

LAW COMMISSION OF INDIA

ONE HUNDRED SIXTY FIFTH REPORT

ON

FREE AND COMPULSORY EDUCATION FOR CHILDREN

NOVEMBER, 1998

JUSTICE
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Chairman, Law Commission of India



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Dated : 19/11/1998

Dear Dr. M. Thambi Durai,

I am sending 165th report on "Free and Compulsory Education for Children".

2. The Law Commission had taken up the aforesaid subject suo motu having regard to the Directive Principle of the Constitution of India as well as decision of the Supreme Court of India. Education is essential for all. This is fundamental to our all-round development material as well as spiritual. Education is quint-essential for economic, social and human development. It also leads to better health care, smaller family norms, greater community and political participation, less income inequality and a greater reduction of absolute poverty.

3. The Commission had prepared a detailed note on free and compulsory education for children together with a draft Bill for a central legislation on which it also obtained views of the Ministry of Human and Resources Development, Department of Education, Government of India. The Commission has carefully considered various issues in the light of the comments received from the Department of Education as well as other available materials, suggestions made by other bodies, committees or conferences in the field of education. The Commission has made recommendations on the subject under Chapter VI of the report emphasising the need for immediate central legislation to give effect to the right to education without waiting for the constitutional amendment to go through in Parliament. A Bill is also appended to this report for this purpose.

With regards.

Yours sincerely,

(B.P. Jeevan Reddy)

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CHAPTER-I

INTRODUCTION

1.1 Genesis of the report:- The issue concerning provision of free and compulsory education to all children upto the age of 14 years, a cherished goal set in the Constitution of India, was taken up by the Law Commission of India for consideration suo motu.

1.2 Importance of the subject:- In our national perception, education is essential for all. This is fundamental to our all-round development, material as well as spiritual.

Education has an acculturating role. It refines sensitivities and perceptions that contribute to national cohesion, scientific temper and independence of mind and spirit -- thus furthering various goals set out in our Constitution.

In sum, education is a unique investment in the present and the future. This cardinal principle is the key to the National Policy on Education¹.

1.2.1 The Human Development Centre in its report² also highlights the importance of education by observing:-

(Education is critical for economic and social development. It is crucial for building human capabilities and for opening opportunities. It is the true essence of human development. Without education, development can be neither broad-based nor sustained. The importance of education was fully recognised by classical economists such as Adam Smith, John Stuart Mills, Karl Marx and Alfred Marshall and has been reconfirmed by recent writers such as Schultz, Becker, and Amartya Sen. Alfred Marshall in the Principles of Economics (1890) observed as follows:

"The wisdom of expending public and private funds on education is not to be measured by its direct fruits alone. It will be profitable as a mere investment, to give the masses of the people much greater opportunities, than they can generally avail themselves of. For by this means many, who would have died unknown, are able to get the start needed for bringing out their latent abilities. 'The most valuable of all capital is that invested in human beings.'"

Frederick Engels in Speeches in Elberfeld (1845) remarks:

"the first [measure] would be the general education of all children without exception at the expense of the state-an education which is equal for all and continues until the individual is capable of earning

as an independent member of society. Every man has the right to the full development of his abilities and society wrongs individuals twice over when it makes ignorance a necessary consequence of poverty. It is obvious that society gains more from educated than from ignorant, uncultured members."

"The education is not merely a means better income and employment opportunities for individuals or for higher economic growth potential for their nations. The social benefits of education spread in many directions. Education leads to better health care, smaller family norms, greater community and political participation, less income inequality, and a greater reduction of absolute poverty. The role of education in removing poverty is decisive. No educated society can remain politically, socially or economically repressed for long. Education is a basic component of social cohesion and national identity."³)

1.2.2 The importance of education may be set out below while quoting the relevant passages from Unnikrishnan, J.P. v. State of Andhra Pradesh,⁴

"The immortal Poet Valluvar whose Tirukkural will surpass all ages and transcend all religions said of education:

"Learning is excellence of wealth that none destroy;
To man nought else affords reality of joy."

Therefore, the importance of education does not require any emphasis.

The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.

An old Sanskrit adage states: "That is Education which leads to liberation" - liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation from prejudices which blind the Vision of the Truth.

In the context of a democratic form of Government which depends for its sustenance upon the enlightenment of the populace; education is at once a social and political necessity. Even several decades ago, our leaders harped upon universal primary education as a desideratum for national progress. It is rather sad that in this great land of ours where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy should be appalling. Today, the frontiers of knowledge are enlarging with

incredible swiftness. The foremost need to be satisfied by our education is, therefore, the eradication of illiteracy which persists in a depressing measure. Any effort taken in this direction cannot be deemed to be too much.

Victories are gained, peace is preserved, progress is achieved, civilization is built up and history is made not on the battlefields where ghastly murders are committed in the name of patriotism, not in the Council Chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land...."

"...The importance of education was emphasised in the 'Neethishatakam' by Bhartruhari (First Century B.C.) in the following words:

"Translation:

Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour at the hands of the State, not money.

A man without education is equal to animal."

"The fact that right to education occurs in as many as three Articles in Part-IV viz., Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part-III viz., Articles 29 and 30 speak of education.

In *Brown v. Board of Education* (1953) 98 Law Ed 673, Earl Warren, C.J., speaking for the U.S. Supreme Court emphasised the right to education in the following words:

"Today, education is perhaps the most important function of State and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

In *Wisconsin v. Yoder* (1972) 30 Law.Ed 2d 15, the court recognised that:

"Providing public schools ranks at the very apex of the function of a State."

The said fact has also been affirmed by eminent educationists of modern India like Dr.Radhakrishnan, J.P.Naik, Dr.Kothari and others."

1.2.3 Imparting education has the benefits of various kinds to the society. It leads to broad economic and social benefits for individuals and for society for it helps in achieving higher productivity, lower infant and child mortality rates, and better health. These benefits are greatest once primary education broadly covers the population.⁵

1.2.4 Primary education leads to better family health, lower fertility and thus slower population growth.

1.2.5 The World Bank⁶ Report concludes from the survey of the economics and social outcomes of education in the following words:-

"First, the economic and social benefits of education are greatest when a critical minimum level of educational attainment has been achieved across the population. Mass expansion of primary education that raises India's currently low educational attainment (averaging about 1.9 years for workers in 1981) to a threshold of about four to five years of completed primary education per worker could have high payoffs

in economic and social benefits. To realize these benefits in the medium term, all states will need to develop a solid foundation of education. And second, the benefits of education extend beyond individuals who receive schooling directly. Other members of society also gain, through externalities. The resulting improvements in economic efficiency provide continuing justification for public sector involvement in education. Primary schooling offers the greatest economic and social returns, followed by secondary schooling.

On economic outcomes, the survey leads to five conclusions. First, the average educational attainment of the population has a strong positive effect on economic growth. An exploratory production function analysis suggests that for 1971-81 each one-year increase in the average schooling of the labour force was associated with an increase in output of 13 percent. Second, in agriculture, primary schooling affects productivity, speeds the adoption of green revolution technologies, and accelerates growth where there are new technological opportunities. Third, schooling also produces externalities by helping to diffuse knowledge about new agricultural technologies to unschooled farmers. Fourth, in areas where schooling across the farm population has reached a certain threshold, the potential effects of an advance in agricultural technology are more fully

realised. Fifth, private and social market returns are highest for primary and middle schooling, and returns to primary schooling are highest for lower-caste graduates."

Present scenario of Education as source of development

1.3 The observations of the World Bank point out the current position as regards primary education in the following words:-

"India's primary education glass is two-thirds full, one-third empty. Having steadily raised primary enrollment rates over the past four decades, India now has 67 million children ages 6-10 who are attending primary school, but 28 million to 32 million primary-school-age children who are not."

"....At Independence in 1947, fewer than 15% of the adult population was literate. Literacy grew slowly over the next four decades and in 1991 the literacy rate for adults (persons overage 7 (sic 17)) was 52%, which is well below rates in East Asian Economies when they began accelerated integration with world market. For example, in 1961, the Republic of Korea's literacy rate was 71% and Thailand's was 68%."

The World Bank Report points out⁹:

"that India's education system is the second largest in the world. According to provisional statistics,

from the Sixth All India Education Survey, 98 million children were enrolled in 575,000 lower primary schools in 1993, another 34 million in 161,000 upper primary schools, and 22 million in 90,000 secondary schools (NCERT 1995). Roughly 5 million students were enrolled in nearly 8,000 institutions at the tertiary level (India, Ministry of Human Resource Development, 1994c). In all, 18 percent of India's population was enrolled in school, up from 7 percent in 1951."

1.3.1 It is revealed in the said report¹⁰ that enrollment has grown at all levels since the 1950s. Thus in 1950-51 students enrolled in grades 1-5 and grades 6-8 were 20 million and less than 5 million respectively and it has grown in 1990-91 to 100 million and little above 20 million in the said grades respectively (as per the graph shown in the World Bank Report under chapter 1 thereof). The said report projects that nevertheless, at least 32 million poor rural primary-school-age children do not attend school even in States with high participation rates. Official primary school dropout rates were 39% for girls and 35% for boys. The World Bank report observes that though India has made much progress towards universal primary education and could achieve nearly universal - 95% - primary net enrollment rates by 2005, it will be atleast two decades later than in such countries as Indonesia and Malaysia and three decades later than in the Republic of Korea.

1.4 As per the National Human Rights Commission¹¹, a gloomy picture of the state of health and education emerges which may best be expressed in the words of the Commission itself:-

"2.14... Based on data contained in 1991 Census Report, 328.9 million Indians were illiterate. Indeed, a report issued by the Ministry of Human Resource Development in January 1997 estimates that 63 million children in the age group of 6-14 years are at present not attending school. As for health, 135 million people had yet to gain access to primary health care, while 226 million were without safe drinking water and 640 million were without basic sanitation facilities; 88% of all pregnant women aged between 15 and 49 suffered from anaemia. As regards food and nutrition, there were 62 million malnourished children under the age of 5 years. [In respect of children, nearly one-third of those under the age of 16 were engaged in child labour - many in hazardous industries. In terms of poverty and income, nearly one-third of the world's poor live in India... Increasingly it becomes evident that the way to improve the quality of life of people is to invest wisely and substantially in education and health. In India, such investment is \$ 14 per person per annum; in the Republic of Korea it is \$ 160..."

1.4.1 The National Human Rights Commission¹² observes regarding child labour that the Central Government has taken up a major programme to end child labour in respect of 2 million children working in hazardous occupations by the year 2000, for which it is proposed to allocate some Rs.850 crores by that year. Under paragraph 5.10, it posed the question as to how the country will be prepared to deal with the much vaster problem of child labour in other occupations as well the estimate of those so working varying from 50 million to a number much higher.

NOTES AND REFERENCES

CHAPTER I

1. National Policy on Education, 1986
2. Excerpts quoted from Mahbub Ul Haq and Khadija Haq Human Development in South Asia, 1996, Chapter 2.
3. Ibid.
4. AIR 1993 SC 2178.
5. World Bank Report on Primary Education in India, Edn.1997, Chapter 2, page 30.
6. Id., at p.50-53.
7. Id., page 1.
8. Id., Chapter 1.
9. Id at page 16.
10. Ibid.
11. National Human Rights Commission, Annual Report, 1996-97, paragraph 2.14.
12. National Human Rights Commission, Annual Report, 1995-96, paragraph 5.9.

