditions:

“Compulsory Education: The legal requirements in all states mandating minimal school attendance annually for children between latest school starting ages and earliest school leaving ages specified by the individual states; states correspondingly require provision of public education through which legal school attendance requirements may be met.”

The Concise Dictionary of Education, 1982)

Compulsory schooling puts a duty on the child to attend school and corresponding duty on the parents to send the child to school. In the past two or three centuries, one can find articles in many Constitutions defining compulsory education as a *child's duty*. In case of non-obedience, the state organs such as the police and the courts are required to take a ction.

When Compulsory education is perceived as a *right*, the focus shifts to ‘*self-assertion*’. This is the meaning of compulsory education propagated by liberal and socialist philosophers, politicians and educationists as a vehicle for safeguarding a human right for people ‘under age.’

The UNESCO Yearbook of Education (1986) viewed compulsory education as a right. Thus, as a right it has *shifted* from being *applied to* the population as a passive subject, to now mainly applied to *the state as an active subject* such that:

“The compulsory nature of education refers not only to the child’s obligation to receive it but also to the state’s obligation to provide”.

UNESCO, International Year Book of Education, Vol. XXXVIII (1986).

Compulsory Education vs. Compulsory Schooling

In some cases, ‘compulsory education’ requirements can be met even without attending school. In such cases, it is the achievement of a stage of education that is the determining factor and not the attendance of the child at a school. In many countries, the conditions of compulsory education may be met through home schooling or through the provision of education through some other

means. The following definition, from an American publication, also refers to this ‘achievement of objectives’ meaning of the term, in addition to the more common meanings related to the requirements to attend school and the requirements to provide schooling facilities. Such definitions of compulsory education draw attention to the distinction between compulsory *schooling* and compulsory *education*:

“Compulsory Education: (1) the practice now common to all states, territories, and possessions of the united states, of requiring school attendance by law; responsibility to be placed on the parents in some states; (2) historically, the requirement that every child should be able to read and write by a certain age commonly 12 years, school attendance not being mandatory (3) the requirement that a political subdivision provide education for the school age population.”

Good/Third Educational Dictionary of Education, (1973)

Operationally too, there is an important difference between compulsory *education* and compulsory *schooling*. Compulsory schooling requires compulsory attendance at a public school, i.e. it refers to a specific process whereby education is to be transacted. Compulsory education, on the other hand, refers only to the output i.e. to the fact that learning must take place, giving little or no emphasis to where it takes place, as long as it is actually taking place.

The present state education acts in India, by and large, make education, rather than schooling, compulsory. However, they make it a requirement for the child to attend an approved school, but, at the same time, schooling can be exempted if the child is shown to be acquiring the required education through some other means. In most countries in Europe (with the exception of Germany) and even in the UK, laws allow children to be educated at home (Petrie, 1995). A large number of States in the USA also emphasise education, and not necessarily schooling, but others still require attendance at schools.

Emphasis on the output of education appears to have definite advantages in contexts where alternate modes of instruction are more appropriate. Increasingly, technological advances are making it possible for learning to take place through 'distance' or 'open' schooling modes. As all educationists are aware, alternate modes of education have been used with advantage in the case of '*difficult to reach populations*', and groups with a different culture or way of life - such as, for example, peripatetic teachers for nomadic populations; part-time or flexible classes for children of certain groups such as fishermen, bridge courses for drop-out children, distance education through post, radio and television for remote areas etc. Many children are out of school in urban areas – even though there is no dearth of schooling facilities. Appropriate methodologies will need to be evolved to address the needs of slum children, street children and other urban out-of-school children.

In opting for compulsory education over schooling, the emphasis will shift from getting the children into schools to the task of determining whether or not they are actually learning. With children's learning being evaluated at definite stages, it may be possible to shift the activity in schools from the ritual aspects of marking the attendance of the teachers and the pupils to actual teaching and learning.

On the other hand, there is the equally obvious danger of such provisions being misused by state agencies to avoid incurring the cost of providing schools.

It may be worth pointing out at this stage that in the Indian context and experience, it is compulsory *schooling* that may be needed, despite the obvious advantages of compulsory 'education'. Some of the present educational disadvantages of many areas stem from the non-provision of schooling facilities in the past and also the non-enforcement of adequate standards of teaching and learning. A tighter law may be needed for some time in order to ensure at least the

provision of minimum facilities and some efforts to ensure that children are freed from other work in order to get an education.

Constitutional Provisions for Protecting the Right of the Child

In the Indian Constitution, prior to the 86th Amendment Act, 2002, three Articles in the Constitution had the child as their specific focus. These were Articles 24, 39 and 45 dealing with prohibition of children from being employed in factories, mines or in other hazardous employment; development and protection of the tender age of children; and free and compulsory education.

Article 24

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in hazardous employment

Article 39

The state shall direct its policy toward securing that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45

The state shall endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years.

Apart from these, the 1993 judgment of the Supreme Court in the case of *J.P. Unni Krishnan and others vs. state of Andhra Pradesh and others (1993)* ISCC was also considered to have the status of a Fundamental Right. The Apex Court had declared: “*The passage of 44 years - more than four times the period stipulated in Article 45 has converted the obligation created by the Article into an enforceable right. At least now the state must honour the command of Article 45 and make it a right.*”

According to this judgment, “*Right to Education is implicit in and flows from right to life guaranteed under Article 21*” and “*Every child of this country has a right to free education until the age of 14, thereafter his rights are circumscribed by the economic capacity and development of the State.*”

Existing Legislation for Compulsory Education

Whether or not, the right to education is a fundamental right, laws can be, and have been made for compulsory education in India. One of the most recent acts, on this subject, in India, was in the State of Sikkim in the year 2000. Some states such as Maharashtra and Madhya Pradesh are presently in the process of amending their existing acts for free and compulsory education.

Table 1 below presents a list of the acts currently in force for making education free and compulsory in different states/UTs in the country. Many people including even educational administrators did not know that India has a number of acts for compulsory education. A study, conducted in 1996, found that over 95 per cent of the educational administrators surveyed were not aware of the existence of compulsory education acts in their states. However, awareness of the same has grown since the recent constitutional amendment.

**Table 1 : Compulsory Education Acts Presently in Force
in States/UTs of India**

S.No.	State/UT	Name of the Act
1	Andhra Pradesh	<i>Andhra Pradesh Education Act, 1982 (Act No.1 of 1982)</i>
2	<i>Assam</i>	The Assam Elementary Education (Provincialisation) Act, 1974 (Assam Act No. 6 of 1975)
3	Bihar	Bihar Primary Education (Amendment) Act, 1959 (Bihar and Orissa Education Act (1 of 1919) as amended by Bihar Act IV of 1959)
4	Goa	The Goa Compulsory Elementary Education Act, 1995 (Goa Act No. 4 of 1996)
5	Gujarat	Gujarat Compulsory Primary Education Act, 1961 (Gujarat Act No. XLI of 1961)
6	Haryana	<i>Punjab Primary Education Act, 1960</i>
7	Himachal Pradesh	The Himachal Pradesh Compulsory Primary Education Act, 1953 (Act No.7 of 1954)
8	Jammu & Kashmir	The Jammu and Kashmir Education Act, 1984 (Act No.XI of 1984)
9	Karnataka	The Karnataka Education Act, 1983 (Karnataka Act No. 1 of 1995) (First published in the Karnataka Gazette Extraordinary on the 20 th day of January, 1995)
10	Kerala	The Kerala Education Act 1958 (Act No.6 of 1959) (As amended by Acts 35 of 1960, 31 of 1969 and 9 of 1985).
11	Madhya Pradesh	The Madhya Pradesh Primary Education Act, 1961 (Madhya Pradesh Act No.33 of 1961)
12	Maharashtra	The Bombay Primary Education Act 1947, Bombay Act No. LXI of 1947) (As modified up to 30 th April 1986)
13	Punjab	Punjab Primary Education Act, 1960 No. 39
14	Rajasthan	The Rajasthan Primary Education Act, 1964 (Act No.31 of 1964)
15	Sikkim	The Sikkim Primary Education Act, 2000 (Act No. 14 of 2000)
16	Tamil Nadu	The Tamil Nadu Compulsory Elementary

