

# COVER STORY

A P R I L

## COMPULSORY PRIMARY EDUCATION IN INDIA: THE LEGAL FRAMEWORK

Laws on compulsory primary education have remained a dead letter thanks to inherent loopholes, dearth of relevant and adequate educational facilities capped by a total lack of political will to ensure that children are brought into the school system.

**Archana Mehendale** provides a historical backdrop to the notion of universal education in India and critically reviews various provisions under the state laws.

The effectiveness of law as a means to achieve 'education for all' has been limited for two reasons: first, the state has not displayed the political will to create conditions for the implementation of laws dealing with the prohibition of child labour, extending school facilities for all, improving the quality of education, etc. Secondly, the law itself is outdated and divorced from ground realities. This paper critically reviews legislations on free and compulsory education adopted by different states in India.

### BRIEF HISTORY

The modern system of education in India originated with the Charter Act of 1813

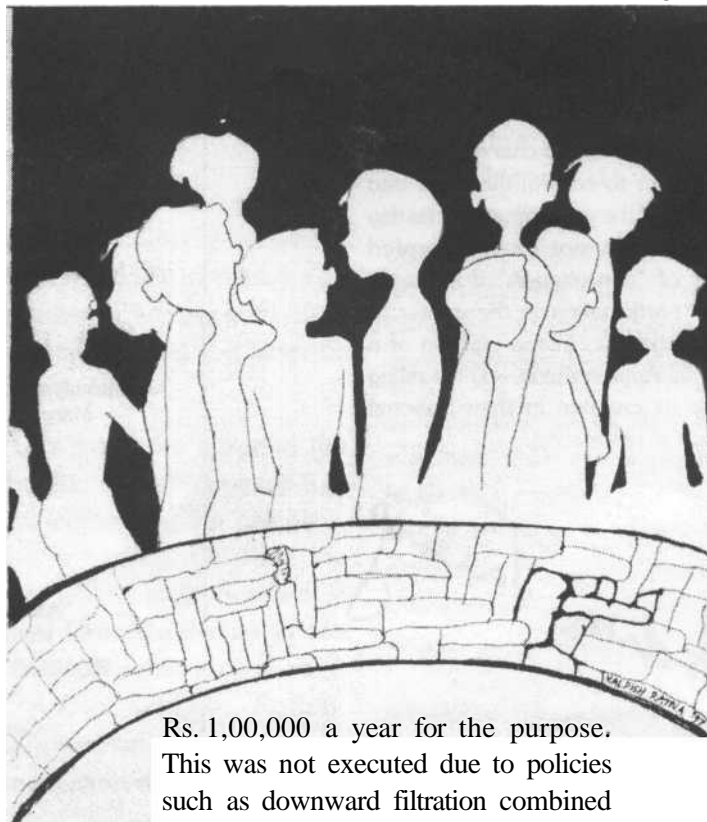
through which British Parliament directed the East India Company to accept responsibility for the education of the Indian people by spending a sum not less than

with the centralized urban character of the British administration, both factors proving a hindrance to mass education.

In England, compulsory education obtained legal sanction in 1870.

When the Indian Education Commission was appointed in 1882, the proposal for adopting a law for universal compulsory education, or at least for children employed in factories, was mooted. This was also rejected due to financial and administrative difficulties.

The first experiment of making primary education compulsory occurred in 1893 when the ruler of the



Rs. 1,00,000 a year for the purpose. This was not executed due to policies such as downward filtration combined

Age and period of compulsory schooling		
Name of the Act	Age Group	Years of Schooling
The Delhi Primary Education Act, 1960	6-14	As prescribed but not beyond 8 years
The Andhra Pradesh Primary Education Act, 1961	6-11	-
The Assam Elementary Education Act, 1962	-	As prescribed but not beyond 8 years
The Rajasthan Primary Education Act, 1964	-	5 years
The West Bengal Urban Primary Education Act, 1963	6-11	-
The Karnataka Education Act, 1983	6-14	4 years

State of Baroda, Maharaja Sayajirao Gaekwad, introduced compulsory education in the Amraeli division of his state; since the results were promising, he extended it to the entire state in 1906.

The first definite demand for the official introduction of primary education was made by Gopal Krishna Gokhale in March 1910 when he moved a resolution in the Imperial Legislative Council which was later withdrawn. Even as late as 1913, the British government was not prepared to accept the principle of compulsion, but wished to expand primary education on 'a voluntary basis' (Dayal, 1955). However, in 1918, with the efforts of Vallabhai Patel, Bombay passed a Primary Education Act permitting municipalities to introduce compulsory education in their areas. Within a few years, Acts aimed at compulsory primary education were passed in several provinces like Punjab, the United Provinces, Bihar and Orissa, Assam, Bengal and Madras.

