

Right to Education—Implications & Implementation

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The thrust of the 93rd Amendment in the Constitution 'Education as a Basic Right' for children between 6-14 years of age, widening the scope of Article 21-A, which guarantees the right to life and covers basic necessities, aims to reduce socio-economic imbalances and give to our first generation learners a more enriched life. As per the Amendment 'the state shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.' It aims at integrated development of millions of educationally deprived children. Envisages education as a powerful instrument to expedite social change. It is a bold step towards empowerment of the poor.'

The Amendment in its present form was presented in the Lok Sabha on 28th November 2001. It was earlier discussed several times at various levels. But notes of dissent remained. Despite this the amendment was passed with 346 members for and none opposing it. Consensus on education as a fundamental right highlights its relevance in the present social context. Fast developments in Information Technology and Bio-technology is changing the patterns of living. Societies are becoming success-oriented and knowledge-based. Education is thus visualised as a 'necessity' to realise peoples aspirations.

During heated discussion in Lok Sabha, the critics pointed out following flaws:

- (i) The amendment does not cover children between 0-6 years. To make the bill comprehensive, this age group should also be included.
- (ii) Fears were expressed that enforcing authorities may misuse the amendment to penalise parents unable to send their

children to school due to socio-economic constraints.

- (iii) Making education a fundamental right may result in poor quality of education. This is a genuine fear vocalised by critics and educationists.
- (iv) Exempting private sector from responsibility to give free education to the needy children aroused anger and strong criticism.

Even large number of parents mobilised by NAFRE (National Alliance for Fundamental Right to Education) who participated in Protest March on 28th itself wanted positive changes in the amendment. They urged that parents should not be vulnerable to exploitation and demanded free education to be clearly defined. They asked for participation of private schools and minimum quality of education to be assured.

Implementation Strategies: Quality of education is the most important parameter of social development. We have enough schools with inadequate infrastructure. Trained teachers are not available. Educational institutions to be established or upgraded now should aim at quality education. Teaching has to be interactive and stimulating. Teaching children from culturally deprived families is a difficult task. Only motivated teachers can do this. Course content has to be meaningful. It has to be relevant to the needs of present times. Even at elementary stage, some inputs in computers, bio-technology and information technology must be given.

Moreover, teachers must encourage initiative, innovative thinking and independent functioning. Education with a 'vision' can equip our children to face challenges of the new Millennium, contribute to national progress, and lead a dignified life.

To make universal education a real success requires tremendous effort. To involve panchayats in creating community resources for adequate infrastructure and assist in finding qualified teachers for schools in remote areas is a realistic step. Panchayats can also help in sensitising communities to the benefits of elementary education. They can mobilise families in a big way to send their children to schools. Awareness about 'Small Family' norms and its advantages has to be created at all levels.

Benefits of 'Education as a Basic Right' publicised through powerful media can convey message to millions living below poverty line. Audio-visual inputs on television and radio will have deep impact on the minds of illiterate poor. Even the poor are now receptive to change and want their children to be educated. What they need is direction and alternate means to improve their socio-economic status.

Formation of self-help groups in rural areas, functional literacy, upgrading of skills, promoting handicrafts and other village industries, improving their marketing skills and habit to save, can assist the poor to increase their earnings. Self-help groups are already doing commendable work in changing the lives of poor women in rural areas. Formation of such groups and micro-credit facilities in areas not covered so far can offer some relief to the poor.

Further, some sort of legal sanctity in the form of registration of self-help groups can strengthen the cause of the poor and reduce uncertainty in crisis situations.

To achieve expected targets and improve retention rate, legislation to ban child labour is to

be implemented effectively. Despite ban on child labour, lakhs of children still work to assist their families to survive. Some examples are family units engaged in brassware, bangle making, bidi making, etc. Unless loopholes in legislation are removed, child labour will thrive thus obstructing the spread of education. Moreover, millions of workers in unorganised sector face uncertainties due to economic reforms and liberalisation.

Intervention by the government, involvement of corporate sector, private institutions to look to the needs of poor, can offer some hope. Incentives like free meals, books, hand bags, uniform, etc. would be helpful for retention of children in schools. The corporate sector can offer such incentives and thereby assist the poor.