S.No.	State/UT	Name of the Act
		Education Act 1994 (Act No.33 of 1995)
17	Uttar Pradesh	United Provinces Primary Education Act 1919* (U.P. Act No. 7 of 1919) United Provinces (Dist. Boards) Primary Education Act 1926* (U.P. Act No. 1 of 1926) *Adapted and modified by the Adaptation of Laws Order 1950.
18	West Bengal	West Bengal Primary Education Act, 1973 (West Bengal No.43 of 1973)
19	Delhi	The Delhi Primary Education Act 1960, Act No.39 of 1960

Considering that compulsory Acts already exist to cover most parts of India, one may wonder, why a new legislation is needed (Section IV of this paper shall address this question). Secondly, does it mean that education is compulsory in the states where these Acts are presently in force? This assumption is, however, not strictly correct, as shall be seen below.

Is Education Compulsory in States Where Compulsory Education Acts Have Been Passed?

Although many of the states in India have passed legislation “to provide for free and compulsory primary education”, popularly referred to as ‘Compulsory Education Acts’, the fact remains that they do not, by themselves, make education ‘compulsory’, but only ‘enable’ the ‘local authorities’ to choose to do so. The present Compulsory Education Acts are, therefore, mere ‘enabling legislations’. For the reason that these acts can apply only to a ‘local area’, for which a scheme must be prepared and passed, these acts cannot cover the whole State. Therefore, it would not be correct to say that education is actually compulsory in states having compulsory education acts.

To enable education to be made compulsory, under these acts, a number of further actions are involved such as: (i) Preparation of a scheme, by the specified

authority to make education compulsory in an area; (ii) Obtaining Government approval for the scheme; and (iii) Notification of a scheme of compulsion within the specified area.

Once a scheme is passed, officers would further: (i) Prepare lists of children who should be going to school and send notices to their parents; and (ii) Ascertain attendance status of each child, and, if necessary, use coercive measures to bring non-attending children to school.

The big question that might worry many people is whether parents will go to jail if education is made compulsory? The answer is simply 'No'. None of the present 'compulsory education acts' have any provision for sending parents to jail for failing to send their children to school. In fact, as shown in Section II, various official documents testify that compulsory education Acts were being enforced in independent India. None of us, who were around at that time, has heard of any parent having gone to jail for failing to educate their children.

Section II

Pace of Compulsory Education in India (1880-1972)

At this stage, many may want to know what happened to the previous legislations for compulsory education. It is a matter of concern that future legislation would not meet the same fate as the earlier ones. Starting with the story of how compulsory education first came on to the statute books in India and then narrating how and why these acts were then, as a deliberate policy, 'forgotten', this section lists the compulsory education acts that have been passed in India, over a period of time, in an attempt to highlight the message, that unless a high priority is accorded to education of the masses especially in budgetary allocations, the new legislation could meet the same fate as the acts in force.

Attempts to make the right to free and compulsory education available to the Indian child began a little more than a century ago. Many changes that had taken place in the 18th century Europe, had their impact on Indian contemporary life and perceptions. This was the period of emergence of the middle class, of the rationalistic and individualistic philosophies and of the 'nation state'. With these new ideas emerged new concepts regarding education as a right of all the citizens and as a duty of the state. In the latter half of the 19th century, the educated Indians in their travel abroad, noticed these changes on the Continent as well as in Great Britain. They noticed, in particular, the difference in the entitlement of citizens in England and in British India.

When in 1870, England passed legislation to make education free and compulsory, a demand was raised, in India, to provide similar facilities in its colonies. A number of educated Indians deposed before the Indian Education Commission in 1882 and asked for laws to be made to make education compulsory and to wean children away from labour in factories and other kinds of

unsuitable work (Desai, 1953). From this point onwards began the struggle for making available this same right to every child in India.

To show to the British that such ideas were not too 'Utopian' in the Indian context, a number of princely states such as Baroda, Travancore, Manipur etc. introduced legislation in their states to make education compulsory (Saiyidain, 1966).

Instead of going into the details of this political battle, a brief overview of the major historical events, in chronological order, is presented below:

- 1870 - 80** Compulsory Education Acts passed in Britain - Demand for similar treatment for Indians.
- 1882** Indian Education Commission – Indian leaders demand provision for mass education and Compulsory Education Acts.
- 1893** Maharaja of Baroda introduces Compulsory Education for boys in Amreli Taluk.
- 1906** Maharaja of Baroda extends Compulsory Education to rest of the state.
- 1906** Gopal Krishna Gokhale makes a plea to imperial legislative Council for introduction of free and Compulsory Education
- 1911** Gokhale proposes Private members Bill (Rejected)
- 1917** Sh. Vithalbhai Patel succeeds in getting Bill passed
- 1917** First Law on Compulsory Education passed (Popularly Known as Patel Act)
- 1918-30** Every Province in British India gets Compulsory Education Act on its Statute Book
- 1930** Hartog Committee Recommendation for better quality (not quantity) hinders spread and development of primary education

- 1944** Post War Plan for Educational Development in India (Sargent Plan) proposes scheme for India to achieve universal elementary education in by 1984 (40 years)
- 1947** Ways and Means (Kher) Committee set up to explore ways and means of achieving UEE within ten years at lesser cost.
- 1947** Constituent Assembly Sub committee on Fundamental Rights places free and compulsory education on list of Fundamental Rights :
- “Clause 23- Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years.”*
- 1947 (Apr.)** Advisory Committee of the Constituent Assembly rejects free and compulsory education as a fundamental right. Sends clause to list of “non-justiciable fundamental rights” (later termed as ‘Directive Principles of State Policy).
- 1949 (Nov.)** Debate in Constituent Assembly removes the first line of this clause (now Article 36) i.e *“Every citizen is entitled as of right to free primary education and it shall be the duty of the State to..”* and replaces it with *“The State shall endeavour to..”* and Dr. B.R. Ambedkar, clarifies that the objective of article 36 is not restricted to free primary education.. *“The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years”**“a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate.”*
- 1950** Article 45 of the Directive Principles of State Policy of the newly adopted Constitution of India, provides that:
- “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.*

Legislations for Compulsory Education in India

In the space of the last century, a number of acts have been passed in India to enable education to be made free and compulsory. The list of such legislations passed in India, both before and after independence, is produced below. This list (hopefully complete) does not, however, include all the current acts in force. The list of 'Acts in Force' was presented in Table 1 earlier. This long list of acts should, at the very least, serve to emphasize the point, that if legislation alone could have achieved universalisation of elementary education, India would have achieved UEE by now. Despite this impressive armory of legislation, India has the largest number of illiterates in the world as well as the largest number of working children. What is important is how this armory was used, (or not used), to fight illiteracy.