CHAPTER-II

CAUSES OF DENIAL OF EDUCATION TO CHILDREN IN OUR COUNTRY

2.1 Various causes of illiteracy among children and adults have been identified by many scholars. It will be fruitful to notice some of the principal ones as set out below:

2.1.1. Prevalence of child labour:- Child labour is a socio-economic phenomenon. Illiteracy, ignorance, low wages, unemployment, poor standard of living, poverty, deep social prejudices and appalling backwardness of the countryside are all cumulatively the root causes of child labour. The direct consequence of child in labour is that a child is denied the opportunity to seek education in a school.

2.1.2. The notion that children should be sent to school and not be a part of the labour force is a comparatively recent idea. A few hundred years ago children in most countries worked with their parents looking after the crops and cattle, collecting fire-wood and fetching water and food. It was only the children of the privileged classes who were educated and thus able to retain their position of power.

2.1.3. But in those days child labour was very different to what happened as a result of industrialisation. It was based on the belief that a child should contribute to the maintenance of the family, which was a social unit. However, after industrialisation children started working in mines and

factories and with machinery and chemicals. They worked for low wages and for long hours and were exploited, with great risk to their health and well being. They also worked in cottage industries. It was only in 1284 that a Venetian statute forbade glass makers from employing children in certain dangerous branches of the glass making trade and only in 1396 that a Venetian ducal edict prohibited children under 13 from working in certain trades¹.

2.1.4. As Myron Weiner has observed², it was only in the subsequent centuries that childhood was discovered and children were

"transformed from valuable wage-earners to economically useless but emotionally priceless objects. The transformation did not occur without considerable public debate and while the upper and middle classes held this view of their own children they did not readily apply it to the children of the poor."

2.1.5. Surprisingly, it was Voltaire who wrote³ that

"it is absolutely necessary that a great proportion of mankind is destined to drudgery in the meanest occupations, that nothing but early habit can render it tolerable, and that to give the meanest of people an education beyond the station in which Providence has assigned them is doing a real injury".

English conservatives argued that schooling was inappropriate for the working class, whose children could better acquire skills as apprentices.

2.1.6. It was in the 19th century that governments started to regulate conditions of employment for children and took on the role as protector of children against employers and parents. This attitude was closely linked to the idea of education of children. As a result even poor parents were not allowed to use their children's labour instead of sending them to school. At the end of the 19th century Japan became the first non-Western country to make elementary school education compulsory. This was successfully followed by South Korea and Taiwan.

2.1.7. It was only when children were viewed as "priceless" rather than as an investment that attitudes started changing and fertility rates declined. In order to ensure universal education it was necessary to remove children from the labour force and make them attend school. This was politically contentious. The opposition to State intervention is based on the concept of the rights and obligations of the State versus the rights and obligations of parents and the character of the economic order.

2.2. India is going through these debates even today and the socio-political forces are very much at play. The main argument against compulsory education is that child labour is

necessary for the well being of the poor as the State is unable to provide relief. The second argument is that education would make the poor unsuited for the kind of manual work that is required to be done. The third argument is that certain industries would be forced to close down if they did not have the facility of the low wage child labour. The last argument against banning child labour and enforcing compulsory education is that the State should not be allowed to interfere in the parents' rights who know what is best for their children and families.

2.2.1. Some people in India feel that society cannot afford to do without the labour of children while the real question is whether we can afford to have child labour, illiterate children and still talk of tomorrow's citizens? It is clear that compulsory elementary education cannot wait till poverty is totally eliminated. It is the child's constitutional right and the duty of the State to provide it. State intervention to remove children from the labour force and require that they attend school has always been politically contentious. The debate is endless. The family's need for money, the mother's need for help; the difficulties of the industry dependent on child labour, the view that education would make the poor unsuitable for the kind of manual work that is required, the State's resources, the children's need for education and the society's claim that the children should be "trained to intelligent citizenship".

2.2.2. The figures of child labour in India vary from 17 million to 44 million to 100 million. A large percentage of these children work in cultivation and agriculture including live-stock, fishing, plantations etc. and the unorganised sector. In the urban areas a large percentage works as domestic servants, rag-pickers, building and construction labourers, in garages, dhabas and stone quarries etc.

2.2.3. The constitutional mandate provides in Article 24 that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. This article cannot be understood as permitting employment of children in employments other than those mentioned in the article. This article must be understood and interpreted in the light of the relevant Directive Principles of State Policy contained in Part IV of the Constitution, as held by the Supreme Court in Unnikrishnan J.P.⁵. The Directive Principles provide in Articles 39 (e) and (f) that the tender age of children be not abused and citizens be not forced by economic necessity to enter avocations unsuited to their age or strength and further that children be given opportunities and facilities to develop in an healthy manner and in conditions of freedom and dignity and that childhood and youth be protected against exploitation and against moral and material abandonment.

2.2.4. Article 41, one of the Directive Principles, provides for the right to education within the limits of the State's economic capacity and development and Article 47 requires the State to raise the level of nutrition and the standard of living and to improve public health.

2.2.5. Article 45 which is of utmost importance, provides for free and compulsory education for all children till they complete the age of fourteen years. The State has been enjoined to endeavour to provide this within a period of ten years from the commencement of this Constitution. Though this is also a Directive Principle it has now been raised by the Supreme Court to a fundamental right as per its judgment in Unnikrishnan's case decided on 4th February, 1993. Consequently the abolition of child labour and the providing of free and compulsory education to children, which are two sides of a coin, and are interlinked is a matter of great public concern and one of the most important functions of the Indian State.

2.2.6. India has also made an international commitment to do so on 11th December, 1992 while ratifying the 1989 UN Convention on the rights of the child. The Government of India has, subject to resources, undertaken to take measures to progressively implement the provisions of Article 32 of the Convention. This specially recognises the right of the child to be protected from economic exploitation and from performing

any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or vitiate his mental, spiritual, moral or social development.

2.3 The International Labour Office⁶, has succinctly framed the causes and forms of child labour. They state that the extent and nature of their work are influenced mainly by the structure of the economy and the level and pace of development.

2.3.1. In agrarian societies work by children is an integral part of the socialisation process and a means of transmitting traditionally acquired skills from parent to child. To some extent, comparable patterns are also found in artisanal workshops and small scale services. Children assist their parents in ancillary tasks, acquire skills and gradually become fully fledged workers in family establishments or trades. However, the ILO did not consider it child labour. In the view of the ILO, child labour as work or employment situation is where children under the age of 15 are engaged on a more or less regular basis to earn a livelihood for themselves or their families⁷.

2.3.2. Causes attributable to child labour can be said to be poverty, low earning capacity of adults in families; unemployment; large families coupled with low income; child labour as a cheap commodity; non-existence of provision for compulsory education; illiteracy and ignorance of parents about advantages of education.

FOOT-NOTES AND REFERENCES

CHAPTER-II

1. Myron Weiner, The Child and the State in India, Second Edn., Chapter 6, page 110.
2. Id., at page 115.
3. Referred in ibid.
4. Leila Seth, The First Rosalind Wilson Memorial Lecture, India International Centre Quarterly, Winter 1993 page 79,85.
5. Unnikrishnan J.P., v. State of A.P., AIR 1993 SC 2178.
6. International Labour Office, Geneva, Child Labour: A briefing manual, Pages 1-2.
7. Id, at page, 11.

CHAPTER-III

RIGHT TO EDUCATION IN INDIAN CONSTITUTION AND INTERNATIONAL COVENANTS

3.1 Constitutional provisions concerning right to education: It is necessary to refer to various provisions of the Constitution of India.

The Preamble promises to secure to all citizens of India "justice, social, economic and political" and "liberty of thought, expression, belief, faith and worship". It further provides "equality of status and of opportunity" and assures dignity of the individual. Articles 21, 38, 39 (a) and (f), 41 and 45 of the Constitution are reproduced hereunder:

"21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.

38. State to secure a social order for the promotion of welfare of the people. - (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State. - The State shall, in particular, direct its policy towards securing -

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(f) 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.

41. Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

45. Provision for free and compulsory education for children - 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."

3.2 In Mohini Jain (Miss) v. State of Karnataka¹, the Supreme Court expounded upon the import of 'right to education' by holding:

"7. It is no doubt correct that 'right to education' as such has not been guaranteed as a fundamental right under Part III of the Constitution but reading the provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens."

"12. "Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

"13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

"17. We hold that every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution."

3.3 Extent of 'right to education' in Unnikrishnan's case:-

The Constitution Bench in Unnikrishnan's case² curtailed the parameters of the right of education by holding:

"180... (1) The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is however, not an absolute right. Its content 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 the limits of economic capacity and development of the State."

3.4 Again in the case of University of Delhi and Another vs. Shri Anand Vardhan Chandal³, the Constitution Bench reiterated the decision in the Unnikrishnan J.P. and Others vs. State of A.P. and others by holding -

"2... there is, therefore, no dispute that the right to education is a fundamental right to the extent it has been spelt out by the Constitution Bench in Unnikrishnan's case."

3.5 In Bandhua Mukti Morcha⁴, the Supreme Court had held that the Right to Life guaranteed by Article 21 does take in "educational facilities". In Unnikrishnan, J.P.⁵, it observed that having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic of the earlier decisions of the court, it agreed with the statement in Bandhua Mukti Morcha, that the right to education is implicit in and flows from the right to life guaranteed by Article 21; further the right to education has been treated as one of transcendental importance in the life of an individual and this has been recognised not only in this country since thousands of years, but all over the world.

3.6 International covenants relevant to the subject: Since the days of the League of Nations, commitments for the protection of children have been projected in various international treaties and declarations. The Geneva Declaration containing five principles was adopted on 26th September, 1924. It stated that necessary means must be given for the physical and spiritual development of the child, and specifically provided that a child must be educated and protected against exploitation. Thereafter, the landmark 1948 Universal Declaration of Human Rights proclaimed that children as a category are entitled to special care and assistance. In Article 26, the right to compulsory free education, at least in the elementary and fundamental stages is recognised⁶.

3.6.1. On 20th November, 1959, the Declaration on the Rights of the Child was proclaimed by the General Assembly of the United Nations. It contained 10 principles which enriched and developed the 1924 Geneva Declaration. Exactly 30 years later, on 20th November, 1989 the General Assembly unanimously adopted the Convention on the rights of the child. It entered into force on 2nd September, 1990, having been ratified by the required 20 States. This Convention has been recognised as the most complete statement of children's rights with the force of international law. The earlier 1959, UN Declaration on the Rights of the Child, though an international instrument, carried no binding legal obligation, whereas the Convention demands an active decision on the part of the individual States ratifying it. Further, a mechanism for

monetary compliance is an integral function of the Convention and the signatory States are obliged to report to a Committee on the Rights of the Child⁷.

