

A fundamental right
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IN a historic judgement the Supreme Court of India in July 1992, declared that education is a fundamental right and that 'the state is under a constitutional mandate to provide educational institutions at all levels for the benefit of citizens.' Immediate reactions to the judgement focused on higher professional education, as that was the scope of the original petition.'

* This article partly draws from the author's presentation made in the Convention on Education as a Fundamental Right, organized by the University of Delhi, as a part of the golden jubilee celebrations of the Central Institute of Education (18 December 1997). The views expressed here are those of the author and should not necessarily be attributed to the organization that he is associated with.

1. For example, the University Grants Commission and the Association of Indian Universities have jointly sponsored a colloquium and several private professional colleges organized debates on this issue. See among many, AIU (1992) and UGC (1992).

The uproar against the judgement declaring education, including higher professional education, as a fundamental right, later required the Supreme Court to modify its judgement (1993) so as to confine the scope to elementary education: 'The citizens of the country have a fundamental right to education... every child/citizen of this country has a right to free education until he completes the age of 14 years...'

Since Article 45 of the Constitution of India (which states that 'the State shall endeavour to provide, within a period often years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years'), and other provisions in the Constitution could not compel the government to provide for universal elementary education even after 50 years of independence, the judgements of the Supreme Court assume utmost significance.

The judgements also assume importance, as we have not been sincere to the UN/UNESCO/ILO declarations on human rights and the rights of children, which India has ratified. The judgement of the Supreme Court is the culmination of a process in which the efforts of the Union government, particularly in constituting the Muhi Ram Saikia (1997) Committee to consider the implications of making elementary education a fundamental right and the subsequent bill, have to be seen.

The Saikia Committee recommended an amendment to the Constitution making the right to free elementary education up to 14 years of age, a fundamental right. The provision of free elementary education, according to the committee, includes exemption from tuition fee, provision of free textbooks for all primary

school children and girls up to upper primary level, and provision of essential stationery to all children in primary classes. While the committee recommended that the mid-day meal programme be continued, provision of other incentives such as free school uniforms, cash incentives, scholarships and so on, could be left to the discretion of the states

subject to 'economic capacities and priorities' of the respective state governments.

The committee has recommended the provision of minimum infrastructure and teachers to all schools as envisaged under the Operation Blackboard Programme. It has obliquely referred to quality by mentioning teacher training, quality textbooks and minimum levels of learning.

However, the committee did not suggest central legislation making elementary education 'compulsory'; on the other hand, states could either amend existing laws or enact fresh legislation in this regard. But the committee did suggest what state legislation should provide for. *Inter alia*, it should include making education compulsory—governments should be required to provide accessible schooling facilities to all, and parents should treat it as their fundamental duty to send their children to schools.

The proposed amendment to the Constitution has to be seen in this background. Fortunately, as the bill for the constitutional amendment was introduced in the Rajya Sabha and not in the Lok Sabha, it did not elapse with the dissolution of the 11th Lok Sabha. But some important questions remain. Why is the amendment necessary?

TABLE 1
Status of Compulsory Education in the World

	Number of countries where compulsion exists	does not exist	no information
Africa	44	8	
North America	23	2	
South America	12	-	
Asia	34	8	
Europe	43	-	
Oceania	5	5	
Total	161	23	

Source: *World Education Report, 1995* (Paris: Unesco).

There are those who feel that the existing provisions of the Constitution (e.g., Articles 39, 41, 45, 46) take care of what is intended in the amendment. But the amendment needs to be welcomed for a variety of reasons: First, even if it does not substantially add to the existing provisions, the amendment is a reiteration by the state of its commitment to universal elementary education. Hopefully, it will induce the state and the people to make a special effort towards reaching this goal. Even symbolically, it is important in a socio-political system of our kind.

SSecond, compulsory school education has been a part and parcel of the civilized world. In as many as 161 out of 193 countries on which information is available, there is some degree of compulsion in school education (Table 1). There are few exceptions. Only 23 countries have no legislation making education compulsory, among which nine are in Africa² and nine in Asia.³

Third, the amendment for making education compulsory is also

2. Botswana, Gambia, Kenya, Mauritania, Mauritius, Sierra Leone, Sudan, Swaziland and Uganda.

3. Bahrain, Bhutan, Lebanon, Maldives, Oman, Pakistan, Qatar, Saudi Arabia and Singapore.

desirable to gradually extend the duration of the cycle to the entire schooling span, i.e., 12 years of schooling for the children of the age-group 6-18.

d) The amendment should necessarily make education compulsory. Compulsion should include (i) compulsion on the part of the government to provide accessible adequate schooling facilities of reasonable quality to all children; and (ii) obligation on the part of the parents to send their children to schools. Though exceptions to either category could be worked out, they should be at a minimum.