List of Compulsory Education Acts

Pre-Independence

1. The Bombay Primary Education (District Municipalities) Act, 1917
2. The Bengal Primary Education Act, 1919
3. The Bihar and Orissa Primary Education Act, 1919
4. The Punjab compulsory Education Act, 1919
5. The United Provinces Primary Education Act, 1919
6. The Bombay City Primary Education Act, 1920
7. The Central Provinces Primary Education Act, 1920
8. The Madras Primary Education Act, 1920
9. The Patiala Primary Education Act, 1926
10. The Bikaner State Compulsory Primary Education Act, 1929
11. The Madras Primary Education Act, 1937
12. The Bombay City Primary Education (District Boards) Act, 1922
13. The Bombay Primary Education Act, 1923
14. The Assam Primary Education Act, 1926
15. The U.P. (District Boards) Primary Education Act, 1926
16. The Bengal (Rural) Primary Education Act, 1930
17. The (Jammu & Kashmir) Compulsory Education Act, 1934
18. The Bombay Primary Education (Amendment) Act, 1938

19. The Punjab Primary Education Act, 1940
20. The Mysore Elementary Education Act, 1941
21. The Travancore Primary Education Act, 1945
22. The Bombay Primary Education Act, 1947

Post-Independence

1. The Assam Primary Education Act, 1947
2. The Bombay Primary Education Act, 1947
3. The Cochin Free Compulsory Primary Education Act, 1947
4. The Madhya Pradesh Compulsory Primary Education Act, 1950,
5. The Ajmer Primary Education Act, 1952
6. The Madras Elementary Education Act, 1952
7. The Hyderabad Compulsory Primary Education Act, 1952
8. The Vindhya Pradesh Primary Education Act, 1952
9. The Himachal Pradesh Compulsory Primary Education Act, 1953
10. The Assam Basic Education Act, 1954
11. The PEPSU Compulsory Primary Education Act, 1954
12. The Bhopal State Compulsory Primary Education Act, 1956
13. The Madhya Pradesh Primary Education Act, 1956
14. The Saurashtra Primary Education Act, 1956
15. The Kerala Education Act, 1958
16. The Delhi Primary Education Act, 1960
17. The Andhra Pradesh Primary Education Act, 1961
18. The Andaman and Nicobar Islands (Primary Education) Regulation, 1959
19. The Mysore Compulsory Primary Education Act, 1961
20. The Assam Elementary Education Act, 1962

As one can see, there has been no dearth of legislations to make education free and compulsory over the years. After the re-organization of the States, many new acts for compulsory education, modelled on the Delhi Primary Education Act, 1960, were also adjusted and notified by a number of States. Records and data available right until 1971-72 report that coercive measures were taken for enforcement of compulsion. A sample of the kind of information available from the data are reproduced in Tables 2-4.

Table 2: Data on Enforcement of Compulsory Education in India since Independence – Number of Notices Issued: All India

Years	Urban	Rural	Total
1949-50	209050	412791	6,21,841
1950-51	N.A.	N.A.	6,45,890
1951-52	N.A.	N.A.	5,91,793
1952-53	N.A.	N.A.	5,92,279
1953-54	N.A.	N.A.	6,18,447
1954-55	269770	356697	6,26,467
1955-56	N.A.	N.A.	6,87,421
1956-57	N.A.	N.A.	7,81,924
1957-58	N.A.	N.A.	6,68,496
1958-59	N.A.	N.A.	6,97,834
1959-60	N.A.	N.A.	6,29,149
1960-61	N.A.	N.A.	5,73,921
1961-62	N.A.	N.A.	5,15,768
1962-63	N.A.	N.A.	4,89,381
1963-64	283144	657378	9,40,522
1964-65	N.A.	N.A.	N.A.
1965-66	445871	870071	13,15,942
1966-67	123860	206015	3,29,875
1967-68	130682	581633	7,12,315
1968-69	230816	272326	5,03,142
1969-70	214526	298666	5,13,192
1970-71	183217	212087	3,95,304

Compiled from Education in India (1949 -50-1970-71) Ministry of Education, Govt. of India.
Source: Juneja (1996)

Table 3: Data on Enforcement of Compulsory Education in India since Independence – Number of Prosecutions – Fines Realised (Rs.): All India

Years	Urban	Rural	Total (Rs.)
1949-50	8455	37437	45, 892
1950-51	N.A.	N.A.	40, 575
1951-52	N.A.	N.A.	42, 110
1952-53	N.A.	N.A.	37, 651
1953-54	N.A.	N.A.	29, 259
1954-55	7921	17037	24, 958
1955-56	N.A.	N.A.	23, 629
1956-57	N.A.	N.A.	20, 785
1957-58	N.A.	N.A.	31, 881
1958-59	N.A.	N.A.	14, 483
1959-60	N.A.	N.A.	12, 932
1960-61	N.A.	N.A.	26, 534
1961-62	N.A.	N.A.	18, 068
1962-63	N.A.	N.A.	8, 880
1963-64	2861	8007	10, 868
1964-65	3629	8151	11,780
1965-66	1056	2962	4, 018
1966-67	9366	2037	11,403
1967-68	951	2159	3, 110
1968-69	1034	1593	2, 627
1969-70	912	1420	2, 332
1970-71	672	1647	2, 319

Compiled from Education in India (1949 -50 - 1970-71).

Ministry of Education, Govt. of India.

Source: Juneja (1996)

Table 4 : Data on Enforcement of Compulsory Education in India since Independence – Compulsory Education in Uttar Pradesh: Coercive Measures Taken

No. of Notices Issued		No. of Attendance Orders Passed	Number of Prosecutions			No. of Attendance Officers
			For Non-Enrolment	For Non-Attendance	Fines Realised	
Years	11	12	13	14	15	16
1949-50	33610	66815	10354	20856	13688	301
1950-51	127367	63579	7165	8856	13984	305
1951-52	144612	61148	10165	11538	13189	258
1952-53	144899	62814	8723	15721	13571	262
1953-54	164485	59827	7657	15394	14454	258
1954-55	177042	62559	6484	11309	14132	250
1955-56	159739	65814	6372	9071	12596	268
1956-57	174544	64016	7726	10719	15167	287
1957-58	178170	76971	6780	8127	10962	287
1958-59	168701	73868	6758	10234	8532	268
1959-60	156263	73949	5810	9869	7714	291
1960-61	148648	70666	6238	10054	23801	298
1961-62	NA	NA	NA	NA	NA	NA
1962-63	118943	66282	5154	11261	5650	299
1963-64	Data not reported state wise in this year					
1964-65	118943	NA	6419	5946	6559	494
1965-66	375881	43906	2078	3061	2117	214
1966-67	115003	45006	2397	2971	10797	240
1967-68	375881	35998	2680	3272	2528	336
1968-69	115003	48360	3370	3494	2492	606
1969-70	329675	46816	3576	2766	2332	614
1970-71	74007	32480	2039	2795	2319	225

NA (Not available)

Compiled from Education in India, Government of India (1949/50 -1970/71)

Ministry of Education, Government of India

Source: Juneja (1996)

Not much information can be found, however, to describe the way in which compulsion was enforced. Even so, some idea of the same can be gleaned from the Sargent Report of 1944, which candidly stated that:

“It cannot be said that in any of these areas, even in the Punjab, compulsion is really effective. It can hardly be so where there is no organized system of trained attendance officers to see that children attend school and the courts are disinclined to enforce the law”.