3.6.2. The Convention recognises the special vulnerability of children and deals not only with civil and political rights but also economic, social, cultural and humanitarian rights which are mutually inter-dependent. It has a holistic approach and acknowledges that although a child may be adequately nourished, its right to develop fully is not properly protected unless it is also educated and shielded from such things as arbitrary detention and exploitation at work. The main underlying principle of the Convention is that the best interest of the child shall always be the major consideration and that the child's own opinion shall be given due regard. The child is recognised as an individual with needs which evolve with age and maturity. Consequently, the child has been given the right to participate in the decisions affecting its present and future when balancing the child's right with the rights and duties of parents or others who are responsible for its survival, development and protection⁸.

3.6.3. The Preamble of the Convention recalls the basic principles of the United Nations and specific provisions of certain relevant human rights treaties and proclamations; it reaffirms the fact that children, because of their vulnerability, need special care and protection and places special emphasis on the primary caring and protective responsibility of the family, the need for legal and other

protection of the child before and after birth, the importance of respect for the cultural values of the child's community and the vital role of international cooperation in achieving the realisation of children's rights⁹.

3.6.4. It advocates concerned public action by all individuals and agencies - government as well as non-governmental, local, national, regional and international to promote the rights of the child. The Convention, is in a sense, a means of empowering children and creating an environment in which all children are able to live securely and realize their full potential in life.

3.6.5. Four sets of basic rights

The Convention draws attention to four sets of civil, political, social, economic and cultural rights of every child. These are:

The right to survival:

which includes the right to life, the highest attainable standard of health, nutrition, and adequate standards of living. It also includes the right a a name and a nationality.

The right to protection:

which includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and negligence including the right to special protection in situations of emergency and armed conflicts.

The Right to development:

which includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.

The Right to participation:

which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

3.6.6. The Convention provides the legal basis for initiating action to ensure the rights of children in society.

3.6.7. The Convention indeed reiterates and elaborates what is already contained in the Constitution of India. Article 39 of the Directive Principles of State Policy quoted above is in parimateria with the said Convention.

3.7.8. Article 28 of the Convention states:

"State Parties recognize 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, make primary education compulsory and free to all."

3.7.9. Recognising the need to make available free and universal primary education is set out in Article 45 of the Constitution of India.

3.7.10. Article 32 of the said UN Convention provides as follows:

"State Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. State Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, State Parties shall in particular:

(a) provide for a minimum age or minimum ages for admissions to employment;

(b) provide for appropriate regulation of the hours and conditions of employment; and

(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article."

The important words in Article 32 are that the child is to be protected from performing any work that will "interfere with the child's education".

3.7.11. Article 46 of the Constitution of India deals with the promotion of education and economic interest of scheduled castes, scheduled tribes and other weaker sections; and Article 41 with the right to work and education, etc. Article 24 as originally proposed by Dr.K.M.Munshi prohibited child labour "in all form" but it was recast and reformulated, and reads "no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment".

3.8. The National Policy for Children in 1974 affirmed the Constitutional provisions and declared that "it shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their growth."

3.8.1. Government of India by ratifying the Convention on the Rights of the Child on December 11, 1992, once again re-affirmed its commitment to children. This obligates the Government to:

- review national and state legislation and bring it in line with the provisions of the Convention;
- develop appropriate monitoring procedures to assess progress in implementing the Convention;
- involve all relevant government Ministries and departments, international agencies, non-governmental organizations, and the legal profession in the implementation and reporting process;
- publicize the Convention and seek public inputs for reporting and,
- ensure that reporting is frank and transparent

3.8.2. By endorsing the 27 survival and development goals for the year 2000 laid down by the World Summit for Children, Government of India has firmly reaffirmed its commitment to advance the cause of children in India¹⁰

Article 6 of the Convention states:-

"State Parties shall ensure to the maximum extent possible the survival and development of the child."

3.8.3. 191 countries have signed the Convention or become State Parties to it by ratification, accession or succession, the largest number for any International Convention; the only exceptions being United States of America and Somalia.

3.8.4. A UNICEF Background Paper¹¹ states that there are two types of development emergencies that need equal attention (1) "loud" emergencies which include natural disasters and armed conflicts that kill and disable children and (2) "silent" emergencies resulting from endemic poverty and widespread deprivations which lead to many more deaths than famine, flood or war. Widespread illiteracy, malnutrition, hunger and morbidity, poor health and neglect of women's concerns are examples of such silent deprivations. Professor John Kenneth Galbraith in a lecture delivered in New Delhi in November, 1992 remarked:

".... Once it was understood : an education is the first requirement for economic progress. That essential fact was forgotten:impressive steel mills, great hydroelectric dams, glistening airports, were too often sited amid ignorant people. I have previously made the point:in this world there is no literate population that is poor, no illiterate population that is other than poor."

A pro-children development strategy has to address both these types of emergencies.

3.8.5. It is therefore clear that we must proceed with some urgency to make these rights of the child a reality. Consequently one would venture to ask, is not all employment and the depriving of education "hazardous" to the child. We respectfully submit it is. Asking a child to work is by itself an "abuse" of their tender age and also amounts to forcing them by economic necessity to enter avocations unsuited to their age and strength within the meaning of clauses (e) and (f) of Article 39 of the Constitution, which article, we submit, must now provide and constitute the content of Article 24. Fifty years after Independence and more than forty eight years after the Constitution, it is these two clauses of Article 39 that must increasingly enlighten the content of Articles 21 and 24 -also because these clauses are consistent with the international conventions and, above all, are in the interest of our nation and a humane view of life.

Without education a child is left without any real choices. It would, therefore appear that it is essential that legislation is introduced to ensure that good schools are established at reasonable distances so that quality education is available for all children and they are not deprived of this opportunity of development which is their inherent right.

FOOTNOTES AND REFERENCES

CHAPTER-III

1. Miss Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
2. Unnikrishnan, J.P. v. State of Andhra Pradesh, AIR 1993 SC 2178 (Constitution Bench).
3. University of Delhi v. Shri Anand Vardhan Chandal, 1998 (5) SCALE 23.
4. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
5. Supra at 2.
6. Leila Seth, The First Rosalind Wilson Memorial Lecture, India International Centre Quarterly, Winter 1993 page 79.
7. Id., at page 80
8. Ibid.
9. Ibid.
10. UNICEF India Background Paper, The Right to be a Child, March, 1994.
11. Ibid.

CHAPTER-IV

ATTEMPTS MADE FOR IMPARTING PRIMARY EDUCATION TO CHILDREN IN SOUTH ASIA

4.1 South Asia has emerged by now as the most illiterate region in the world, with 395 million illiterate adults (nearly one-half of the world total) and 50 million out of school children (over two-fifths of the world total). Human Development in South Asia 1998¹, is documented by the Human Development Centre and it reveals that what is missing is not financial resources, but political commitment, for tackling the educational tasks that lie ahead. The said report observes that income poverty is no barrier to the spread of basic education. Thus it points out that Kerala with a per capita income of \$ 1017, has a literacy rate of 90%, compared to 58% in Punjab which has more than double the per capita income of Kerala. International comparisons also corroborate the same. For example, Vietnam, with a per capita income of \$ 1208 (in 1994 PPP dollars) has attained an adult literacy rate of 94%, while India (real per capita income of \$ 1348) has 52% literacy; Pakistan (per capita income of \$ 2154) is even further behind with 38% literacy. Thus while income is important, it is not decisive².

4.2 Key Education challenges examined:- The HDC report³, loudly projects three key challenges which require devising concrete strategies to address the three key shortcomings in South Asia's education system. First, the lack of access to

schooling for large number of children, second the low level of primary school, completion due to drop out and repetition; and the third the low learning achievement of many students who enrol and complete school. Amongst other nations, countries like India, Bangladesh, Pakistan, Bhutan, Nepal, Srilanka and Maldives are afflicted because of these key problems.

4.3 Based on the studies undertaken in South Asian countries, the said report concludes⁴:-

(a) The quickest way to expand capacity is to upgrade existing school facilities, viz., provision of schools at the nearer distance, electricity in the schools, latrines, potable water, playgrounds and construction of buildings.

(b) Setting up a formal school costs 80 times more than a non-formal school in Pakistan.

(c) Flexible timings has been a key strategy for improving schooling of girls and rural children.

The report also observes that one of the mechanisms for increasing the demand for education is to ensure active community and parent participation. When parents are active in the educational process, their children are more likely to attend school.

(d) The production and distribution of text books are best handled by the private sector.

(e) Local monitoring is the most effective strategy for ensuring that schools remain open. (emphasis supplied)

(f) Achieving universal primary completion is as important as universal primary enrolment.

(g) Decentralisation is the key to improving education administration in South Asia.

(h) Decisions regarding primary schooling must be taken on educational grounds rather than on political grounds.

(i) Better education data are required for efficient educational planning in South Asia.

4.4 How Zimbabwe achieved universal primary enrolment in three years:- The aforesaid report of HDC has brought out⁵ the key reforms made by Zimbabwe for enrolling students and the pro and cons of the reforms. These are summarised below:

A. Key reforms for enrolling students

1. Compulsory primary schooling
2. Primary school tuition fees abolished
3. Repetition abolished
4. Primary school graduates given option of four years of

secondary schooling

5. Rapid increase in public spending on education
 6. Substantial community financing introduced
- B. Key reforms for increasing buildings
1. 'Hot seating' introduced - double shifts but with two different sets of teachers
 2. Automatic promotion for primary school and first four years of secondary school
- C. Key reforms for increasing teachers
1. Teacher supply was rapidly increased by employing untrained teachers at the primary level.
 2. Teacher supply was increased by introducing a new, low-cost teacher-training scheme, Zimbabwe Integrated National Teacher Education Course (ZINTEC): only two terms in the four-year course were spent in college, the remainder being spent teaching in schools.
- D. Other reforms to lower unit costs
1. Unit costs reduced by standardizing classes, thus increasing class size in many of the more privilege schools.
 2. School resource allocation strictly on the basis of children enrolled.
 3. Number of topic in curriculum reduced.

4. Examinations localized.
 5. Science-kits for class-based science teaching, even without labs of electricity.
 6. Vocational subjects introduced.
- E. Key strategies for financing universal primary education

Focused on devolution of responsibility for planning, financing, and implementation to local communities and households

Financing strategy for government primary schools. Government paid for staff salaries, maintenance, all other materials and running expenses; the community financed building materials and school building, paid a small variable fee, and provided voluntary additional community support.

Financing strategy for non-government primary schools (90 per cent of all primary schools): the government provided salaries of teaching staff and gave a per capita grant of \$Z 17.35 per child (1Z\$ = US \$ 0.4-US\$1.6 over the period); 'responsible authorities' financed school maintenance, non-teacher salaries, furniture, equipment, textbooks, and running expenses of schools; the community financed school building,

paid general purpose and sports fees, contributed to a building fund, and provided voluntary additional community support.

It would be worth pointing out that amongst other reforms to lower unit cost, vocational subjects were introduced. This could reduce unit cost by producing marketable goods in schools. However, it failed elsewhere in Africa. The report observes on the aspect of financing for education that several South Asian countries heavily subsidised higher level of education. A rise in funding for university education would have been understandable if the goal of universal basic education had already been met. The efficiency of education spending in South Asia is very low. The report further projects a five point strategy to ensure universal basic education.

1. The first step is to prepare a concrete five year plan (1999-2003) to extend universal basic education.
2. Compulsory education laws must be passed and enforced.
3. In order to make the financial targets more feasible, a cost effective strategy should be adopted for implementing the target of universal primary education.
4. In order to formulate a realistic financial strategy, the main focus should be on the reallocation of existing budgets.