Education of the girl child needs special mention. Gender discrimination still persists. They are more involved in house work. Hence not sent to school especially in poor families. Dropout rate of girls is very high. It has to be tackled realistically. Opening of more creches may be helpful. To ensure mainstreaming of gender perspective in development process and achieve gender equality, education of girls must be given special attention. Women's organisations have to be involved in making compulsory education for girls a success in due course.

To empower the poor through 'education as a basic right' is a well planned strategy. Effective implementation of this 'right' will change the social scenario, give renewed hope to millions in wait, and justice though belated. But success of 93rd Amendment will depend largely on strong 'political will' mindset of the people, and cooperation of private sector corporates and non-government organisations.

MCD school students to get insurance cover from April

Chairman of the Municipal Corporation of Delhi Standing Committee, Prithviraj Sawhney has announced that from April 1, 2002, each and every child studying in its primary schools will be insured for Rs 25,000. On the final deliberations on the MCD budget he said New India Insurance has been asked to insure every student. A provision of Rs 8 lakh has been earmarked in the budget for this. [JE, 5.1.02]

HC notice to Govt over MCD-run schools case

The Delhi High Court has issued notices to Ministry of Human Resource t Development, Delhi government, Municipal Corporation of Delhi (MCD) and Joint Council of Delhi Primary Teachers on a public interest litigation (PIL) alleged that the governments and its agencies had failed to ensure smooth studies of the MCD-run schools in the Capital. Taking up a PIL filed by social jurist through its counsel Ashok Agarwal seeking court's intervention to end the primary school teachers strike of the MCD-run schools, a division bench comprising Chief Justice SB Sinha and Justice AK Sikri directed the authorities to be present in the court by January 7, the next date of hearing. More than 22,000 primary school teachers of 1851 MCD-run schools gone to strike on December 10, last year, demanding to raise their perks and salaries. [*Pioneer*, 4.1.02]

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Visvabharati to lose Tagore rights

The human resources development ministry has decided not to extend the term despite repeated requests of university authorities and Bengali intellectuals to extend the term by a decade more, in order to avoid distortion of the poet's works and "to maintain standards and conserve the legacy of Tagore." Dr Murl Manohar Joshi, the human resources development minister, had said a week ago in Kolkata that the UNESCO and the ministry were jointly looking into whether Tagore's work could be given heritage status and the copyright be given permanently to the university. However, the ministry's copyright committee to decide against extending the copyright as it meant a further amendment of the Copyright Act. [*AA*, 28.12.01]

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Changing history can not be justified

Eminent historian, Prof. Satish Chandra, said the removal of certain passages from the history textbooks of NCERT without consulting academic opinion had reflected the Sangh Parivar's desire to impose on ' the country its own view of history. The Sangh Parivar's view of history negated the pluralistic and multi-cultural character of Indian society, Prof. Satish Chandra told press-persons. He also expressed concern over the emerging lack of tolerance for the difference of opinion in the society. Prof. Satish Chandra who is in Jaipur to attend a three-day international conference on "Rajasthan in the new millennium" being organised by the Institute of Rajasthan Studies from tomorrow also addressed a seminar on "History indoctrination and the present state" organised by the Jan Vichar Manch and Centre for Women's Studies Rajasthan University. [*Hindu*, 28.12.01]

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State-run schools have no facilities for the disabled

Where do the lakhs of physically challenged children in the Capital go to study? Nowhere, they just sit back at home as none of the schools here have the infrastructure or teachers to cater to their special needs. There is not even a single specially trained teacher for them in any of the schools being run by the Municipal Corporation Delhi. The Delhi government-run schools have only seven special education teachers in its more than a thousand schools. These startling revelations came during the recent hearing of a public interest litigation in the high court, highlighting the utter lack of teachers and infrastructure in State-run schools. [*70/*, 28.12.01]

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Compulsory education mooted in A.P.

The Government wants to recognise education as a fundamental right of the child,

pursue the objective vigorously and reach the goal of total literacy by bringing about three million kids into the fold of schools in four years.