The enforcement of these Acts necessitated the provision of many facilities to enable children to attend school. Under many of the acts, and especially of the 1960s, government was even obliged to provide alternate forms of schooling for those children who could not attend regular full-time formal schools. But in a situation in which sufficient money was never made available to provide to enough schools, nor to provide the enabling conditions for children to make it to school, there seemed little point in prosecuting those who could not send their wards to school. Also, it was generally perceived that parents could not (rather than did not) send their children to school.

From around 1963-64 onwards the enforcement of compulsory education was deliberately discouraged. Juneja (1996) traces the process by which compulsion was discontinued. What is important for our immediate purpose is to try and understand *why* despite the Constitutional directive in favour of compulsory education, it was, by a policy decision, actively discouraged. The grounds for the discontinuance of compulsory education, in the sixties, hold a lesson for any future Acts that may be framed to deliver free and compulsory education to Indian children.

From Compulsion to Persuasion : A Policy Shift

Although many acts for free and compulsory education were introduced with great enthusiasm in India, both before and after independence, this enthusiasm for education of the masses was not shared by all. When it came to allocation of funds, free and compulsory education for the masses was never considered to be of higher priority than some other expenditures for which money was found (Desai, 1953; Naik, 1982). Unfortunately, there was little protest against this non-provision of facilities for education of the masses.

Even in the 10-year period, “after the commencement of the Constitution”, when evidence of great ‘endeavour’ may have been expected, the picture was one

of lack of priority to mass education. Based on an analysis of the budget speeches of the post independence years, particularly in the 10-year period, 1951-1961, which embraced both the first and second five-year plans, ('a period of rare political cohesion') Jain (2001) pronounced that "there is not to be found even a passing reference to education let alone to Article 45 in the Budget Speeches".

Likewise, the addresses of the Education Ministers to the Central Advisory Board of Education (CABE) were full of apology and despair:

1956 "I must confess that I was considerably disappointed when this revised plan was drawn up... I am continuing with my endeavours and it is my resolve that we must try to provide a reasonable allocation for education in the second plan...."

*Maulana Abdul Kalam Azad, Chairman's, Address,
Twenty-third Meeting of the CABE, January 1956.*

1958 "I may add that one of our difficulties has been that some of my colleagues have regarded education to be a purely provincial subject and did not therefore think it necessary that the central government should provide adequate funds for education. Even when the Planning Commission was set up, the situation did not at first change. When the first draft of the plan was made, education was almost completely ignored. There seemed to be a general view that we should take up only subjects, which would give quick returns. Since they held that education could not do this, education was left out of the first draft".

*Maulana Abdul Kalam Azad, Chairman's, Address,
Twenty-fifth Meeting of the CABE, 1958*

In desperation, given this situation of non-priority in funding, a 'de-facto' Central Policy in respect of 'non-enforcement' of compulsory education appears to have been enunciated and communicated to the states to bring about a 'shift', away from the policy of enforcement of compulsory attendance. Since education at that time was a 'state' subject, a process was set in motion (through the 'National Seminars on Compulsory Education' which commenced in 1961 and were held annually in the mid-sixties,) to bring to a halt whatever action was being taken by way of enforcement of compulsion. Finally, in 1972, a new format of

data gathering ceased even to collect data on compulsory education even though the acts continued to exist on the statute books (Juneja, 1996). The official ‘death knell’ of compulsion in India came through the recommendation of the CABE meeting of 1964. It was recommended:

*“In regard to legislation or compulsion at the primary stage, the Board was of the view that **whereas statutory provisions may be necessary for such purposes as collection of cess, the really effective method of achieving universality in education in this age group would be extension of facilities in areas not yet covered and use of persuasion incentives.**”*

*Excerpt from proceedings of the
31st meeting of the CABE, Bangalore, 1964)*

With this official sanction to relegate ‘legislation or compulsion at the primary stage’ to the sole purpose of collection of cess, the ‘National Seminars on Compulsory Primary Education’, having served the purpose of influencing the change in the stated policy, also changed their name. After the 1964 CABE recommendation, they became ‘Seminars on Elementary Education’, and the national educational goal, which up to then had been stated in Central Government annual reports as the “introduction of universal free and compulsory education”, was changed thereafter to the “achievement of the goal of universal education”. Despite the fact that Article 45 of the Directive Principle of State Policy directed the State to endeavour to provide free and compulsory education to all children until they complete the age of 14 years, neither the 1968 policy on education nor the 1986 policy spoke of making education ‘compulsory’!

J.P. Naik, who at that time, was the Education Adviser to the Union Government and also the Director of the Seminars on Compulsory/Elementary Education provided enlightenment on the underlying reasoning behind this policy shift in a publication in 1975 (Naik, 1975). Though the Constitution directed the State to provide free and compulsory education, enough money was never made available for making education compulsory. Rather than giving up efforts for this

constitutionally directed compulsion altogether, it was decided, as may be seen from the extract reproduced below, to enforce it up to the age of 14 (as directed by the Constitution), but from the age of 11 years onwards, – *because the Constitution did not specify any lower age from which compulsion should begin!*

The following Extract, from the Report of Working Group of the CAGE on Universal Primary Education, shows just how the lack of funding for mass education led to the grasping at desperate, (even one many say today, somewhat illusory) measures, to provide for the constitutional directive of compulsory education:

- “2. *The present policy is to consider universal enrolment in the age group 11-14 after universal enrolment in education system. In the new policy, an attempt would be made to make education universal in the age group 11-14 side by side with expansion of facilities for the age group 6-11.*

The emphasis thus shifts from enforcing enrolment and attendance in the age group 6-9 to enforcement of enrolment and attendance in the age group 11-14, ordinarily on a part-time basis. This is more economical and effective. The late Dr. Zakir Hussain used to say that if he had money to provide only three years of education for the children of the country (and this is precisely the position at present), he would rather make education universal in the age group 11-14 than in the age group 6-9 because the grown up child will learn better and faster and remember things longer. He also emphasised that the Constitution specifies the age of 14 as the upper limit for universal education and does not mention the lower age limit. He therefore argued that compulsion in the age group 11-14 would satisfy the Constitutional directive while that in the age group 6-9 or even 6-11 would not. It is this sound policy on educational and constitutional grounds that is proposed to be given effect to in these recommendation.”

Extract from ‘ Report of the Working Group of the CAGE on Universal Primary Education in India ’ reproduced in Naik, J. P. (1975)

Compulsion – And the Burden of Apathy

Compulsory education laws make it a duty of the government to provide the facilities and the means for children to be able to go to school. Had enough money been allotted for the purpose, then the regular surveys stipulated by the

compulsory education laws would have been seriously conducted to identify children who should be in school; notices would have been issued to parents informing them that a seat has been allotted to their child in a school. Schools at reachable distances would have been provided, staffed and suitably equipped. This would have been followed up by enquiries to ascertain whether the child is going to school, and, if not, the reasons for non-attendance would have been verified. Officers appointed for the purpose would have dealt with problems as soon as they occurred, and made it possible for the child to get education somehow, if not in a formal school.

Had such a procedure been regularly followed; had there been a sufficient number of officers checking on attendance, carrying out surveys, showing concern, finding solutions to problems; and had there been enough schools and teachers, enough concern for learning, sufficient money allocated to education, as was the case in some other equally poor countries who became independent around the same time, then India may have been, like those countries, one of the Asian Tigers today.