These laws, however, were not satisfactorily implemented. The Hartog Committee report stated the following reasons for this: technical

flaws in the statutes, lack of experience and interest on the part of the local boards, unwillingness to make use of the power of prosecution under the Acts and delays in conviction of defaulters. The number of schools was insufficient; attendance officers were few and exemptions were granted freely.

## CURRENT SITUATION

In the 1960s, most states fashioned their own laws on the model of The Delhi Education Act, 1960. Today 14 states and four Union Territories have laws on compulsory primary education. As in the content of most of our laws, the colonial hangover is perceptible. The provisions of the Acts are similar to the provincial laws enacted during the British period. Some statutes such as the Karnataka Education Act, 1983 and the Tamil Nadu Elementary Education Act, 1994, repealed their earlier laws but little changed in the actual provisions of the new enactments.

Age and years of compulsory education differ from state to state. In certain statutes, only the age is specified, while in others the years of compulsory schooling alone are

specified; in yet others both are specified. The relevant provisions of some state laws are furnished in the table given alongside.

The age of compulsory schooling begins at six; pre-school education is not even touched upon. Various research studies have shown that if a child has received pre-primary education, the chance of her/him dropping out at the initial stage is substantially reduced and the likelihood of completing education is improved. On the other hand, the laws assume that children are prepared to receive formal education and come from families conversant with education patterns. However, non-enrollment in school is most severe among first generation learners who do not have access to pre-school education. In fact, the induction of children in so-called 'tradition-based skill occupations' occurs when the child is in the pre-school age group. By overlooking pre-primary education the law has ignored a crucial factor leading to stagnation in primary schools.

The age limit for compulsory education is not uniform across state legislations. Although Article 45 of the Constitution includes children upto 14 years of age, these standards are diluted in some states.

The age limit up to which education is compulsory does not coincide with the years of schooling specified. For example, in Karnataka, although the age of compulsory schooling is upto 14 years, the number of years of compulsory schooling is only four. On an average, a child enters standard I by six years of age and completes standard IV by the age of nine. Even if the years from nine to 14 were

included to account for stagnation and the late entry of children to school, this does not foresee continued compulsory education for children after they complete nine years of age.

**The age of compulsory schooling** should coincide with the age of permitted employment. Child labour below 14 years is prohibited in certain occupations and processes under The Child Labour (Prohibition and Regulation) Act, 1986. However, the years of compulsory schooling terminate years before the child is 14 years old. If compulsory education laws have to be a strategy to eradicate child labour, the compulsory years of schooling should necessarily coincide with the age at which employment is permitted, irrespective of the level of education achieved during that period.

## FREE EDUCATION

All the state Acts indicate that no fee shall be levied for any child attending an approved school under the management of the state govern-

Even at the normative level, the law is not opposed to the co-existence of the two streams, 'education for the masses' and 'education for the classes'. The Karnataka Education Act, 1983

and The Delhi Primary Education Act, 1960 state that in cases where the only school which the child can attend is an approved school under private management, the School Board or the Director for Compulsory Primary Education may take such steps to ensure that primary education which the child is to receive is free. However, it is not clear whether the state will be obligated to open more schools for such children or support the education of

such children in the privately managed school.

In addition, the concept of 'free education' implies merely non-payment of fees and does not include expenses such as transport, school

## India is a Signatory

### 1) *Universal Declaration of Human Rights, 1948*

*Article 26 - Everyone has the right to education. Education shall be free, at least in the elementary and fundamental states. Elementary education shall be compulsory. Parents have the prior right to choose the kind of education that shall be given to their children.*

### 2) *Declaration of the Rights of the Child, 1959*

*Principle 7 - The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages ... The best interests of the child shall be the guiding principle of those responsible for his education and guidance, that the responsibility lies in the first place with the parents.*

### 3) *Convention on the Right of the Child, 1989*

*(Article 28(1) - The States Parties recognise the right of the child to education and with a view to achieving this progressively and on the basis of equal opportunity, they shall in particular, a) Make primary education compulsory and available free to all; b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; c) Make higher education accessible to all on the basis of capacity by every appropriate means; d) Make educational and vocational information and guidance available and accessible to all children; e) Take measures to encourage regular attendance at schools and the reduction of drop out rates.*

### 4) *World Declaration on Education for All, 1990*

*Article 1: Every person - child, youth and adult - shall be able to benefit from the educational opportunities designed to meet their basic learning needs. These needs comprise both learning tools (literacy, oral expression, numeral proficiency and problem solving) and basic learning content (knowledge, skills, values and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions and to continue learning.*

ment or local authority, or a school board. Education is not provided free of cost at schools managed by private bodies. It is tacitly accepted that children from poor families would attend government-run schools and the children of the rich have access to elite schools in the country.

uniforms, examination fees etc. Thus 'free education' is not free in the real sense of the term and families have to incur costs on education in addition to losing out on the meagre wage that the child may have otherwise brought home.