5. A number of innovative methods can also be used to provide adequate funding for the goal of universal primary education. Certain countries have resorted to special levies earmarked for education spending.

It goes without saying that some of the radical features/strategies which helped in achieving universal primary education elsewhere, must be adopted.

FOOTNOTES AND REFERENCES

CHAPTER-IV

1. Mahbub Haq and Khadija Haq, Human Development in South Asia, 1998, Human Development Centre, page 2.
2. Id, at page 3.
3. Ibid, Chapter 5
4. Id., at pages 71-75
5. Id, at pages 140-141.
6. Id., at pages 142-143.

CHAPTER-V

NATIONAL POLICIES AND PROGRESS MADE IN REALISING THE OBJECTIVE

5.1 Educational plans in the initial years after independence were formulated in the context of new enthusiasm and high expectations. Jawahar Lal Nehru in the Conference of State Education Ministers argued that "the entire base of education must be revolutionised". In 1948, an All India Education Conference was convened by the then Union Minister of Education which endorsed the recommendations of earlier committees on free and compulsory education. The national leaders visualised the extension of democracy from political to economic spheres.

5.2 Data projected by World Bank in its Publication:- The World Bank chronologically brings out¹ the details of the National Policy, Central schemes, State projects and the decentralised education development and District primary education programme approved in 1992. It states:

"Working groups of the Planning Commission established ambitious target dates for achieving universal elementary education, targets that were revised throughout the 1960s and 1970s. In 1966, the Kothari Commission proposed achieving the goal no later than 1986. This target, too was superseded when the 1986 National Policy on Education articulated a goal of

ensuring that by 1990 all children 11 years of age would have completed five years of formal or non-formal education....

The 1986 National Policy on Education sets the stage for the Central Government to play an increasingly important role in primary education. The policy explicitly recognised the need to make a concerted effort to expand and improve basic education, meaning formal and non-formal primary and adult literacy education. At the primary schools level, the policy gave priority to reducing the disparities in enrolment for girls and for students from Scheduled Castes and Scheduled Tribes. To carry out the policy, the Department of Education created a set of centrally sponsored grant schemes to assist States in developing basic education."

Such schemes included, inter-alia, Operation Blackboard: 1986; District Institutes of Education and Training (DIETs): 1988; Total Literacy Campaign: 1988; Minimum Levels of Learning: 1989.

5.2.1. The publication adds² that assisted by donors various State projects were also initiated such as Andhra Pradesh Education Project, which began in early 1980s with the support of United Kingdom's Overseas Development Administration (ODA), Bihar (United Nations Children Fund, UNICEF), Rajasthan (Swedish International Development Authority) and Uttar

Pradesh (International Development Association, IDA) started projects between 1990 and 1993. In each State, registered societies have been created to receive and disburse funds and to provide an umbrella organisation, closely linked to state education departments for project implementation.

District Primary Education Programme

5.2.2. In 1992, Parliament approved an updated National Policy on Education. The new policy opted for giving a priority for girl's education and improved quality in primary education. It also called for an integrated and decentralised approach to developing primary education systems, with a focus on building the capacity of districts to plan and manage primary education. Thus in 1992 constitutional (73rd and 74th) amendments were carried out which visualised the increase in the responsibility and the authority of local governments. These amendments gave the control of primary, secondary, adult, non-formal, technical and vocational education to Panchayati Raj Bodies. The Central Advisory Board of Education issued a special report as to how to decentralise the management of education, detailing the structure, role, functions and powers of local bodies, with the objective of improving the efficiency and effectiveness of schools and to reducing demoralisation at the local level (Ministry of HRD, 1993). It is understood that almost all States have passed enabling legislation for implementing the said constitutional amendments. Administrative guidelines for decentralisation are also being issued³.

5.3 Achievements on elementary education as indicated in 1998⁴, a reference annual of the Ministry of Information and Broadcasting, Government of India:-

EDUCATION

Before 1976, education was exclusively the responsibility of states, the Central Government was only concerned with certain areas like coordination and determination of standards in technical and higher education, etc. In 1976, through a Constitutional amendment, education became a joint responsibility. Decisions regarding the organisation and structure of education are largely the concern of the states. However, the Union Government has a clear responsibility regarding the quality and character of education. In addition to policy formulation, the Ministry of Human Resource Development, Department of Education shares with the states the responsibility for educational planning.

5.3.1. The Central Advisory Board of Education (CABE), set up during the pre-Independence period in 1935, continues to play a lead role in the evolution and monitoring of educational policies and programmes, the most notable of which are the National Policy on Education (NPE), 1986, Programme of Action (POA), 1986 and a revised NPE and POA (1992).

5.3.2. EXPENDITURE:

National Policy on Education, 1986 and the Programme of Action (POA) 1992 envisages that free and compulsory education of satisfactory quality should be provided to all children upto the age of 14 years before the commencement of the 21st century. As per the commitment of the Government under the Common Minimum Programme, about six per cent of the Gross Domestic Product (GDP) would be earmarked for the Education Sector by the year 2000 AD and 50 per cent of the outlay will be spent on Primary Education.

5.3.3. With the increasing commitment of the resources to education, resource allocation for education has, over the years, increased significantly. Plan outlay on education increased from Rs.153 crore in the First Five Year Plan to Rs.19,600 crore in the Eighth Five Year Plan (1992-97). The expenditure on education as a percentage of GDP also rose from 0.7 per cent in 1951-52 to 3.3 per cent in 1995-96 (RE).

5.3.4. The Eighth Plan outlay (Centre and States) at Rs.19,600 crore is higher than the Seventh Plan expenditure of Rs.7,633.13 crore by 2.6 times. In keeping with this set up, the Central Plan outlay for education has been substantially increased from Rs.1,825 crore in 1995-96 to Rs.3,363 crore in 1996-97 and further to Rs.4,095 crore in 1997-98...

5.3.5. There has been inter-se shift in the allocation of resources within the education sector from higher education to elementary education. The outlay on elementary education is 62.1 per cent of the total Central Sector Plan outlay in 1997-98. Further the outlay consists of Rs.354.94 crore for Secondary Education, Rs.403 crore for University and Higher education, Rs.127 crore for Adult Education and Rs.390 crore for Technical Education.

5.3.6. ELEMENTARY EDUCATION:

The revised Programme of Action 1992 of the NPE, 1986 resolves to ensure free and compulsory education of satisfactory quality to all children upto 14 years before we enter the 21st century. In order to operationalise the revised policy of the Government, the following three sub-schemes were proposed under Operation Blackboard during the Eighth Plan : (i) continuation of the ongoing scheme to cover all the remaining schools identified as on 30 September 1986; (ii) expanding the scope of the scheme to provide three rooms and three teachers in primary schools with enrolment exceeding 100 with provision for about 50 per cent women teachers in primary schools as mandatory for all states/UTs; and (iii) extending the scope of the scheme to upper primary schools. The expanded schemes have been started since 1993-94.

5.3.7. To achieve the goal of Universalisation of Elementary Education, the Non-Formal Education Programme had been put into operation in 1979-80 to provide education of a quality comparable to formal system to children who do not/cannot attend school, school dropouts, girls who cannot attend whole day schools and working children. The scheme was reorganised and expanded in 1987-88 and again in 1993. Under the Scheme, assistance is given to the states/union territories in the ratio of 60:40 and 90:10 for running general co-educational and girls centres respectively. Cent per cent assistance is given to voluntary agencies for running non-formal education centres and undertaking experimental and innovative projects. Presently 2.86 lakh centres have been sanctioned for imparting education to about 71 lakh children. About 1.18 lakh centres are exclusively for girls. Under another Centrally-sponsored scheme of Restructuring and Reorganisation of Teachers Education, launched in 1987-88, 433 DIETs, 110 CTEs/IASEs have been established throughout the country to impart good quality of pre-service and in-service training to teachers and 19 SCERTs have been strengthened.

5.3.8. In elementary education the focus has been shifted from enrolment per se to retention and achievement. The Minimum Levels to Learning programme answers the third dimension of Universalisation of Elementary Education, namely, universal achievement. Laying down competency to be mastered by all children in the country at a particular grade, the programme envisages a package of quality improvement. It incorporates curricular revision, teacher orientation and

improved pedagogy to handle multi-grade situations. A Committee has also been constituted to lay down Minimum Levels of Learning for subjects taught at upper primary stage.

5.3.9. In the first phase, 18 projects were taken up and after working in 4,000 primary schools, the programme is being upstaged through the institutional mechanism of DIETs and SCERTs in about 12 states. After this period of initiation the programme would be extended and expanded to cover the entire school system by 2000 AD. Currently, about 200 DIETs have been oriented in the comprehensive strategy.

5.3.10. DISTRICT PRIMARY EDUCATION PROGRAMME:

The District Primary Education Programme (DPEP) is a special thrust and a new initiative to achieve Universalisation of Elementary Education (UEE). The programme takes a holistic view of primary education development and seeks to operationalise the strategy of UEE through district specific planning with emphasis on decentralised management, participatory processes, empowerment and capacity building at all levels. The programme is implemented through the State level registered societies.

5.3.11. The programme aims at improvising access to primary education for all children, reducing primary dropout rates to less than 10 per cent, increasing learning achievement of primary school students by 25 per cent and reducing the gender and social gap to less than five per cent.

5.3.12. The programme is structured to provide additional inputs over and above the Central/state sector schemes for elementary education. The programme fills in the existing gaps in the development of primary education and seeks to revitalise the existing system. DPEP is contextual and has a marked gender focus. The programme components include construction of classrooms and new schools, opening of non-formal/alternative schooling centres, appointment of new teachers, setting up early childhood education centre, strengthening of State Councils of Educational Research and Training (SCERTs)/District Institute of Education Training (DIETs), setting up of block resource centres/cluster resource centres, teacher training, development of teaching learning material, research based interventions, special interventions for education of girls, education of SC/ST etc. A new initiative of providing integrated education to disabled children and distance education for teacher training has also been incorporated in the DPEP Scheme.

5.3.13. The district is the unit of programme implementation and selected on the basis of twin criteria, viz., (a) educationally backward districts with female literacy below the national average and (b) districts where total literacy campaigns (TLCs) have been successful, leading to enhanced demand for elementary education.

5.3.14. DPEP is a centrally-sponsored scheme. Eighty-five per cent of the project cost is provided by the Government of India which is resourced by external funding, which is already tied up to the extent of Rs.3,450 crore. The balance 15 per cent is shared by the participating states. The World Bank is providing assistance to the tune of US\$ 260.3 million (Rs.806 crore) for the District Primary Education Programme (DPEP) phase-I and an amount of US\$ 425.0 million (Rs1,480 crore) for DPEP phase -II for which a grant from Government of Netherland amounting to US \$25.8 million (Rs.90 crore) is also tied up. The European Community has made available a grant of ECU's 150 million (approximately Rs 585 crore), for implementation of DPEP in 19 districts of Madhya Pradesh.