Talking to reporters after a Janmabhoomi visit to Rapole in Ranga Reddy district on Monday, the Chief Minister, N. Chandrababu Naidu, said the programme had generated a lot of awareness among the people not only about population control but also about the need to send children to schools.

There were 2.8 million children in the 5-14 age group who still remained outside the regular school-going stream. They would be put through bridge course in the coming 4 to 5 years to achieve near total literacy.

A sound infrastructure base was created in the rural areas during the past few years with the establishment of a number of schools with adequate teachers.

The Chief Minister referred to a Supreme Court order to the Government of India in this regard, and said the State Government would amend the existing laws to enable compulsory education.

It was also proposed to introduce deterrent punishment and other disincentives to those who declined to send their children to schools.

At Rapole, Mr. Chandrababu Naidu ticked off parents who held back their children from schools on one count or the other and ordered that half a dozen boys and girls be admitted straightaway to residential school or bridge course. He made one of the erring parents to tell the audience that it was an offence not to send children to schools.

The kids were diverted from school to tend siblings or herd cattle/sheep or work in the fields to keep the family hearth burning. [Hindu, 8/1/02]

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Statute panel recommends right to education for children

The National Commission to Review the Working of the Constitution has recommended

providing free elementary education to children as a fundamental right under the Constitution.

The Commission has suggested that a new 'clause' be added to Article 30 to ensure that "every child shall have a right to free elementary education of quality until he/she completes the age of 14 years". The same Article will have another provision to ensure that "every person shall have the right to education beyond 14 years within the limits of economic capacity and development of the State". [Hindu, 8/1/02]

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'Promote value education'

"We need value education in schools because the absence of human values makes a person unhappy and nurtures the feelings of insecurity and suspicion". This was the message of Nobel laureate for peace and spiritual leader, the Dalai Lama, at a lecture on 'Education for Peace', organised by the National Council of Educational Research and Training recently. The lecture was the first in a series planned by the council's resource centre, which was set up in September 2000 to develop a framework of value education in schools.

As if sensing NCERT's concern about value education, the spiritual leader had more than ample suggestions to offer, "The *mantra* is to combine knowledge with spirituality and inculcate basic human values such as love, compassion, forgiveness, sharing and caring," the leader said. [TOI]

"There was no genuine human rights education in the country; all part of a formal design to create non-questioning, uncritical and passive mindsets. If there was genuine human rights education and a democratization of history--content and approach—we would need no social revolution in the country."

Shabana Warne Teesta Setalvad, Joint editor of *Communalism Combat*

The 'Hidden' Fees in Minority Schools

M.P.Raju

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Shalmali, a girl child was admitted in Little Flower School run by the Christian religious minority at Auran-gabad. Her father is an advocate by profession. The school authorities collected from him Rs.120 and Rs. 180 in July and November 1993 respectively in the account of School Maintenance. In July 1993 they also collected another amount of Rs.600 in the account of Computer Fees. According to the father of the child, the said collection was a crime and an offence. It was capitation fee and was in contravention of the provisions of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act 1987, as the fees prescribed by the Government under the Act could not exceed Rs.15 per month.

As the parent did not want his daughter to continue to study in the same school, presumably on account of his opposition to the amount of fees collected, he wanted the Principal to issue transfer certificate to his daughter. When that was not given he filed a writ petition in the High Court and a direction was issued by the Court for granting transfer certificate. After the child was taken away from the school her father launched prosecution by filing a criminal complaint before the local Judicial Magistrate against the Principal and six office bearers of the school alleging that they have committed the offence under Section 7 of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.

The magistrate took cognizance of the offence and ordered process to be issued against all the seven accused who are arraigned in the complaint. Those accused challenged the said order first before the Magistrate himself and later before the Sessions Court still later before the High Court. At all those levels they failed to get the order quashed. The impugned judgement

passed by a single Judge of the High Court of Bombay had upheld the order passed by the Magistrate.