What appears shocking to many of us today is that there was much apathy to the directive principles enunciated in the Constitution. In fact, one of the members of the Constituent Assembly, had in 1947, added a note of dissent to the division of the rights of the people into two categories - justiciable and non-justiciable rights. In his view, non-justiciable rights had no meaning. He had wanted the Assembly to unambiguously declare all rights as justiciable for the reason that:

“Once an unambiguous declaration of such a right is made, those responsible for giving effect to it would have to bestir themselves to find ways and means to give effect to it. If they had no such responsibility placed upon them, they might be inclined to avail themselves of every excuse to justify their own inactivity in the matter, indifference, or worse.”

*Excerpted from Note of dissent of K.T. Shah to the Report
(April 17-20, 1947) On Right to Work (B. Shiva Rao, 1968)*

Dreze and Sen (1995) found it striking that the failures of government policy over an extended period provoked so little political challenge. They said :

“Had the government shown similar apathy and inconsistency in dealing with, say, the demands of the urban population for basic amenities, or of farmers' organisations for adequately high crop prices, or of the military establishment for modern hardware, or of the World Bank for structural adjustment measures, it is safe to predict that a major political battle would have followed. The fact that the government was able to get away with so much neglect in the field of primary education relates to the lack of political clout of the illiterate masses. It also reflects the fact that the social value of basic education has been neglected not only by government authorities but also in social and political movements”.

Further, they could well have been echoing what Saiyidain et al (1966) had said some thirty years earlier:

“But was it just 'sweet reasonableness' and the appreciation of the difficulties facing the Government which made the people refrain from taking it to task for its failure to give immediate effect to section 45 of the Constitution? No such indulgence was shown by them in other matters. The new Government was mercilessly criticized for many sins of omission and commission, especially by the opposition parties of the right and the left but the question of compulsory education was not made an important issue by any prominent person or political party. Even in the recent general elections, when each political party promised the electorate a 'heaven on earth' of its own particular brand none of these promised heavens held out any prospect of universal and free primary education whether voluntary or compulsory. In fact no election manifesto attached a great importance to any aspect of the educational problem.”

Ghosh (1995) also, commenting on the neglect of policies for the education of the poor, said:

“The Mudaliar Commission as well as the Radhakrishnan Commission which came before it dwelt exclusively with two areas of education in which the ruling elite groups were interested. Both these sections received huge allocations of funds and underwent rapid unplanned and uncontrolled expansions resulting in deterioration of standards and creation of severe problems of educated unemployment. On the other hand, the programmes of adult education and liquidation of illiteracy continued to be neglected as in the past. In elementary education, the evils of wastage and stagnation continued unabated as no structural changes like multiple entry or part-time education were introduced”.

Naik (1982) was particularly critical of the elite-oriented growth of education – “all programmes of educational reform, which were meant for the ruling classes, were successfully implemented on a priority basis. These included expansion of agricultural, engineering and medical education; the development of elite institutions and as IITs and IIMs, large expansion of public and special schools, especially those with English medium, the expansion of "merit" scholarships, most of which are bagged by their children, and so on. But there has been no movement to improve the standard of living of the poorer sections of the society and no movement to build up their awareness and their organizations to help them to come into their own. Consequently, all programmes of educational reconstruction meant for the people have languished (e.g., universal elementary education, liquidation of adult illiteracy, etc.).”

At the risk of digression, it may be interesting to note how this 'uncontrolled expansion' in the system was viewed by two policy-makers – separated by 30 years – at the helm of affairs in education in India. An Additional Secretary, Elementary Education, Government of India cautiously admits to the additional factor feeding expansion of higher and technical education being “the demand in *political* markets for expansion of institutions of all types” (Ayyar, 1993), while Naik (1982) who, in the sixties and early seventies was Educational Advisor, makes a statement on the intensity of vested interest in expansion, saying:

“Efforts to counter such demands were met with hostility because no one seemed to appreciate the point that all secondary and higher education involves a subsidy which goes to the wrong social groups. We were in fact called fools who try to educate those who do not come to school and do not want to learn. The first duty of a Government, we were told was to educate those who were willing to learn. The task of educating those who do not even want to learn should come later”.

One of the factors, perceived to be behind the political demand for expansion was the fact that it not only absorbed the products of the education system within the system itself as teachers and in the absence of employment became a cause for students to linger within the system (Naik, 1975). It was argued also that expansion continued: “for, it testified to the government's commitment to the Constitution. But there was no idea or method to make universal elementary education a coherent project”. (Krishna Kumar, 1991)

Finally, the Supreme Court in its landmark judgment (in the case of Unni Krishnan J.P. vs. the state of Andhra Pradesh 1993) stepped in and stated:

“In this context we feel constrained to say that the allocation of available funds in India discloses an inversion of priorities”.

In declaring the Directive Principle a Fundamental Right, it chided the government for the lack of achievement of the goals of Article 45, and asked:

"Has it no significance? Is it a mere pious wish even after 44 years of the Constitution? Can the state flout the same directions even after 44 years on the grounds that the article merely calls upon it 'to endeavour to provide' the same...?"

With this judgment, the tide was seen to turn in the direction of amendment of the Constitution to give to children an unambiguous right to free and compulsory education.

These lessons of history serve to show that in the absence of a 'will' compulsory education acts alone cannot achieve education of the masses. The lack of priority to mass education expressed in terms of inadequate funding ensured that sufficient facilities were never put in place nor were the conditions created to enable all children to go to school. Ultimately, the enforcement of these acts was also stopped.

The continued illiteracy of the masses recalls to mind the famous statement:

"In this world there is no literate population that is poor, no illiterate population that is other than poor"

Galbraith J.K. (1992)

Section III

Recent Developments Leading to the 86th Constitutional Amendment

In the early 1990s, a sudden revival of interest was observed in the matter of securing the right to free and compulsory education for all children in India. Interestingly, neither the 1986 Policy on Education nor its Programme of Action had mentioned making education compulsory. It is believed that commitments at Jomtien in 1990 and the events leading to it may have had its echoes in India as well. However, among official documents, it was the Ramamurti Committee Report in 1990, on the review of the 1986 education policy, which first chided the government for not paying attention to the right to education saying, *“this problem qualifies for being the most fundamental problem of our education system”*. This Report called for recognition of the right to education as a fundamental right.

An outline of the events leading up to the passage of the 93rd Constitution Amendment Bill (86th Constitutional Amendment Act) in both houses of Parliament is presented below:

1990: The Committee to Review the National Policy on Education, 1986 - **Ramamurti Committee** in its report titled ‘Towards an Enlightened and Humane Society – NPE, 1986 – A Review’ chides the government for its continued failure since independence to fulfil the Constitutional directive:

*“Now time has come to recognize ‘Right to Education’ as one of the fundamental rights of the Indian citizens for which necessary amendments to the constitution may have to be made and more importantly, conditions be created in society such that this **right** would become available for all children of India.” (Para 6.1.3)*

1991 **Myron Wiener’s Book, “The Child and the State in India: Child Labour and Education Policy in Comparative Perspective”** creates ripples. Its main thesis being that India’s poverty was less relevant, as an explanation for the failure to eradicate child labour and enforce compulsory education, than the belief system of the middle classes (to which class, the state bureaucracy also belonged.)

1992 India becomes signatory to the **UN Convention on Rights of the Child**. (CRC). Article 28 of this Convention states:

“State parties recognize the right of the child to education and with a view to achieving this right progressively, they shall in particular (a) make primary education compulsory and available free to all....”