5.3.15. Assistance from ODA of UK amounting to Rs.42.5 million (Rs 255 crore) and Rs.37.71 million (Rs.226.22 crore) is available for DPEP in Andhra Pradesh and West Bengal respectively. The World Bank has also offered assistance for coverage of 17 educational districts (27 revenue districts) in Bihar under DPEP phase-III.

5.3.16. The programme, which was initially launched in 42 districts of seven states in 1994, is now covering a total of 122 districts in 13 states. The programme implementation has shown promising results as per reports of various supervision missions and evaluatory studies. The programme is encouraging application of numerous innovative and practical interventions for improving access, retention and quality of education.

5.3.17. BIHAR EDUCATION PROJECT:

The Bihar Education Project (BEP) is a basic education project aimed at Universalisation of Primary Education by bringing about a qualitative improvement in the existing education system. The project was initiated in 1991 covering seven districts in Bihar. The financing pattern was 3:2:1 among UNICEF, Government of India and Government of Bihar. The phase-I concluded in March 1996 and the programme has been extended for a period of two years from 1996-97 to 1997-98 under phase - II, with an outlay of Rs 61.5 crore. Significant outcomes of the Project include intensification of community participation process and motivational training of teachers in participatory mode leading to renewal of teaching learning processes. During 1997-98, it is proposed to cover 17 educational districts, (27 revenue districts) including these seven districts of Bihar under DPEP-III with assistance from the World Bank.

5.3.18 LOK JUMBISH:-

An innovative project called "Lok Jumbish" (People's movement for Education for All) with assistance from Swedish International Development Authority (SIDA) has been undertaken in Rajasthan. The basic objective of the project is to achieve "Education for ALL" through people's mobilisation and their participation.

5.3.19. The Project has so far covered 58 blocks-where it has undertaken environment building activities in 2,491 villages and has completed school mapping exercises in 1,800 villages where community mobilisation and partnership with voluntary groups has been noteworthy. Three hundred and forty four new schools have been opened while 275 primary schools have been upgraded. An innovative and successful NFE programme launched by LJP has spread to 1,502 centres. The Lok Jumbish Project has made a positive contribution to quality improvement through the development of improved MLL based textbooks from Classes I-IV, which has been mainstreamed in all schools of Government of Rajasthan.

5.3.20. NATIONAL PROGRAMME OF NUTRITIONAL SUPPORT TO PRIMARY EDUCATION:

A National Programme of Nutritional Support to Primary Education commonly called the Midday Meal Scheme was launched on 15 August, 1995 with the intention of improving enrolment, attendance and retention while simultaneously impacting on the nutrition status of students in primary classes. The programme envisages provision of cooked meals/processed food for children studying in classes I-V in all government, local body and government aided primary schools. Central assistance under the programme is available for the reimbursement of cost of foodgrains and for transportation charges for movement of foodgrains from FCI godowns to schools/villages. Salaries of cooks/helpers etc., as well as expenditure on construction of kitchen sheds needed for conversion of foodgrains into cooked

meals are eligible for coverage under the poverty alleviation schemes i.e. JRY/NRY. Other costs of conversion of foodgrains into cooked meal/processed food are to be met by implementing agencies/states.

5.3.21. Apart from this, the implementation of these schemes is today, indifferent and full of "leakages". In spite of the achievements "set out in the said report, the fact remains that in India, out of 5,47,672 villages, 48,566 do not have any school and 1,67,382 rural schools have just one teacher for each school⁵.

5.4 Recommendations of the Committee of State Education Ministers on implications of the proposal to make elementary education a fundamental right:- The Chief Ministers' Conference held on 4th to 5th July, 1996 adopted a resolution to universalise primary education by 2000 A.D. A Committee chaired by Mr. Muhi Ram Saikia, Union Minister of State for HRD (Education) was constituted on 29th August, 1996 with the Education Ministers of 13 States and senior officials of the Central Government as its members to consider the legal, academic, administrative and financial implications. The Committee submitted its report on 15th January, 1997. The report says that the number of primary schools have gone up to 5,90,421 and the number of upper primary schools to 1,71,216 in 1995-96 as against 2,10,000 and 13,000 in 1950-51 respectively. Gross enrolment ratio at primary level has increased from 42.6 in 1950-51 to 104.5 in 1995-96 with a large proportion of increase being in rural and semi-urban

areas. According to the 5th All India Educational Survey, 94.6% of the rural habitations have a primary school within one kilometre and 85.4% have an upper primary school with a distance of three kilometres. The committee observes that the task of universalisation of elementary education (UEE) is far from being complete because there are severe gender, regional, sectional and caste disparities in UEE. Only two-thirds of the children complete primary schooling and only half complete upper primary schooling. A significant proportion of those who join school drop out before completing their studies due to socio-economic and cultural factors as also due to lack of adequate infrastructure, shortage of teachers, non-availability of teaching, learning materials and text books, a curriculum which is not fully related to local needs and low levels of learning.

5.4.1. After considering various pros and cons, the said committee made the recommendations which are summarised as follows:

- i) The Constitution of India should be amended to make the right to free elementary education upto 14 years of age a Fundamental Right. Simultaneously, an explicit provision should be made in the Constitution to make it a Fundamental Duty of every citizen who is a parent to provide opportunities for elementary education to all children upto 14 years of age. Consequential amendments to the Directive Principles of State Policy as enunciated in Article 45 of the

Constitution should also be made.

- ii) In a diverse federal polity such as ours and with the States being the main providers 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 on the lines of the action taken in regard to implementation of 73rd and 74th Constitutional amendments. The Central Government should issue guidelines providing a broad framework for enactment of fresh legislation on compulsory elementary education. The guidelines should be finalised in consultation with State/UT Governments.
- iii) State legislation should provide for the following:-
- (a) provision of permissive compulsion to enable State Governments and local bodies to enforce the law selectively in a phased manner;
 - (b) grounds for exemption from compulsory school attendance;
 - (c) imposition of punishment on defaulting parents - quantum of minimum and maximum punishment should be specified;
 - (d) establishment of primary schools within a distance of 1-1.5 kilometers from rural habitations provided that there is a population of 250 in the catchment areas;
 - (e) establishment of upper primary schools within

a distance of 3 kilometres from rural habitations provided that there is a population of 500 in the catchment areas;

State Governments should be entitled to relax the norms in (d) and (e) above in the case of hill, desert, tribal and inaccessible areas so as to ensure that the proposed schools are viable.

(f) responsibilities which may be delegated to Gram Panchayats and Village Education Committee (VECs) for achieving Universalisation of Elementary Education (UEE) in their jurisdiction;

(g) provision for engaging honorary attendance officers; and

(h) vesting of powers to impose penalties and grant exemptions in the Panchayat Raj Institutions/Village Education Committees (PRIs/VECs); and

iv) A State-wise approach in regard to free education should be adopted in keeping with the local situation. However, in order to ensure uniformity, free elementary education may include exemption from tuition fee; provision of essential stationery to all children in primary classes. In addition, the Mid-day Meals Programme may be continued. State Governments may provide other incentives such as free school uniforms, cash incentives, scholarships, etc. in accordance with their economic capacity and priorities.

v) The administrative machinery for supervision,

inspection, monitoring and evaluation of elementary education should be augmented and strengthened at the Secretariat, Directorate, District and Block levels.

- vi) The academic implications of the proposal which include provision of recurrent teacher training and quality textbooks besides introduction of Minimum Levels of Learning (MLL) should be given due attention.
- vii) Minimum infrastructure and teachers as envisaged under Operation Blackboard should be provided in all primary and upper primary schools preferably during the 9th Five Year Plan. However, such provision of facilities may not be made a statutory obligation for the present. The norms prescribed under OB would not be applicable to alternative schooling and non-formal education programme.
- viii) As in the past, the primary responsibility to promote elementary education should remain with the State Governments, who should consider measures which will enable local bodies in urban and rural areas to raise revenues for improvement of facilities in schools. They should consider the proposal to levy an "educational cess" in this regard. The Central Government should meet additional requirements keeping in view the past trend of resource transfers and the need to augment resources to implement the proposal. The Central and State Governments should allocate 50% of budgetary allocations for education to elementary education and ensure that the funds so allocated are

not re-appropriated or diverted to any other sector. They should also streamline the existing system of flow of funds to Elementary Education Programmes.

- ix) The Planning Commission and Ministry of Finance should evolve an appropriate formula in consultation with the State Governments concerned to share additional finances required to implement the proposal. The formula so evolved should provide for transfer of more resources to educationally backward States/Districts/Blocks. Estimates of additional funds required to implement the proposal should be carefully examined in consultation with experts who may also identify the possible sources of financing the additional requirements. The additional expenditure to implement the proposal should be phased out, preferably over a period of 5 years, coinciding with the Ninth Five Year Plan.
- x) States should provide adequate space and opportunity to deserving private schools to spread elementary education in remote and inaccessible rural areas. They should also consider suitable regulatory provisions to ensure that the tendency of commercialisation of education is effectively curbed.
- xi) In regard to medium of instruction at primary level, States should continue the existing policy of providing primary education in the regional language and where regional language is other than the mother tongue, in the mother tongue.
- xii) In order to give meaning and effect to the proposal,

special efforts should be made to build public opinion in favour of Universalisation of Elementary Education (UEE) by social mobilisation and involvement of local communities on a much larger scale. To achieve this, a National Elementary Education Mission (NEEM) should be effectively operationalised in IXth Plan; Non Governmental Organisations (NGOs) should be provided larger assistance and support in their efforts to promote Universalisation of Elementary Education (UEE); and Panchayat Raj Institutions (PRIs) should be given greater responsibility in planning, management and implementation of programmes of elementary education.

5.5.1. The Saikia Committee observes that the requirement of additional funds in five years coinciding with the 9th Plan to achieve the national goal of UEE, would be approximately Rs.40,000 crores. As per the Annexure-IV of the proposed 9th Plan, under the Head Education, for realising primary/elementary education including mid-day meal scheme, the proposed outlay for the 9th Plan is Rs.31,594 crore (comprising of Centre's share of Rs.12,644 crore and State and UTs share of Rs.18,950 crore). However, the required outlay is of Rs.48,950 crore (comprising of Centre's share of Rs.30,000 crore and State and UT's share of Rs.18,950 crore). Thus a gap of Rs.17,356 crore is still being projected in the 9th Plan.

FOOTNOTES AND REFERENCES

CHAPTER-V

1. The World Bank Publication, Primary Education in India, Edn., March, 1997, Chapter 1.
2. Ibid.
3. Ibid.
4. Ministry of Information and Broadcasting, Government of India, India 1998 A Reference Annual.
5. Dr.J.C.Kulshreshtha, Indian Child Labour, Edn.1994, page 39.

CHAPTER-VI

IMPLEMENTATION OF THE RIGHT TO EDUCATION: RECOMMENDATIONS OF THE COMMISSION :

6.1 The need for compulsory education for children:- The Law Commission had prepared a detailed note on free and compulsory education for children together with a draft Bill for a central legislation. In drafting the Bill, the Commission had taken into consideration certain suggestions and comments received by it including those made at the National Conference on Education as a Fundamental Right organised by Pratham on 24th and 25th April, 1998 at New Delhi; and the National Consultation on Right to Education; a strategy to eliminate Child Labour, organised by the Centre for Child and the Law, the National Law School of India University with the support of UNICEF held on 16th and 17th May, 1998 at Bangalore. A copy of the same was forwarded to the Ministry of Human Resource Development, Department of Education, Government of India requesting for views of the Department.

