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PRATHAM

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Report

1. In India, Universalisation of Elementary Education (UEE) has been recognised as a crucial input for nation building since independence. The founding fathers of our Constitution had given a prominent place to educational endeavours when they made a provision for free and compulsory education for children up to 14 years of age within a period of 10 years in the Directive principles of State Policy. However, this goal has proved elusive so far. Our inability to achieve this goal 36 years after the target date has been a cause for serious concern within the country and in international fora. Our failure to achieve UEE has resulted in a number of interconnected problems like the population explosion, prevalence of unacceptable levels of poverty, unemployment and disease; one of the largest adult illiterate populations in the world; and lack of adequate skilled manpower to achieve our economic goals.
2. According to the Department of Education, the proposal to amend the Constitution to make the right to free education, a Fundamental Right and provision of opportunities for education for children up to 14 years of age a fundamental duty of the citizens of India, is expected to provide the desired momentum to the efforts being made in the country to achieve UEE by 2000 AD. It is expected to stimulate Central and State Governments to meet the special needs of under-served and unserved populations and regions.
3. The Department of Education have stated that the thrust of the Central and State Governments in Universalisation of Elementary Education (UEE) has been on universal access, universal participation, universal retention and universal achievement. The Committee is, however, constrained to note that notwithstanding these achievements, the task of UEE is far from complete. There are several gender, regional, sectional and caste disparities in provision of elementary education. Even after 50 years of Independence, a very large segment of children of school-going age still remains out of school. It is a tragic state of affairs that only two-third of those who join school complete primary schooling and only half complete upper primary schooling. A significant proportion of children drop-out from school before completing their studies due to socio-economic and cultural factors. Lack of basic amenities, shortage and absenteeism of teachers, non-availability of teaching learning materials and a curriculum which is not fully related to local needs are equally responsible for the ever increasing drop-out problem. Not only this, studies have revealed low achievement levels in primary school even in States which are considered educationally advanced.
4. The Department in the written note stated that the Supreme Court in its judgement in Unni Krishnan J.P. Vs. Andhra Pradesh, 1993, has held that children of this country have a Fundamental Right to free education until they complete the age of 14 years. According to the Supreme Court, this right flows from Article 21 relating to protection of life and personal liberty and its contents and parameters have to be determined in the light of Article 41 which provides for right to work, to education and to public assistance in certain cases and Article 45 which provides for free and compulsory education to children up to the age of 14 years. The apex court has observed that the obligation created by these Articles of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognising and granting affiliation to educational institutions. It was further stated that the Saikia Committee recommended that the Constitution of India should be amended to make the right to free elementary education up to 14 years of age a Fundamental Right.
5. Many people and experts in education who have submitted a written memoranda to the Committee, have welcomed the proposal of the Government. They are, however, against deletion of Article 45. They felt that there could be a simple fundamental right in the proposed Article 21 (A) and Article 45 can be retained. On these doubts expressed by several educational experts as to whether it is wise to delete Article 45, the Secretary, Education stated that the Law Ministry advised that after it is converted into Fundamental Right, Article 45 becomes redundant, and they went by the advice of the Law Ministry.
6. Article 45, lays down that every child up to the age of 14 years shall receive free and compulsory education. The proposed article 21 (A) lays down that the State shall provide free and compulsory education to all citizens of the age of 6-14 years. Many people in the written memoranda have opposed the proposal of restricting the age limit for providing free compulsory education between 6 to 14 years of age. According to them Article 45 which is sought to be deleted, was framed by the founding fathers to provide education to children up to the age of 14 years without mention of lower limit and deletion of article 45 without simultaneously making a provision for the education of children under 6 years will be tantamount to taking away the rights sought to be given to this age group by the founding fathers.
7. As regards limiting the age at 14 year also, many representationists expressed the view that it should be increased from 14 to either 16 or 18. The general feeling was that at the time of framing of article 45, the formal certification of school education was at standard 7th and the founding fathers had set the limits of free and compulsory education for the child one year beyond the age at which standard 7th could be completed. However in the present scenario, a child can finish education up to standard 8 within the age of 6 - 14 years and no more. The current educational pattern have no formal certification of completion of school studies until the successful completion of standard 10th. This means that the child who cannot afford education except when it is free will have to discontinue her/his education before formal certification. This closes further avenues of learning or employment. It was, therefore, prayed that the age limit should be increased up to 16 years. On this the Secretary, Education stated that the Department, after agonising over this issue for a very long time, thought that though this issue could not be ignored, but while coming to a situation where it becomes as justiciable fundamental right, what is possibly enforceable is the age-group i.e. after 6 years when one enters into a formal system. Prior to that, it is very essential, very necessary, but

it is entirely a different exercise and a big problem as to how it can be converted into a structure, pattern under which it can be enforced as a fundamental right.

8. It was informed by the Department of Education to the Committee that the Constitutional amendments to make elementary education a Fundamental Right enforceable against the State and a Fundamental Duty of parents would need to be backed by suitable statutory measures for making elementary education compulsory. At present there is no Central Legislation, making elementary education compulsory. About having a Central Legislation, the Secretary stated that the question was debated extensively by the Committee of Ministers. The Committee of Ministers, after some discussions, came to the conclusion that in this land of enormous diversity, it would be, perhaps, undesirable to go in for a Central Legislation which may not be able to take care of the requirements and specific needs of the State. The consensus was clearly in favour of State legislation, he added.