The Saikia Committee has estimated that an additional Rs 40,000 crore are required to make elementary education available to everyone during the next five year period. This appears to be an underestimate, as the committee took the average recurring expenditure per pupil at Rs 948 (in 1995-96) and the number of children who are outside the school system at 6.6 crore. While the recurring expenditure partially factor in additional expenditure required for improvement in quality, it does not take into account many other necessary inputs currently not provided at all, or provided only to a section of the student population.

In addition, the estimate is exclusive of requirements in terms of capital expenditure, such as additional school buildings/classrooms, furniture and equipment. An expert committee was constituted, as recommended by the Saikia Committee, to examine the financial estimates in detail. According to the expert committee, the additional financial resources required would be of the order of about Rs 95,000 crore for a 10 year period,⁸ or about Rs 9.5-10 thousand crore per year.

Compared to the present (1996-97) level of expenditure (plan and non-plan) of about Rs 32,000 crore on education, 50% of which is on elementary education,⁹ the additional requirement is indeed sizable. However, it is not beyond reach. If we have to spend on average an additional Rs 10,000 crore every year, it would only be 0.7% of GDP in 1997-98 and would come down to 0.5% by the end of the 10 year period, on the assumption that GDP would increase at a real rate of growth of 5% per annum.

In other words, the additional requirement for the 10 year period is only 0.56% of the 10 year cumulative GDP (in real prices). If GDP increases at a faster rate, i.e., higher than 5% per annum, the proportion additionally required for free compulsory education would be less. If the government sticks to its promise of allocating at least 6% of GDP for education by the end of the Ninth Five Year Plan, the task of additionally allocating Rs 10,000 crore every year for elementary education does not seem to be difficult at all. All this requires, however, a systematic plan for mobilizing additional resource.

The need for mobilization of additional resources is obvious, but the choices available are limited. The governments - union and states—have to finance elementary education out of their own budgetary resources, rather than depending on non-governmental sources such as the students, parents or the community to share the responsibility for financing elementary education. This would be in the true spirit of the constitutional directive of free compulsory education. The Saikia Committee required the central government to meet the additional require-

ments of the states. This would indeed be better and effective. The economically weak state governments should be aided in providing a basic human need — elementary education. In our federal system, however, it would be in the interests of the state governments if they came forward on their own with proposals to invest sizable additional resources on elementary education.

An important and widely prevalent way of financing elementary education is through general taxation. Central and state governments may formulate norms regarding the proportion of their respective budgets to be allocated to education as a whole and to elementary education in particular.¹⁰ The norms should be reasonably high so as to ensure adequate allocation of resources every year. The Saikia Committee recommends that the central and state governments should allocate 50% of budgetary allocations for education to elementary education and to see that they are not diverted to any other sector. A provision of 50% of resources to elementary education (and the remaining 50% to post-elementary education - secondary and higher levels) would also ensure a balanced development of the education system.

The government (central and state) may have to examine and explore the scope for reallocation of resources from unproductive sectors to elementary education. For instance, the union government has stated that resources saved from public sector disinvestment (and the resources generated through such schemes as the voluntary disclosure of income scheme) would be invested in sectors like education and other social infra-

8. *Indian Express*, 8 November 1997.

9. *Selected Educational Statistics 1996-97* (New Delhi: Ministry of Human Resource Development).

10. Countries like Brazil and Taiwan have norms of this kind.

structure. A clear weightage may be given to elementary education in this process of reallocation.

From the point of view of public finance, earmarked taxes are not highly favoured. Many argue that as they yield resources for specific and short term needs, measures like an education cess may have to be reintroduced in order to mobilize additional resources for elementary education. This was proposed by the Saikia Committee. Such a cess, if introduced, should be high enough to yield sizable resources for elementary education. The cess is not to be confined to the parents of children going to school. In fact, it should be a general cess levied as a part of another direct/indirect tax, the revenues from which are earmarked for elementary education; and it should not be related to participation of the cess payees' children in schooling.

Another suggestion worth exploring is the creation of a national elementary education fund." Donations and contributions to such a fund could be provided with liberal tax incentives, such as those given to higher/higher professional education and literacy campaigns -(saksharata samithis). Contributions may be generated on a voluntary basis through innovative approaches. It may be made obligatory on the part of all manufacturing firms (excluding household and small scale units) to necessarily make provision for elementary education of the children of their employees, either directly or through financial contributions to the fund.

At the same time, it may be reiterated that, given (a) the spirit of the Constitution and the UNUNESCO dec-

larations and conventions on the rights of children, (b) our own experience and, (c) international experience with reference to financing basic education, non-governmental contributions will be peripheral in quantum, the government-union and state-has no choice but to shoulder the total responsibility of financing elementary education in India.

In a few years we will celebrate the centenary year of Gopal Krishna Gokhale's introduction of a resolution for free compulsory education in the Imperial Assembly. Whether his dream materializes into a reality we can be proud of is for us to decide.

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11. This could be on the lines of the Socially Useful Development Fund for Compulsory Education in Yugoslavia.