As part of this agreement, India is also committed to review its laws and bring them in line with the Convention. International treaties serve to set standards and Courts generally interpret domestic laws so as to maintain harmony with the provisions of international law. Article 51 (c) of the Indian Constitution states that the State shall endeavour to foster respect for international law and treaty obligations.

1993 The **Supreme Court Judgment** in the case of: *UnniKrishnan J.P. vs. State of Andhra Pradesh and others* (SC. 2178, 1993.) makes education a fundamental right:

“The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right however is not an absolute right. Its contents and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to limits of economic capacity and development of the state.”

1994 The ‘**Common Minimum Programme**’ of the United Front Government resolves to make the right to free and compulsory elementary education into a fundamental right and to enforce it through suitable statutory measures. It sets up a committee (Saikia Committee) to examine this proposal.

1997 (Jan.) The Report of the Committee of State Education Ministers on Implications of the Proposal to Make Elementary Education A Fundamental Right (**Saikia Committee Report**) recommends:

“The Constitution of India should be amended to make the right to free elementary education up to the 14 years of age, a fundamental right. Simultaneously an explicit provision should be made in the Constitution to make it fundamental duty of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age”.

The committee also recommended the amendment of existing state legislation on compulsory education.

1997 (July) The Constitution (83rd Amendment) Bill, 1997, tabled in the Lok Sabha, (this was further referred to the ‘Department-Related Parliamentary Standing Committee on Human Resource Development’). The 83rd Amendment Bill proposed:

“2. After Article 21 of the Constitution, the following article shall be inserted, namely:

“21A. (1) The state shall provide free and compulsory education to all citizens of the age of six to fourteen years.

(2) The right to free and compulsory education referred to in clause (1) shall be enforced in such manner as the State may, by law, determine.

(3) The state shall not make any law, for free and compulsory education under clause (2), in relation to the educational institutions not maintained by the State or not receiving aid out of State funds”.

3. Article 35 of the Constitution shall be renumbered as clause (1) of that article and after clause (1) as so renumbered and before the Explanation, the following clause shall be inserted, namely:

“(2) The competent legislature shall make the law for the enforcement of right to free and compulsory education referred to in clause (1) of Article 21A within one year from the commencement of the Constitution (Eighty-third Amendment) Act, 1997:

Provided that a provision of any law relating to free and compulsory education in force in a State immediately before the commencement of the Constitution (Eighty-third

Amendment) Act, 1997 which is inconsistent with the provisions of article 21A, shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier”.

4. *Article 45 of the Constitution shall be omitted.*

5. *In article 51A of the Constitution, after clause (j), the following clause shall be added, namely:*

“(k) to provide opportunities for education to a child between the age of six and fourteen years of whom such citizen is a parent or guardian”.

1997 (Nov.) The Department–Related **Parliamentary Standing Committee** on Human Resource Development submits report to both houses of Parliament, and recommends that the bill be passed subject to changes recommended by it. The major recommendations of the committee related to:

- i) Retention of Article 45 to cater to the 0-6 age group.
- ii) Clause (3) of the proposed Article 21-A relating to private institutions may be deleted.
- iii) “The Centre should prepare one simple legislation with some skeletal framework which may also indicate the Central share in the financial burden. The details can be formulated by the respective states according to their requirements. The Central Government may therefore consider working out the necessary legislation.” (Para 15.16)

2001 The 83rd Bill was amended, and reintroduced as **Constitution (93rd Amendment) Bill 2001** in the Parliament with the following provisions:

- After Article 21 of the Constitution, the following Article shall be inserted namely:

“21-A. The state shall provide free and compulsory education to all children of the age of 6 -14 years in such manner as the State may, by law, determine.”
- For Article 45 of the Constitution, the following shall be substituted, namely:

“45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.”

- In Article 51-A of the Constitution, after clause (j), the following clause shall be added, namely:

“(k) Who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward, between the age of 6 and 14 years.”

The Constitution 93rd Amendment Bill, 2001, was discussed and passed by unanimous vote in the Lok Sabha on 27th November 2001 and by the Rajya Sabha on 14th May, 2002. It again went back to the Lok Sabha for approval of the clauses to amend the date of the Bill to 2002.

According to Article 368 of the Constitution, there was no need for ratification by the state legislatures. After the Bill received the President’s assent, it became the 86th Constitution Amendment Act. It now remains for the ‘State’ to determine ‘by law’, as required by the new Article 21A, the manner in which free and compulsory education is to be provided to all children in the 6 -14 age group. The new law, as recommended by the Parliamentary Standing Committee, shall be a central legislation. It is anticipated that this shall be the first central legislation on elementary education.

Section IV

Follow up Legislation to the Fundamental Right to Education

As noted at the outset, Article 21-A stated: “*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine*”. The amendment itself, therefore, places the onus of the provision of this right onto a follow-up legislation, which will, in many ways, shape the future of Indian Education.

The question before the country at this juncture is – **how should the law be framed in order for it to ensure that every child (6-14 years) is able to avail of the right to education?**

As stated earlier, there are already many compulsory education Acts in India. If anything is missing, it is the will to accord free and compulsory education for all children a greater priority and more funding than some of the other claims on the limited exchequer. Nevertheless, the questions arise. Why should there be a need to prepare *new* legislation? Why do our existing Compulsory Education Acts no longer serve the purpose? Why does a new central legislation need to be framed in order to determine how the right to free and compulsory education is to be delivered to all children between the ages of 6-14 years? Some issues, that may need to be addressed in the framing of this new legislation are presented here.

The Need for a New Central Legislation

Most of the current Acts in force for compulsory education were drafted in the 1960s and were applicable to that period. A number of changes have taken place since then, including amendments to the Constitution of India, and commitment to the international treaties and forums that have in effect changed

the ‘operating system’ in which, these acts will now have to be implemented. Recent years have also seen the emergence of a civil society that recognizes the need for a more egalitarian society and is vocal in trying to secure rights for the disadvantaged.

Perhaps such changes could also be accommodated through the framing of a new State legislation. Indeed, the Conference of State Education Ministers and State Education Secretaries, (Saikia Committee), after considering the matter in detail, recommended, in its report dated January 15, 1997, thus: "In a diverse federal polity such as ours and with the State being the main provider of elementary education, there is no need to enact a Central Legislation making elementary education compulsory. States should either amend their existing legislation or enact fresh legislation to give effect to the proposed Constitutional amendments".

However, the Departmental Parliamentary Standing Committee – to which the Constitution 83rd Amendment Bill was referred, (after having been tabled in the Rajya Sabha,) in 1997 and which returned the Bill for redrafting and for accommodating some of its recommendations – was in favour of “not leaving too much to the states” and had recommended the framing of Central Legislation.

A few other considerations that uphold the need for a new legislation also deserve attention, some of which are as follows:

1. Concurrent Status of Education

It is only since 1976 that education at the school level has been on the ‘Concurrent list’ i.e. the list of subjects in the Constitution of India on which both the Centre and the State Governments can legislate. When the Constitution of India had come into being, education was a ‘state’ subject. In 1976, it was transferred onto the Concurrent List, which implied that, in case the State laws

differed from the central legislation, the laws of the Centre would prevail. Therefore, before 1976, only state laws existed for the provision and governance of mass education and even today, in the absence of any central legislation, it remains for each state to decide whether or not it needs a compulsory education act or to decide whether or not it will enforce it. All previous legislation on compulsory education in India was at State level. As things stand, almost half the States and UTs have not even passed any such laws. In fact, there is, so far, no concurrent legislation in school education, though it has been possible since 1976 for the Union Government to pass a Central legislation on the subject.