When the challenge of the said judgement of the High Court was pending in the Supreme Court, the Principal of the school along with three other office bearers filed a writ petition in the Supreme Court under Article 32 of the Constitution for a declaration that the provisions of the Act, in so far as they apply to unaided educational institutions run by a religious minority, are ultra vires to Article 30 of the Constitution. Alternatively, it was prayed that the Supreme Court may declare that the provision of the Act would not apply to "unaided minority institutions". Both appeal and writ petition were heard together and the Apex Court through a Bench consisting of Mr. Justice K.T. Thomas and Mr. Justice S.N. Phukan passed the judgment on December 12, 2001, quashing the criminal complaint but without deciding the question whether the said provisions of the Act regulating the fees of an unaided educational institution are ultra vires and not applicable to minority educational institutions being against the provisions of Article 30 of the Constitution of India.

Whether the Complaint disclosed any offence?

The court first considered whether the complaint has disclosed the offence under Section 7 of the Act. For that purpose the court has assumed that the facts averred in the complaint were true. The offence said to have been committed is under Section 7 read with Section 3(1) of the Act. Section 7 reads thus: "Whoever contravenes any provisions of the Act, or the rules made thereunder, shall, on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may

extend to five thousand rupees: Provided that any person who is accused of having committed the offence under sub-section (1) of section 3 of demanding capitation fee shall, on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which may extend to five thousand rupees."

As the offence alleged is on the premise that capitation fee was demanded and collected by the accused, it is necessary to see Section 3(1) of the Act which prohibits collection of capitation fees. That sub-section reads thus:

"3. Demand or collection of capitation fee prohibited

(1) Notwithstanding anything contained in any law for the time being in force, no capitation fee shall be demanded or collected by or on behalf of any educational institution or by any person who is in charge of, or is responsible for, the management of such institution, from or in relation to, any student in consideration of his admission to, and prosecution of any course of study, or his promotion to a higher standard or class in, such institution."

The expression "capitation fee" is defined in Section 3 (a) of the Act. Capitation fee means "any amount, by whatever name called, whether in cash or kind, in excess of the prescribed or as the case may be approved, rates of fees regulated under Section 4." The word "prescribed" in that clause refers fixed as for aided schools. So far as unaided schools are concerned, the question of capitation fees would arise only if there is any "approved" rate of fees. Section 4 of the Act regulates the prescribed as well as approved rates of fees. Subsection (1) of Section 4 empowers the Government to regulate the tuition fees or any other fee that may be received or collected by any educational institution. Subsection (2) of Section 4 is important in this context and hence it is extracted below:

"(2) The fees to be regulated under sub-section (1) shall-

(a) in the case of the aided institutions, be such as may be prescribed by a university under

the relevant University Law for the time being in force in the State or, as the case may be, by State Government, and

(b) in the case of the unaided institutions, having regard to the usual expenditure excluding any expenditure on lands and buildings or on any such other items as the State Government may notify, be such as the State Government may approve:

Provided that, different fees may be approved under clause (b) in relation to different constitutions or different classes or different standards or different courses of studies or different areas.

Thus, what is meant by prescribed rates of fees can only apply to aided educational institutions. So far as unaided schools are concerned the statute conferred an option on the State Government to approve the rates of fees. Such rates need not be uniform as for different institutions. It can as well be different rates for different institutions and also for different classes (or standard) and even for different courses of studies. It could be different rates in different areas also. This means that the State Government should have approved a rate of fees in respect of different standards applicable to Little Flower School before school authorities are made liable for collecting capitation fees. Such a fixation of rates of fees is hence *sine qua non* for holding that the authorities of Little Flower School have contravened Section 3(1) of the Act.

The Supreme Court found that the complainant had not even stated anywhere in the complaint that the State Government has fixed any such rates of fees for any class or standard for any unaided school, much less for Little Flower School, Aurangabad. The court asked the advocate for the State of Maharashtra whether the State Government had fixed any such rate applicable to this particular school. The answer was in the negative. In view of that, the Court found that there was no usefulness for the complaint to proceed further, and that any further step with this complaint, in the present set up, is only an exercise in futility. The Supreme Court

quashed the criminal proceedings against the Principal and the school authorities.