6.1.1. The Law Commission has carefully considered various issues in the light of comments of the Department of Education as well as other available materials. Accordingly, it has come to the following conclusions:

6.1.2. If a Central Legislation is enacted as is being proposed by the Commission, it would not require ratification by the State Legislatures, being a subject falling under Entry 25 of Concurrent List of Seventh Schedule to the Constitution of India. Article 254(1) provides that the law made by Parliament with reference to a concurrent subject shall prevail over a law made by the State Legislature on the same subject irrespective of the fact whether the law made by the Parliament is earlier or subsequent to the State enactment. (This provision is of course subject to clause (2) of article 254.)

6.1.3. A view has been expressed that it may not be feasible to bring the private unaided institutions within the purview of the proposed Bill. In this connection, reference has been made to article 21A(3) as proposed to be inserted by the Constitution (Eighty-Third Amendment) Bill, 1997 which provides that States shall not make any law for free and compulsory education under clause (2) in relation to the institution not maintained by States or not receiving aid out of State funds.

6.1.4. The Department of Education may perhaps be right in saying that as of today the private educational institutions which are not in receipt of any grant or aid from the State, cannot be placed under an obligation to impart free education to all the students admitted into their institutions. However, applying the ratio of Unnikrishnan case, it is perfectly legitimate for the State or the affiliating Board,

as the case may be, to require the institution to admit and impart free education to fifty per cent of the students as a condition for affiliation or for permitting their students to appear for the Government/Board examination. To start with, the percentage can be prescribed as twenty. Accordingly, twenty per cent students could be selected by the concerned institution in consultation with the local authorities and the parent-teacher association (see the appended Bill at Annexure-A). This proposal would enable the unaided institutions to join the national endeavour to provide education to the children of India and to that extent will also help reduce the financial burden upon the State.

6.1.5. Further, imparting education, including primary/elementary education, is as much the obligation of the Central Government as that of the States after the 42nd amendment of the Constitution which has put "education" in the Concurrent List. It is the Commission's view that the Union of India has the primary responsibility for carrying out the mandate of article 45 read with articles 41, 46 and 21 of the Constitution. One cannot lose sight of the fact that substantial additional finances are required for this purpose and in the present state of things, the additional finances can only come from the Centre. It hardly needs mention that most of the high-yielding revenue resources are with the Centre.

6.1.6. Article 45 speaks of "free and compulsory education for all children until they complete the age of 14 years". The expression "compulsory" in the said article necessarily implies an element of compulsion, be it compulsion on the State to provide free education or a compulsion on the parents to send their children to the school or a compulsion on the society to ensure that all its children go to school atleast until they complete the age of 14 years or for that matter upon any other institution, organisation or individual, as the case may be. It may not, therefore, be correct to say that the method of compulsion is inadvisable.

6.1.7. A statute imposing compulsory education is no encroachment on any fundamental right, for no one has any right to remain ignorant or illiterate¹.

6.1.8. The Law Commission is of the view that Universal Elementary Education (UEE) cannot be achieved except by the use of a certain amount of compulsion. In this context, it is relevant to notice that the method of persuasion has not yielded the desired results. It needs to be emphasised that the constitutional obligation is to provide "free and compulsory education" and all permissible means and measures ought to be employed to achieve the said goal. It may necessitate dispensing with the tuition fee, providing free text books or free uniforms, free lunch, etc. wherever necessary.

6.1.9. The Commission is aware that the basic reason for the children from the poor families being not able to attend the schools is poverty. The Commission recognises that no parent who can afford to send his child to school, would not do so and would prefer to send him to work. Undoubtedly, it would be the wish and desire of every parent to see that his child is educated and that he is not called upon to work whether as a domestic servant or in a factory or anywhere else. At the same time, it is recognised by all educationists that a little amount of compulsion may be necessary in certain cases apart from persuasion and incentives, to achieve the goal of an Universal Elementary Education which is basic to any democratic society.

6.2. The Commission has noted with some satisfaction that so far 19 States/Union territories have enacted legislation making primary/elementary education compulsory. (A list is attached as Annexure-B). These are Assam, Andhra Pradesh, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Delhi and Andaman & Nicobar Islands. These enactments are in three parts:

- (i) Power vested in the State Government to notify the area in which the Act can be implemented.
- (ii) Penalties for not sending children to school.
- (iii) Power in a vested authority to grant exemption from the legislation.

6.2.1. The Department of Education has pointed out that most of these Acts have, however, remained unenforced due to various socio-economic and cultural factors as well as administrative and financial constraints. According to that Department, the compulsion contemplated in article 45 of the Constitution is a compulsion on the State rather than on parents. As such a consensual approach to motivate parents and children is said to be more appropriate. The key elements of this approach are stated to be: (i) community involvement; (ii) decentralisation of planning and management of school education to Panchayati Raj Institutions; (iii) motivation of children to attend schools regularly; (iv) improvement of infrastructure and facilities in schools; (v) development of locally relevant curricula; (vi) improvement in quality of textbooks; (vii) teacher training; (viii) child centered learning; and (ix) adoption of minimum levels of learning.

6.2.2. However, since the consensual approach alone has failed to yield results, it is the view of the Law Commission that it may be necessary to introduce some compulsion to supplement if not supplant the consensual approach and methods of persuasion:

6.3 It was brought to the Commission's notice that a committee of State Education Ministers (Saikia Committee) had in August, 1996 inter-alia, examined the need for a central legislation for elementary education and came to the conclusion that it was not strictly necessary to have a central legislation in view the fact that elementary education

was mainly the responsibility of the States and in a diverse federal polity such as ours with wide disparities, it was debatable whether a central legislation on compulsory education would serve much purpose. It was felt that since these State Governments are the main providers of elementary education, they should enact such legislation and be responsible for their proper implementation. Noting that existing legislation was outdated and required to be in tune with later developments and the current social ethos, the Committee was of the view that States should either amend their prevailing legislations or enact fresh legislations for free and compulsory primary education. The Central Government should support and strengthen the efforts made by the States in this regard and issue guidelines providing a broad framework for enactment of fresh legislation on the subject. The guidelines should be finalised in consultation with State/Union territory Governments.

6.3.1. The Law Commission finds it difficult to agree with the approach of the Saikia Committee for the reasons already stated. The spirit of cooperative federalism does not come in the way of central legislation, nor does the central legislation prevent the States from offering appropriate amendments (as may be called for in their local conditions) to such central legislation. Only when an inconsistent law or inconsistent provision (inconsistent with the central legislation) is sought to be enacted by the State Legislature that the requirement of President's assent is necessary to make it effective and valid as per article 254(2).

In fact, the report of the Parliamentary Standing Committee on Human Resource Development has stated in paragraph 15.6 that the Central Government should consider working out the necessary legislation to provide for the universalisation of free elementary education. This law should be simple "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".

No such law is presently being worked out by the Central Government, which is awaiting the passing of the Constitution (Eighty-third Amendment) Bill, 1997 before taking action.

As above noticed there does not appear to be any sense of urgency with regard to the Constitution (Eighty-third Amendment) Bill. Presently it lies in a state of suspended animation and one does not know if and when and in what form it will eventually be passed. We are fast moving towards the end of the century and Indian children cannot wait and remain ignorant. Their needs have to be dealt with Today. The Supreme Court has given them the right to elementary education as part of their right to a dignified life, a life where they can make choices. This is the law of the land and must be implemented immediately.

6.4 On the issue of ramifications of compelling parents/guardians of every child to send their children to attend the school, the Committee of State Education Ministers appears to have examined the matter keeping in view the socio-economic conditions prevailing in the country. It pointed out that one of the major barriers in the effective enforcement of compulsory education laws had been the spectre of large scale punishment by imposition of fines or imprisonment of defaulting parents, particularly those who ostensibly could not afford to send their children to school. Another apprehension was that the defaulting parents would be subject to considerable harassment by the bureaucracy, resulting in widespread resentment among the general population against the implementation of compulsory education laws.

The Law Commission agrees that the request of compulsion on the parent/guardian should not be allowed to become an instrument of harassment and penalties should be enforced only as a last resort; and that too in a humane and compassionate manner without losing sight of the objective of the exercise, that is, pressurising and persuading recalcitrant parents to send their children to school. The punishment may vary from State to State and could possibly include community service (Shram Daan, Kar Seva etc.) and suitable disincentives as determined by Panchayati Raj Institutions.

In this connection, it may be noticed that in the United Kingdom, the defaulting parents who fail to send their children to the schools, are forced to do so through the State agencies. Under sections 37(5) and 40(1) of the Education Act, 1944 in that country, any person who fails to comply with a school attendance order served upon him is guilty of an offence unless he proves that he is causing the child to receive efficient full-time education suitable to his age, ability and aptitude otherwise than at school. On a summary conviction for the offence, a person is liable in the case of a first offence to a fine not exceeding pounds 10, on a second conviction of the same offence to a fine not exceeding pounds 20 and on a third or a subsequent conviction of the same offence to a fine not exceeding pounds 20 or imprisonment not exceeding one month or both (Education Miscellaneous Provisions) Act, 1948 section 9(1) (UK); Criminal Justice Act, 1967, section 92(1), Schedule 3, Part-I (UK).

The court by which a person is convicted of failing to comply with a school attendance order or before which a person is charged with failing to cause a child of compulsory school age to attend regularly at the school at which he is a registered pupil, may direct the local education authority which instituted the proceedings to bring the child in question before a juvenile court (section 40(3) of the Education Act, 1944 (UK) and Children and Young Persons Act, 1969, section 72(3), Schedule 5, para 13 (UK).

6.4.1. Many existing State Legislations in our country on the subject also provide for imposition of punishment on the parents who fail to send their children to school. In the Commission's view, it would not be conducive to realising the objective of compulsory education to provide a punishment which may vary from State to State.

6.5 The Department of Education has rightly emphasised the need for social mobilisation and involvement of the community to build up public opinion in favour of UEE which is crucial to implementation of the proposal. The Saikia committee recommended, inter-alia, that NGOs should be provided larger assistance and support in their efforts to promote UEE; and Panchayati Raj Institutions should be given greater responsibility in planning, management and implementation of programmes of elementary education. The committee also recommended that a National Elementary Education Mission (NEEM) should be operationalised in the Ninth Five year Plan to monitor and supervise programmes of elementary education, assist State Governments in area specific programmes for equality and equity in UEE and to launch a national media and advocacy campaign for UEE.

6.5.1. The Law Commission is in agreement with the view that social mobilisation and involvement of the community to build up public opinion in favour of UEE is crucial for the implementation of the proposal. Besides, the increasing role of village education committees and parent-teacher associations also needs to be acknowledged. However, these

provisions can hardly be operationalised through incorporation in the proposed legislation. This will need to be dealt with and enforced at the executive levels through the machinery of Centre and the States. However, a specific provision enabling parent-teacher associations to monitor the functioning of the schools and the quality of education imparted therein would be in order.