## NOTIFICATION

In the Karnataka, Madhya Pradesh, Punjab and West Bengal statutes, it is expressly stated that the state governments may direct by notification primary education to be compulsory in specified areas. Thus, the Acts do not come into direct and immediate effect; specific areas have to await notification. Further, there is no time limit within which the Act has to be made universally applicable in a given State. In the case of Karnataka, the Act [S.I 1(3)] states that no order shall be made unless the state government is satisfied that the necessary facilities have been provided in the area for imparting primary education to all children to whom the order is intended to apply. In the case of Madhya Pradesh and Punjab, the order passed may direct primary education for children of either sex or of both sexes [S.3(1) of Punjab Primary Education Act and S.4 of the M.P. Primary Education Act]. Thus, certain Acts have given powers to the state government to exempt certain classes, communities or persons of a particular sex. This goes directly against the spirit of universalising education.

## ENFORCEMENT AUTHORITIES

The state Acts have conferred the responsibility of implementing

*In Unnikrishnan. J.P. v/s State of Andhra Pradesh AIR 1993 SC 2178), the Supreme Court held that 'the right to education, understood in the context of Article 45 and 41 means a) every child/citizen of this country has a right to free education until he completes the age of 14 years; b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the state and its development. The right to education flows directly from the right to life and is related to the dignity of the individual'.*

compulsory education on the Attendance Authorities. The Acts state that the state government may appoint as many persons as it thinks fit to be attendance authorities. It may also appoint as many persons as are considered necessary, to assist the Attendance Authorities in the discharge of their duties. This over-reliance on the bureaucracy is based on the assumption that it is people-friendly and capable of reaching out to families to ensure that each child goes to school.

The duties of the Attendance Authorities are multi-pronged. They have to prepare a list of all children of school-going age, seek information from parents through home visits, and inform the parents of their duty to enroll children in school. In case the child is not sent to school, the Attendance Authority has to hold an inquiry. If no 'reasonable excuse' for non-attendance exists, an attendance order against the parent has to be passed in a prescribed form. In the event of failure on the part of parents to send their children to school, judicial proceedings are to be initiated.

In certain state rules such as of

Karnataka, exemption from school attendance is granted when the child's assistance is specially required by the parent or guardian to help his vocation. Thus, laws themselves leave enough scope for defeating the object of universal education.

## COMPULSION

All the state Acts clearly indicate that parents are duty-bound to send the child to an approved school, unless a reasonable excuse for non-attendance exists. In case parents are unable to send their children to school, they are liable to be penalised. Compulsion on the parents without providing any facilities for schooling or supportive measures for ensuring that children complete at least the minimum level of schooling, is meaningless. There is a legitimate fear that penal provisions can be used as a weapon to cause further harassment to poor families, already struggling for survival. However, it is important to note that the attitude of a few illiterate parents themselves is sometimes likely to come in the way of their children's education but penalising them only adds insult to injury.

All the Acts state that children of school-going age should not to be employed. Any employer engaging a child who should be in school can be penalised under the state Acts. However, these provisions as also laws prohibiting child labour are seldom enforced.

The chief flaw in all the state statutes on free and compulsory education is that they do not impose a duty on the state to provide adequate and quality educational facilities so that avowed goals can be achieved. There

is no mention of the quality of education, an aspect critical in deciding whether the child goes to school or to the workplace. Absurdly enough, the absence of educational facilities can be a 'reasonable excuse' for the child's non-attendance.

Subsequent to the Supreme Court verdict in *Unnikrishnan's case* which held that free education is a fundamental right of children below the age of 14 years, the child's right to education has been reinforced. The question is, can the child or parents on behalf of the child go to court to enforce this right to education. The law does not hold the state culpable for not providing educational facilities to children. It is callously assumed that left to themselves, poor families will not send their children to school and therefore, they have to be compelled

in the interests of the larger public good.

The history of compulsory primary education worldwide shows that legislation cannot play a positive role in ensuring universal education unless the social conditions are favourable. So, the strategy of mass mobilisation, supportive services to bring children to school and social recognition of the value of education is required for effective implementation of laws. When the legal basis of primary education is voluntary, enrollment in primary schools shows a rapid increase only upto a certain point. When this point is reached, enrollment slows down and almost reaches a standstill; rapid advance beyond this point is possible only if compulsion is introduced.

Compulsion has to be accompanied

with measures to strengthen the socio-economic conditions of families. It will be ineffective if the present system of formal education continues to be enforced with all its flaws. If families have the means to meet their basic necessities, primary education itself being a fundamental necessity, the notion of compulsion in universalizing education will become redundant. The pivot of the debate needs to shift to the rights of the child vis-a-vis the duty of the state.

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*Archana Mehendale works for the Centre for Child and the Law, National Law School of India University.*