Permissibility of Commercialisation of Education

However, since the legality of the statutory provisions fixing the fees limits even for the unaided minority educational institutions was challenged, the court went into that question. On behalf of the Principal and the school it was contended that no hurdle can be imposed by the Government even on the strength of any statutory provision, as for unaided minority educational institutions because any such hurdle would be violative of Article 30 (1) of the Constitution. By fixing up the rates of fees to be collected from students of such unaided minority schools the legislature cannot restrict the right to administer such schools, according to the school. Fee is one of the approved means for raising funds to meet the expenses of the educational institutions including payment of salary to the teaching and non-teaching staff of the school. Hence fixation of any ceiling regarding the amount of fees to be collected from students can amount to scuttling the right envisaged in the said Article which itself is a fundamental right. The school relied on the decisions of the Supreme Court in the cases of *The Kerala Education Bill, 1957*, (AIR 1958 SC 956), and *Ahmedabad St. Xaviers College Society & anr. vs. State of Gujarat & anr.* 1975 (1) SCR 173. The State of Maharashtra contended that it is the look out of the State including the legislature to prevent "commercialisation of education" and that prohibition of collecting capitation fee has been envisaged by the Act for the purpose of preventing such malady.

The court referred to the decision of a Constitution Bench of the Supreme Court in *Unnikrishnan, J.P. and ors. vs. State of Andhra Pradesh and ors.* {1993 (1) SCC 645}. The judgment authored by Mr. Justice Jeevan Reddy was concurred by majority of the Judges of the Bench. While dealing with unaided minority institutions, the Judge said that they cannot be compelled to charge the same fees as is charged in the Government institutions, for the simple

reason that they have to meet the cost of imparting education from their own resources and the main source can only be the fees collected from the students. Nonetheless the Judges deprecated any kind of commercialisation of education, and pointed to the reasons of collecting exorbitant amount in the name of capitation fees or even other fees. Following passage in the said judgment is worth to be noticed in this context:

"Even so, some questions do arise - whether cost-based education only means running charges or can it take in capital outlay? Who pays or who can be made to pay for establishment, expansion and improvement/diversification of private educational institutions? Can an individual or body of persons first collect amounts (by whatever name called) from the intending students and with those monies establish an institution - an activity similar to builders of apartments in the cities? How much should the students coming in later year pay? Who should work out the economics of each institution? Any solution evolved has to take into account all these variable factors. But one thing is clear: commercialisation of education cannot and should not be permitted. The Parliament as well as State Legislatures have expressed this intention in unmistakable terms. Both in the light of our tradition and from the standpoint of interest of general public, commercialisation is positively harmful; it is opposed to public policy. As we shall presently point out, this is one of the reasons for holding that imparting education cannot be trade, business or profession. The question is how to encourage private educational institutions without allowing them to commercialise the education? This is the troublesome question facing the society, the Government and the courts today."

The Supreme Court held that it is a question of fact in each case whether the limit imposed by the Government regarding approved fees would hamper the right under Article 30 (1) of the Constitution in so far as they apply to any unaided educational institution established and administered by the minorities. If the legislature

feels that the nefarious practice of misusing school administration for making huge profit by collecting exorbitant sums from parents by calling such sums either as fees or donations, should be curbed, the legislature would be within its powers to enact measures for that purpose. Similarly, if the management of an educational institution collects money from persons as quid pro quo for giving them appointments on the teaching or non-teaching staff of such institution, the legislature would be acting within the ambit of its authority by bringing measures to arrest such unethical practices. Such pursuits are detestable whether done by minorities or majorities. No minority can legitimately claim immunity to carry on such practices under the cover or Article 30(1) of the Constitution. The protection envisaged therein is not for shielding such commercialised activities intended to reap rich dividends by holding education as a facade.

The Court has held: "We do not think it necessary to make any final pronouncement on the right of the legislature in fixing an upper limit regarding the fees to be collected from the students by such institutions because the State Government has not fixed any such upper limit of approved rates of fees as for the unaided schools established and administered by the minorities in the State of Maharashtra. That question can be considered only if any such upper limit is fixed by the State in exercise of the powers under the Act."

Thus even though the Supreme Court quashed the criminal complaint and the proceedings in this case, it has expressed its views that it is against any commercialization of education even by the minority educational institutions under the cover of protection under Article 30 of the Constitution of India. [Courtesy: IC, 30/12/911