6.5.2. In addition to the Non Governmental Organisations, the Panchayats and Municipalities should also be involved in this effort. Articles 243G and 243W in Chapter IX and IXA of the Constitution of India introduced by the Constitution (Seventy-Third Amendment) Act, 1992 w.e.f. 1.6.1993 provide the necessary basis for this purpose. Article 243G contemplates the State Legislatures enacting laws conferring upon Panchayats, such powers and authority as may be necessary to enable them to function as institutions of self-government. It is further provided that such law may contain provisions for the devolution of powers and responsibilities on Panchayats at the appropriate level subject to such conditions as may be specified therein with respect to (a) the preparation of Plans for economic development and social justice and (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. Items 17 and 18 of the Eleventh Schedule read: "17: Education, including primary and secondary schools; 18: Technical training and vocational education" To the same effect is article 243W which places upon the Municipalities a similar obligation read with items 3 and 13 of the Twelfth Schedule. It is appropriate that State

Legislatures should enact legislation as contemplated by the aforesaid provisions of the Constitution, if they have not already done so.

6.5.3. It is essential that legislation should also contain a provision to ensure that good schools are established at reasonable distances so that quality education is available for all children.

6.6. Constitution (Eighty-Third Amendment) Bill, 1997 proposing insertion and amendment of certain provisions in the Constitution of India:- A Constitution amendment Bill being the Constitution (Eighty-Third Amendment) Bill, 1997, dated 9th July, 1997 was introduced in the Rajya Sabha on 28th July, 1997. The Bill provides for the insertion of a new article 21A the omission of article 45 and amendments to articles 35 and 51A. The proposed article 21A reads as under:

"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."

6.6.1. In the Law Commission's view, the words "right to" in clause (2) of proposed article 21A should be substituted by the words "obligation to provide". This is for the reason that there cannot be a fundamental "right to free and compulsory education". The fundamental right of citizens, until they attain the age of 14 years, is to "free education", whereas the State's corresponding obligation is to provide "free and compulsory education". The chapter on fundamental rights contains several articles which are worded so as to create an obligation upon the State and yet those provisions have been understood and interpreted as creating a corresponding fundamental right for citizens. The foremost example of this type of legislative practice is article 14 which says "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

So far as clause (3) is concerned, the Law Commission suggests that it should be totally re-cast in the light of the basic premise of the decision in Unnikrishnan, which has been referred to hereinabove. It would neither be advisable nor desirable that the unaided educational institutions are kept outside the proposed article altogether. While the primary obligation to provide education is upon the State, the private educational institutions, whether aided or unaided, supplement this effort.

6.6.2. The unaided institutions should be made aware that recognition, affiliation or permission to send their children to appear for the Government/Board examination also casts a corresponding social obligation upon them towards the society. The recognition/affiliation/permission aforesaid is meant to enable them to supplement the effort of the State and not to enable them to make money. Since they exist and function effectively because of such recognition/affiliation/permission granted by public authorities, they must and are bound to serve the public interest. For this reason, the unaided educational institutions must be made to impart free education to 50% of the students admitted to their institutions. This principle has already been applied to medical, engineering and other colleges imparting professional education and there is no reason why the schools imparting primary/elementary education should not be placed under the same obligation. Clause (3) of proposed article 21A may accordingly be recast to give effect to the above concept and obligation.

6.6.3. The aforesaid bill also provides that 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."

6.7. Article 45 of the Constitution is proposed to be omitted by the same bill. Further, in article 51A of the Constitution, after clause (j), the following clause is proposed to 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."

6.7.1. The reason given for this constitutional amendment is that it "would demonstrate the necessary political will and administrative resolve of the country to achieve universalisation of elementary education and to eradicate illiteracy". It was suggested that this historical amendment of the Constitution in the 50th year of Independence would inspire the nation to meet the daunting challenge of achieving the goal of education for all by 2000 A.D.

6.7.2. As is apparent from what is set out above, the States and Union territories would be required to enact laws for the enforcement of the right to free and compulsory education within one year from the commencement of the Constitution (Eighty-third Amendment) Act, 1997.

6.8. The aforesaid bill was referred by the Chairman, Rajya Sabha to the Department-Related Parliamentary Standing Committee on Human Resource Development. A press communique inviting suggestions/views was issued on 18th August, 1997. The Committee considered the Bill in four sittings and heard oral evidence. It adopted the draft report at its meeting held on 4th November, 1997. The report was then presented to the Rajya Sabha on 24th November, 1997 and laid on the table of the Lok Sabha on the same day. Unfortunately, the Lok Sabha was dissolved soon thereafter and elections were called.

6.8.1. The Budget Session after the new Lok Sabha was constituted is over. There is, however, no indication whether the Government is inclined to pursue the pending bill.

6.9. The question is debatable whether it is at all necessary to amend the Constitution when there is an explicit recognition of the right to education till the age of fourteen years by the Supreme Court in Unnikrishnan's case. As the said judgment can be overruled by a larger Bench in another case, thus making this right to education vulnerable, it would appear advisable to give this right constitutional sanctity.

6.10. In the view of the Law Commission, the obligation to enforce the right to education should not be shifted to the State Governments. A uniform Central legislation underlining certain minimum parameters for implementing this right would be clearly desirable. In that view of the matter, amendments to article 35 as proposed in the Constitution (Eighty-Third Amendment Bill) 1997 would be unnecessary for the reason that even if the law is made by Parliament, the State Legislatures are competent to effect local amendments thereto inasmuch as the subject of "education" is in the Concurrent List. Indeed, according to the Constitution, a State Legislature can also substitute a provision in the Parliamentary legislation or enact an inconsistent provision wherever necessary - of course subject to the requirement of obtaining the assent of the President. Similarly the Commission does not favour the proposed amendment under clause (3) of article 21A seeking to bar enactment of any law against educational institutions not maintained by the State or not receiving aid out of State funds for the reasons indicated by us in paragraph 6.6.2. above. The Commission does not see any harm if the other amendments are retained.

6.11 The Commission is not unaware of the fact as also stated in the Financial Memorandum to the Constitution (Eighty-Third Amendment Bill), 1997, that huge expenditure is involved in providing compulsory education to all citizens of the age of six to fourteen years. The annual expenditure estimated in this regard is said to be forty eight thousand nine hundred fifty crore rupees. However, it is not in the

domain of this Commission to dwell on resources to be found for providing free education to the children. This aspect has been the subject-matter of discussion in the report of the Committee For Review of National Policy on Education (1986). The suggestions in this regard include levying of "education cess". It would be for the Centre and the States/Union territories to raise necessary resources to achieve the goal of providing free education. We may incidentally point out that mopping up of resources through levying of "education cess" has been upheld by the Supreme Court of India in Goodricke Group Ltd. case².

6.12 Vocationalisation of the education as a means of meeting the demand of skilled manpower and as an alternative to higher education is another area on which the Government may have to pay attention. However, this cannot be a substitute for free primary/elementary education.

It is important that the people at large should know how much money has been allocated for ensuring free primary/elementary education. The State Governments concerned may be required to publish necessary details in this respect in local newspapers which are widely circulated in the area. The District education authorities concerned should be also under an obligation to publish quarterly details as to how the funds were utilised. There should be an appropriate mechanism for dealing with complaints of misuse of funds. In case of any lapse or negligence in executing the project, the NGOs or the PTAs or local residents (of a group of 100 persons) may

approach the appropriate authorities which shall be bound to take immediate action thereon and inform the complainant of its decision.

6.13 Finally, the Law Commission would like to emphasize the need for immediate Central legislation to give effect to the right to education without waiting for the constitutional amendment to go through in Parliament. Accordingly, a draft bill has been prepared and annexed to this report (Annexure-A). While drafting the bill, the Commission has taken into consideration laws enacted in certain States in India as also recommendations or suggestions made by other bodies, committees or conferences in the field of education. The Commission commends the draft bill for its adoption by the Government of India.

(MR.JUSTICE B.P.JEEVAN REDDY)(RETD)

CHAIRMAN

(MS.JUSTICE LEILA SETH)(RETD)

MEMBER

(DR.N.M.GHATATE)

MEMBER

(DR.SUBHASH C.JAIN)

MEMBER-SECRETARY

DATED: 19TH NOVEMBER, 1998

FOOTNOTES AND REFERENCES

CHAPTER-VI

1. Cf. Colley, Constitutional Law, 4th Edition, 1931, P.295 (as also referred to in Basu's Commentary on Constitution of India, Sixth Edition, volume E, p.121).
2. Goodricke Group Ltd. v. State of West Bengal, 1995 Supp (1) SCC 707

ANNEXURE-A

Free and Compulsory Education for Children Bill, 1998

An Act to provide for free and compulsory education for for all children upto 14 years of age and matters incidental thereto.

Be it enacted by Parliament in the Fifty First Year of Independence of the Republic of India as follows:

Short title,
extent and
commencement

- 1.(1) This Act may be called Free and Compulsory Education for Children Act, 1998.
- (ii) It extends to the whole of India.
- (iii) It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

Provided however that the date of such notification shall not be later than one year from the date on which the assent of the President is obtained.

Definition

2. In this Act, unless the context otherwise requires,--
 - (a) "approved school" means any school in any specified area within the jurisdiction of a local authority imparting elementary education which --
 - (i) is under the management of the Central Government, State Government or the local authority,
- or

(ii) being under any other management, is recognised by the local authority for the purposes of this Act and receives aid from Government funds for running the school, or

(iii) being under any other management, is recognised by the local authority for the purposes of this Act and has received substantial aid from Government funds in setting up or expanding the school.

(b) "appropriate government" means the State Government in the case of States mentioned in Part I of the First Schedule to the Constitution and in the case of Union Territories mentioned in Part II of the First Schedule to the Constitution, the 'Government of India'.

(c) "attendance authority" means the Panchayat or local authority concerned or any other authority as may be prescribed;

(d) "attendance at an approved school" means presence for instruction at a school imparting elementary education for such number of days, and on such days in a year, and at such time or times on each day of attendance, as may be prescribed;

(e) "child" means a boy or girl within such age group not being less than six or more than fourteen.

(f) "competent authority" means the Director of Education of the Government or such other authority as may be specified by the Government;

(g) "compulsory education" means and implies an

obligation on Government to take all steps to ensure that every child is enrolled and retained till the prescribed level of education in a school imparting the prescribed courses of study and the steps taken in that behalf;

(h) "free education" means exemption from the obligation to pay tuition fee or other charges which schools usually collect from pupils in a school. It extends to provision of free supply of text-books, note-books and other study materials and may also include health care and nutrition where the appropriate Government so declares by rules under the Act;

(i) "guardian" means any person to whom the care, nurture or custody of any child falls by law or by natural rights or by recognised usage, or who has accepted or assumed the care, nurture or custody of any child or to whom the care, nurture or custody of any child has been entrusted by any lawful authority;

(j) "parent" means the father or mother of a child and includes an adoptive father or mother;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "recognised school" means a school recognised by the competent authority or recognised by or affiliated to the Central Board of Secondary Education or other like public education authority.

(m) "school" means a centre for imparting education to children of six to fourteen years where

the strength of the teaching staff is not less than two;

(n) "school age" in relation to a child means being not less than six years or not more than fourteen;

(o) "special school" means any institution which imparts such education as in the opinion of the Government is suitable for children suffering from any physical or mental defect; and

(p) "year" means the academic year as specified by the government.