2. Central legislation and Panchayati Raj Institutions

The 73rd and 74th Constitutional Amendments have, since 1992, provided for decentralisation of powers and responsibilities to a third -tier of Panchayati Raj bodies, and as such, have added a new chapter to the process of democratic decentralisation in India. The basic function of democratic decentralisation is to ensure that development planning is made more responsive and adaptable to regional and local needs of the population.

Education is one of the subjects that have been recommended in the eleventh and twelfth schedules of the 73rd and the 74th Amendments to the Constitution for transfer to the Panchayati Raj Institutions. It may be anticipated, therefore, that once the states have completed the task of devolving power and responsibilities to the third tier of governance, the implementing agencies of the fundamental right of the child to education, in the States, would be the Panchayati Raj institutions. The experience of the states, in the matter of devolution of powers, has rather been slow. On the other hand, some states, notably Andhra and Karnataka, have enacted new legislations giving power to parents in schools, through the formation of School Management and Development committees.

With the 73rd and 74th Amendments, however, while on the one hand, it has become possible for the Central Government to legislate on elementary and secondary education, on the other hand, the powers and functions of Panchayati Raj institutions have become subjects over which only the State governments can legislate. Is the Centre, therefore, any closer to ‘legislating’ on what happens in school education at the ground level? Can one ensure that the State Governments will not just pass on the responsibility for implementation of this right on to the third tier of governance, without suitably equipping them to carry out their responsibilities? How does one mandate the transfer of fiscal resources to the Panchayati Raj bodies in order for them to carry out their responsibilities?

3. People’s Demand for Education

The belief, that the people do not want to send their children to schools, or that they do not want education, has now been accepted by most as just a myth. Once, it is accepted that the people want education, it follows that they do not need to be forced to send their boys to schools. Therefore, in this changed perspective, what should be the role of legislation aimed at protecting the child’s right to education? Would the law need to punish truancy?

What if some parents from backward communities do not want to send their teenaged daughters to school? What would one recognise in such a case – the right of the parents to be concerned for their daughters or the child’s right to education? How would one charge the State with the duty to make education possible for such a girl child – even if it is wanted neither by the parents nor the child?

At the same time, there is also a need to recognise that for many reasons some parents may not be able to send their children to schools. They may need to be supported in various ways to be able to enrol in a school, attend the school regularly and be able to imbibe education up to the elementary level. How can the

laws, made to protect the right of the child to education, also be made sensitive to this reality? How can laws make education possible for such children?

4. Demand for Education of Satisfactory Quality

It is said that education must be of satisfactory quality. Only when education satisfies quality, would people be willing to pay the opportunity cost of sending their children to schools. Logically, recognition of the right of the child to education and of the popular demand for education also implicitly recognizes that the education provided must be the kind of education that the people would want for their children. The National Policy on Education, 1992, resolved: “It shall be ensured that free and compulsory education *of satisfactory quality* is provided to all children up to 14 years of age before we enter the twenty-first century”. We will all agree that it is time to redeem that resolve. But the question is – How to do it?

5. Ratification of Convention on Rights of the Child (1992)

India has also ratified the Convention on the Rights of the Child and is now committed to a progressive change in its legislation in line with the ratified convention. At the international meets at Jomtien (1990) and Dakar (2000), India committed itself to the achievement of the goal of education for all. It is expected that the principles and the spirit of these international treaties and declarations would be reflected in the legislation of such importance as the follow-up legislation to the Fundamental Right to education (which may incidentally also be the first Central legislation in elementary education).

6. Parliamentary Standing Committee (HRD) Recommendations

The Department-Related Parliamentary Standing Committee on Human Resource Development that had considered the Constitution 83rd Amendment Bill and had returned it for redrafting and for accommodating some of its

recommendations, in November 1997, had made some recommendations that have bearing on the follow up legislation:

1. *Follow-up legislation: Central; Skeletal*

The most significant recommendation, in this context, was, as stated earlier, regarding the need to frame a *Central* legislation. It had recommended that the central legislation should be simple, it should be skeletal, and it should indicate the Central Share in the financial burden. The committee had said:

“After a thorough discussion in the matter, the Committee feels that the Centre should not leave everything to the States. The Centre could make one simple legislation with some skeletal framework which may also indicate the Central share in the financial burden. The details can be formulated by the respective States according to their requirements. The Central Government may, therefore, consider working out the necessary legislation”. (Para 15.6)

2. *Penal provision on parents to be avoided*

The committee made specific mention of the need to avoid a provision for penalty on parents in the follow-up legislation. Compulsion, the committee felt, was on the State Governments to provide for essential facilities. It was of the view that some parents may be too poor to send their children to school. To quote:

“The Committee strongly desires that such penal provisions on the parents should be avoided in the follow-up legislation to be made. The Centre may make necessary provision to this effect either in the follow up legislation or in the guidelines that may be issued to the States. The Committee feels that compulsion should be on State Governments to provide for essential facilities for UEE rather than on the parents, majority of whom are struggling for their survival.” (Para 15.7).

Thus one may note that the committee is clear that some action needs to be taken; but it is not the *penal* action but *supportive* action that is needed in the case of parents who are not able to send their children to school.

Apart from the above two specific directions for the follow up legislation, some of the other recommendations of the Parliamentary Standing Committee also have a message for the follow up legislation. The committee recommended:

- Emphasize quality and improve capacities of teachers (15.2)
- Find ways and means to face challenges from litigation to follow the justiciable right to education (15.4)
- Formal certification after the 8th class (15.5)
- Free education should also include various other components such as text-books, stationery, uniform, one meal and transportation, wherever necessary etc. (15.8)
- Administrative responsibility should be left to states for implementation according to their convenience. (15.10)
- Directive principles to be followed, wherever possible (15.11)

What Should the Law Determine?

Returning to the main question, – **how should the law be framed in order for it to ensure that every child is assured of the right to education** - the attempt so far has been to provide a background to this exercise. Compulsory education is a means of safeguarding the child's right to education. The experience of implementing laws for compulsory education in India in the past century has served to show that there has been little appreciation of the need to accord a priority status to mass education. Nevertheless, a new beginning appears to have been made with a unanimous decision in both houses of the Parliament to place the right to free and compulsory education on to the list of fundamental rights. Other recent developments also present a new framework of polity and society.

The task before us now becomes one of recognition of all these new concepts and developments; of imbibing all the basic principles underlying human rights, child rights, rights of participation, constitutional guarantees etc; of taking

into consideration and accepting all the realities of human greed, selfishness and failings; and weaving them, along with our concept of good education, into a strong fabric that will serve for many years to provide every child with the ability to successfully negotiate its world.

It is a tall order, but, the first issue, that must be resolved, is one of participation of the community at large. The greatest barrier to participation here is the belief among laymen that law-making should be left to lawyers. A look at some of the compulsory education acts can show that these are basically divided (like research reports) into four or five main compartments. In fact a study of a few of these acts can serve to reassure most academicians that indeed the analogy with a research report may not be too far fetched. Content-wise, one may find the following sections:

1. The Preamble (Introduction to the study)
2. The Title
3. Purpose of the Act
4. Scope of the Act
5. Definitions (Operational definitions)
6. Main Provisions (specific objectives)
7. How these provisions are to be implemented (methodology)
8. Checks/cross checks (Precautions)
9. Some routine provisions, (power to make rules etc.)
10. Penalties for contravention of the provisions of the act.