**Compulsory
Education**

3. (i) Subject to the provisions of this Act education shall be compulsory for every child of school age.

(ii) For giving effect to the provisions of subsection (1) the Government of India and the State Governments shall ensure that at least one school is established within 1-1/2 kilometres distance of all centres of human habitation within its territory.

**Responsibility
of parent to
cause his
child to
attend school**

4. (1) It shall be the duty of the parent or guardian of every child to cause the child to attend an approved school unless there be a reasonable excuse for his/her non-attendance within the meaning of section 5.

(2) It shall be the duty of the attendance authority to ensure compliance with sub-section (1). This duty shall extend to children without a parent or guardian.

Reasonable
excuse for
non-
attendance

5. For the purposes of this Act any of the following circumstances shall be deemed to be a reasonable excuse for the non-attendance of a child:

(i) that there is no approved school within the prescribed distance from his residence;

(ii) that the child is receiving education in a recognised school;

(iii) that the child suffers from a physical or mental defect which prevents him from attendance;

(iv) that such child is exempt from attendance on any other ground as may be prescribed;

Certain
duties of
Teachers

6. It shall be duty of the teachers in association with the parents/guardians to ensure continued attendance of children enrolled in the schools. Every teacher has an obligation not only to impart education but to also support all round development of the children entrusted to his/her care. The teachers will report to the attendance authority if they are unsuccessful in their efforts to get a defaulting child back to school. Failure to report will be deemed to be a professional misconduct and the teacher will be proceeded against accordingly.

Parent-
teacher
Association

7. A parent-teacher association shall be constituted in each school in the manner as prescribed. It shall be the duty of such an association to ensure that quality education is imparted and proper standards are maintained in the school.

The concerned local authority or panchayat shall also be under a similar obligation in respect of the schools within its area.

Special
Schools

8. If there is in existence a special school within the prescribed distance from the residence of a child who is suffering from a physical or mental defect, the competent authority may, if it is satisfied that the child is not receiving any education in some other manner considered by it to be satisfactory, by order require the child to attend the special school; and it shall be the duty of the parent or guardian of such child to cause the child to attend the special school unless there be a reasonable excuse for the non-attendance of the child within the meaning of clause (iv) of section (5).

Attendance
Order

9. (1) Whenever the attendance authority has reason to believe that the parent or guardian of a child has failed to cause the child to attend an approved school and that there is no reasonable excuse for the non-attendance of the child within the meaning of section 5; it shall hold an enquiry in the prescribed manner.

(2) If as a result of the enquiry the attendance authority is satisfied that the child is liable to attend an approved school under this Act and that there is no reasonable excuse for his non-attendance within the meaning of section 5, it shall pass an attendance order in the prescribed form directing the parent or guardian to cause the child to attend the approved school with effect from the date specified in the

order.

(3) An attendance order passed against a parent or guardian in respect of his child under this section shall, subject to the provisions of sub-section (6), remain in force for so long as this Act continues to apply to the child.

(4) If any parent or guardian against whom an attendance order has been passed in respect of his child under sub-section (2) transfers the custody of the child to another person during the period for which the attendance order is in force, such parent or guardian shall be bound to immediately inform the attendance authority in writing of such transfer with the necessary particulars.

(5) Where an attendance order has been passed against a parent or guardian in respect of his child under this section, such order shall have effect in relation to every other person to whom the custody of the child may be transferred during the period for which the attendance order is in force as it has effect in relation to the person against whom it is passed.

(6) A parent or guardian may at any time apply to the attendance authority for cancellation of an attendance order on the ground --

(i) that he is no longer the parent or guardian in respect of the child; or

(ii) that circumstances have arisen which provide a reasonable excuse for non-attendance;

and thereupon the attendance authority may, after holding an inquiry in the prescribed manner, cancel or modify the attendance order.

Employment or engagement of a child preventing from attending school not permissible

10. No person shall employ or engage a child in a manner which shall prevent the child from attending an approved school.

No fee to be levied

11. (1) No fee shall be levied in respect of any child for attending an approved school which is under the management of the Central Government, State Government or a local authority or under private management but receiving aid from government funds.

(2) Where, in respect of any child an attendance order has been passed under section 9 and the only school which he can attend is an approved school under private management falling within sub-clause (iii) of clause (a) of section 2, the school shall admit such student in consultation with the parent-teacher association and the local authority subject to the limit of forty per cent as mentioned in sub-section (3).

(3) (i) The approved schools falling within sub-clause (iii) of clause (a) of section 2 shall impart free education to forty per cent of the students admitted to any class upto and inclusive of eighth standard. The children under this category shall be chosen by the local authority concerned in consultation with the parent-teacher association from the poorer strata of society of the village or locality who are not able to afford the fee and other charges levied by the school.

(ii) In case of any dispute, the competent authority shall decide whether the school has received "substantial aid" in terms of sub-clause (iii) of clause (a) of section 2.

Obligation of recognised schools

12. Every recognised school shall impart free education to twenty per cent of the students admitted to any class upto and inclusive of eighth standard. The students in this category shall be admitted by the school in consultation with the Parent-teacher association and the concerned local authority from among the children of the poorer strata of society of the village or locality, who are not able to afford the fee and other charges levied by the school.

How to compute the age of a child

13. The age of a child for the purposes of this Act shall be computed in terms of years completed by the child on or before the first day of the academic year:

Provided that where the birthday of a child falls on a day not later than sixty days from the first day of the academic year, the birthday shall be deemed to fall on the first day of the academic year for the purpose of computing the age of the child.

Ordinarily the birth certificate and in its absence the declaration of a parent or guardian will be prima facie proof of age unless the admitting authority has reasons to disbelieve it.

In case it is disbelieved, the authority concerned should record the reasons therefor and make such enquiry as is deemed appropriate for determining the age.

Penalty for violation of attendance order

14. Every parent or guardian who fails to discharge his duty or comply with the attendance order shall be liable to fine not exceeding Rs.5/- for each day in violation as may be

imposed by the competent authority.

Penalty for
contravention
of Section 10
and cognizance
of offence

15. (1) If any person contravenes the provisions of section 10 he shall be punishable with a fine which may extend to Rs.500/- and in the case of continuing contravention, with an additional fine not exceeding Rs.50/- for each day during which such contravention continues after conviction for the first of such contraventions.

(2) No court shall take cognizance of an offence under this Act except on the complaint of the competent authority/attendance authority or any other person authorised in this behalf by the local authority by general or special order.

Courts
competent to
try offences
under the
Act

16. (1) The Courts competent to try offences under Section 15 of this Act shall be the following,-

(a) the Panchayat Adalat - by whatever name called, in respect of offences within their jurisdiction;

(b) Where there are no Panchayat Adalats - by whatever name called - and where the offence takes place outside the jurisdiction of such Panchayat-Adalats, the court of a magistrate having jurisdiction over the area.

(2) Any offence triable by the Panchayat Adalat shall be tried in the manner provided for the trial of criminal cases by the concerned Panchayat Raj Act, and any offence triable by a magistrate shall be tried in a summary way.

Certain
persons to be
public servants

17. Every person referred in clauses (c) and (f) of

section 2 and other persons authorised to lodge complaints under section 15 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Protection
of action
taken in good
faith

18. No suit, prosecution or other legal proceeding shall lie against the Government or any authority or person in respect of anything which is in good faith done or intended to be done under this Act.

Delegation
of powers

19. (1) The appropriate Government, may by notification in the Official Gazette and subject to such conditions, if any, as may be specified in the notification, authorise any officer or authority subordinate to it to exercise all or any of the powers conferred on the appropriate Government by or under this Act.

(2) A local authority may, by general or special order and with the previous approval of the appropriate Government, authorise any officer or authority subordinate to it to exercise all or any of the powers conferred on a local authority by or under this Act.

Power to
make rules

20. (1) The appropriate Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the quality and standard of education which

shall be considered essential for education and the measures to be taken for imparting such education;

(b) the particulars to be contained in any scheme including particulars relating to the provision made or to be made in any area for the establishment of special schools or of schools imparting education or for the supply of books, writing materials, uniforms or other necessary amenities, to children while attending school or for health care and nutrition.

(c) the manner in which lists of children may be prepared and the intervals at which the lists shall be kept revised and persons with whose assistance such lists shall be prepared;

(d) the functions to be performed, and the manner in which such functions may be performed, by competent authorities;

(e) the distance beyond which a child may not be compelled to attend an approved school;

(f) the circumstances which may be regarded as reasonable excuses for the non-attendance of a child within the meaning of section 5;

(g) the manner in which any inquiry under this Act may be held including the determining of age;

(h) the form in which an attendance order under this Act may be passed;

(i) the composition of parent-teacher associations to assist schools to ensure a relevant and value based education;

(j) the registers, statements and other

information to be maintained or furnished by approved schools for the purposes of this Act;

(k) any other matter which has to be, or may be prescribed under this Act.

ANNEXURE-B

ACTS PERTAINING TO COMPULSORY PRIMARY
EDUCATION/ELEMENTARY EDUCATION

STATES/UTs	NAME OF ACT
1. ANDHRA PRADESH	Andhra Pradesh Education Act 1982 (Act No.1 of 1982)
2. ASSAM	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 XVI of 1939 and Bihar Act XVII of 1946 and Bihar Act IV of 1959).
4. DELHI	The Delhi Primary Education Act 1960 Act No.39 of 1960
5. GOA	The Goa Compulsory Elementary Education Act, 1995 (Goa Act NO.4 of 1996)

6. GUJARAT Gujarat Compulsory Primary Education Act, 1961 (Gujarat Act No.XLI of 1961)
7. HARYANA Punjab Primary Education Act 1960
8. HIMACHAL PRADESH The Himachal Pradesh Compulsory Primary Education Act 1953 (Act NO.7 of 1954)
9. JAMMU & 1984 The Jammu and Kashmir Education Act (Act No.XI of 1984)
10. KARNATAKA The Karnataka Education Act 1983 (Karnataka Act No.1 of 1995) (First published in the Karnataka Gazette Extraordinary on the Twentieth day of January, 1995)
11. 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)
12. MADHYA PRADESH The Madhya Pradesh Primary Education Act 1961 (Madhya Pradesh Act No.33 of 1961)
13. MAHARASHTRA The Bombay Primary Education Act 1947 (Bombay Act No. LXI of 1947)(As modified upto 30th April, 1986)

14. ORISSA Orissa Basic Education Act 1951 No.18
Orissa Primary Education Act 1969 as
amended by the provisions of the
Orissa Education (Amendment) Act, 1974
& 1975
15. PUNJAB Punjab Primary Education Act 1960,
No.39.
16. RAJASTHAN The Rajasthan Primary Education Act 1964 (Act
No.31 of 1964)
17. TAMIL NADU The Tamil Nadu Compulsory Elementary Education
Act 1994 (Act No.33 of 1995)
18. UTTAR United Provinces Primary Education Act
PRADESH 1919* (UP Act No.7 of 1919)/United Provinces
(Dist. Boards) Primary Education Act
1926*
(UP Act No.1 of 1926)
Adapted and modified by the Adaptation
of Laws Order 1950
19. WEST BENGAL Primary Education Act 1973 (West
Bengal No.43 of 1973)

NOTE: *(as per information available till November, 1996)