Most of these sections need not concern us the laymen. Laymen, however, can and should decide what must constitute the Main Provisions, and how they are to be implemented such as, for example: “No fee shall be charged from any child

for attending a school maintained out of public funds”. The legal department will later convert it into legal language such as: - “No fee shall be levied in respect of any child for attending an approved school which is under the management of the State government or a local authority.”

However, even before this stage, there is the need to deliberate on many a ticklish issue and the number of issues that need to be considered are limited only by the capacity to anticipate eventualities. As a start, some of the possible issues are like those presented below:

Possible Issues

I Related to Form of Legislation

- How will a Central legislation differ from the present State legislations?
- Should one also prepare a Model legislation by Centre for the States?
- Whom should the legislation address: Centre to states? Child to ‘State’?
- Should it be a ‘Bare-bones’ type of legislation or should it spell out in detail what has to be provided and how?
- Whom will the legislation empower – The child (parent) to demand facilities for education from the State; The State to compel every child to attend school (and parent to send); The Centre to compel the federal state governments/PR bodies to provide facilities for education?
- Will the legislation be applicable to the third tier? Who will implement the provisions of the legislation? Can Central legislation be made for the third tier bodies to implement?

II Preamble

- What should the Preamble say?

III Issues Related to Statement of Objectives

and Scope of Legislation

- What will be the aims and objectives of the act?
- Should the legislation restrict itself to 6-14 age group (Article 21 A of the Constitution) or include ECCE (new Article 45) and Fundamental duties of parents (Article 51 -A clause 'k')?
- Whom should the legislation empower? The parent to demand education from the 'State'? *Or*, The 'State' to compel every parent to send child to school? *Or* the Centre to compel the federal state governments to provide educational facilities and attendance authorities? How should this be reflected in the Aims and Objectives? Secondly, how should this be done?
- Will the right to education include the opposite right –*not* be educated? If not, what will be the penalty for not participating in any educational Programme?
- Right of child to *education* – or to 'education of *satisfactory* quality'? Can one make a legislative provision for quality?
- Article 21A states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Should the law determine *how* the children will have to come to the school or, should it determine the 'provision' of it; i.e. how the state shall 'provide' for education – i.e. how it shall commit its funds for this purpose? How these funds shall be transferred from centre to state to third tier body to individual schools?

IV Issues Related to Provisions

1. Issues of Schooling Vs Education

- Is 'education' or 'schooling' being made compulsory?
- What will be compulsory? To attend school? To attain a given level of education? What should the provision say?
- What is to be the position regarding 'alternative' schooling? How will flexibility be incorporated, where needed by the child?

- What if a state government were to register every child in a 'distance education' programme?
- What if the school is unrecognised? What about certain types of 'madarsas'?
- How will monitoring be done of who is going where, and which child is not attending school?
- What about home tutoring?
- How will it be determined that the child has attained education up to a certain level?
- On whom will the onus lie – on the child to prove that he/she is receiving education of satisfactory standard, or on the State to test whether or not the child is receiving education of a suitable standard? What should be the provisions that will take care of these issues?

2. Issues of Schooling Facilities

- Provision of infrastructure?
- What should be provided and according to what criteria and norms?
- Should this be specified in legislation or in follow-up rules, given the experience that rules remain unmade/ not updated for years?
- Micro-level planning?

3. Issues of Disadvantaged Children

- What should be provided for children without parents – abandoned children; neglected children run-away children; street children?
- What provisions are needed for working children?
- What provisions should be made for disabled children? Should there be distinction between different forms of disability e.g. mental, visual, hearing, loco-motor, spastic etc? If so, with what provisions?

- What about the poor, the children of nomadic, migratory groups, remote areas, areas which become inaccessible in some parts of the year; children in slums, children who are over-age, children who drop out and have to rejoin; what provisions are needed for these different groups?

4. Issue of 'Free' Education

- What should be free? Will the guarantee to provide free education apply to private schools? Why/How to exempt them?
- What will be free? Tuition? Or the whole schooling experience? Books? Uniform? Stationery? Transport? Boarding and lodging? Mid-day meals? Should the legislation specify this or should it be left to 'rules'?

5. Issue of Quality and Standards

- How can one make some provisions for sustained improvement of quality of individual schools?
- Can "Satisfactory" quality be legislated?
- How can one make a legislative provision for quality?

6. Issue of Parents' duty

- How can one bring parents on board – since it will be their fundamental duty to allow their child to receive education – without subjecting them to potential harassment in case of genuine difficulty?
- Who will determine 'genuineness' of difficulty?
- Can a genuine difficulty take away the right of the child to education?

7. Issue of Power to Parents

- Can/should the parents, who have a stake in the education of their children, have a larger role to play?
- Can this legislation empower them? How?

V Issues Related To Effective Implementation – Giving Effect To Provisions of The Act**1. Issue of Adequacy of Funding**

- How can the follow-up legislation ensure that, this time, the compulsory provision of facilities will not languish due to lack of funds?
- How can the follow-up legislation ensure transfer of share of financial burden whether from the Centre to the State, or from the State to the PR bodies?

2. Specification of Roles

- The 73rd and 74th Amendments to the Constitution provide a role to third tier bodies. Some States have brought in legislation to give them a role in education. How can the envisaged legislation involve the PR bodies effectively?

3. Monitoring of what is Happening

- Does the manner of monitoring of compliance by UN Agencies have a lesson for us?

4. Corrective Mechanism – At Nearest Level

- What mechanism can one suggest at the nearest level to effectively deal with grievances?

VI Issues Related to Penalties/Accountability

- Is there a need to discuss who will go to jail?
- Fundamental rights are actionable in courts against somebody – governments or others. Whom should the central legislation provide for taking action against?
- What provisions can this act include so that there are disincentives for the non-implementation of the provisions of the follow up legislation, such as:
 1. For non-provision of funds
 2. For non-provision of schooling facilities
 3. For not attempting to equalize disadvantage of the disadvantaged
 4. For not ensuring quality education

There is no doubt that the above list of issues is only suggestive. It can by no means, claim to be a comprehensive one. As more and more minds address this problem, more issues will come to the fore, and ideas will be generated on how to address these issues in the follow-up legislation. The very generation of more issues will turn the focus of discussion, away from its obsession with penalty to parents, to its true purpose of enabling every child to have the benefit of a curriculum of quality learning for a minimum of eight years.

Conclusion

This paper is an attempt to equip the readers with an overview of the historical and recent events relating to the task of education of the masses in India. It also acquaints them with some of the issues surrounding the constitutional amendment to make education into a fundamental right of each child, hence, the case for a follow-up legislation. The fact that a follow-up legislation shall determine the manner, in which this right shall be realised enjoins on all well-wishers of this cause to at least become aware of the issues involved, if not to contribute their creative inputs to the drafting of a law that will work to make the right to education a reality.

We may bear in mind that most parents, these days, have come to realize the importance and the desirability of good education for their children, and that those, who can, are already attending school. Legislation is needed much less to make the children come to school than *to make it possible for those who cannot*.

In the context of realities of the lives of children of the poor, this would mean that the legislation should deal with more than just the provision of schooling facilities and incentives. Rather, it should concern itself with a large array of issues ranging from making schooling accessible and available, to making the contents and processes of education acceptable to all. It should make it a *duty* of the providers of education to find ways and means of making education more accessible and acceptable to all children.

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