- 9.1 Most of the experts were of the view that the term 'free' needs to be clearly defined. They felt that it should not mean a mere non-payment of fees but should also include one meal, books notebooks/Slates, medical assistance, transport where needed and above all guaranteed presence of teacher and a school. The Committee was given to understand that free education, so far, has been equated with the exemption of tuition fees which is negligible in the case of students in primary and upper primary schools run by Government and local bodies, the consensus which emerged was that there should be, at least, free tuition up to the primary stage, for both boys and girls. If certain States are in a position to provide additional incentives, they can do it. But in so far as the common understanding is concerned, the minimum is, up to the primary level, free tuition and free books, he added. As regards the question of providing free stationery, he clarified that there was no clear consensus. \

10. One of the main apprehensions voiced by the eminent educationists was that the State cannot provide a fundamental right to compulsory education. Only a right to education can be provided. The wording free and compulsory education is in consonance with the spirit of directive principles but while shifting this article to the fundamental rights, this compulsion does not go well with the concept of right. The Secretary Education clarified that the compulsion more or less, is being looked at as compulsion of the State Government to provide basic facilities which the Government must provide.

11. Clause (3) of the proposed Article 21 provides that 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. However, strong apprehensions were voiced about clause (3) of the proposed new Article 21 A. Many of the people in the written memoranda and also

educational experts in the oral evidence have expressed displeasure over keeping the private educational institutions outside the purview of the fundamental right to be given to the children. The Secretary, stated that the Supreme Court in the Unni Krishnan judgement said that wherever the State is not providing any aid to any institution, such as institution need not provide free education. The Department took into account the Supreme Court judgement in the Unni Krishnan case which laid down that no private institution, can be compelled to provide free services. Therefore, they provided in the Constitutional amendment that this concept of free education need not be extended to schools or institutions which are not aided by the Government, the Secretary added. He, however, stated that there was no intention, to exclude them from the overall responsibility to provide education.

12. The total additional financial requirement estimated to be incurred to Rs. 7,200.00 crore per annum in case the fundamental right to elementary education is operationalised. Some educationists felt that the amount may increase. But they suggested that if all irrelevant and non-priority wasteful expenditure on elementary education can be done away with, it will be possible to fulfil the commitment.

13. The eminent Educationists felt that the bill is silent on the Quality of Education. They suggested that there should be a reference to quality of education in the Bill. The Secretary, Education agreed that the quality aspect also has to be seen. Education definitely must mean quality education and anything less than that should not be called education. Therefore, the emphasis would be through strengthening the teacher education content, the Secretary stated.

14. The proposed insertion of Article 51 A, provides for a fundamental duty of every citizen who is a parent or guardian to provide opportunities for education to all children upto 14 years of age. Apprehensions have been expressed by the educationists that compulsion on parents as a result of this Article would pose major problem, particularly for those parents who ostensibly cannot afford to send their children to school. Defaulting parents would be subject to considerable harassment resulting in widespread resentment among the general population. The Secretary, Education, on being asked to comment on this, informed the Committee that the Constitutional amendment as such is not talking about penalising the parents. But there are already certain existing State legislations in different States which do have penal provision. When this issue came up before the Saikia Committee, they took the view that the emphasis should be on the motivation of parents. But, in an extreme case, where there are aberrations, a penalty should be resorted to as a last resort. But, there again, the Saikia Committee felt that instead of bringing it under the provisions of the Indian Penal Code, it should be taken to the court of society, the Secretary added.

XV. OBSERVATIONS AND RECOMMENDATIONS

15.1. The Committee welcomes the initiative of the Government to make the right to free elementary education a Fundamental Right. It is indeed a welcome step. In spite of a large number of schemes taken up for universalisation of elementary education since independence, it is unfortunate that the country is still languishing with a sizeable number of illiterates. The high drop-out rate has resulted in total disarray in the implementation of the education programmes. Reasons for high drop-out rates are varied-social, economic, quality, lack of interest and lack of attraction can be cited as a few examples. It is unfortunate that the drop-out rate in 1996-97 in class I to V was as high as 39.37%. This explains the state of affairs obtaining in the country. The Committee hopes that the amendment of the constitution to provide free education to children as a fundamental right would motivate both Governmental as well as non-Governmental sectors to take necessary measures so as to achieve universalisation of elementary education, the ultimate goal of the country. The Committee welcomes the spirit behind the amendment and welcomes it in principle.

15.2. However, the Committee feels that in the enthusiasm to provide this fundamental right, the quality of education should not be ignored. The education that is provided should be able to create attraction and interest among the children. The Committee understands that the National Policy on Education makes a reference to 'education of satisfactory quality'. Quality is the most important aspect of education which should not be ignored. The Committee strongly feels that quality aspect has been totally forgotten and children who can afford are compelled to go to private institutions for better and quality education. There is, therefore, a necessity of improving the quality. For this, there is an urgent necessity to improve teacher training. In regard to the point as to whether there should be a reference to 'Quality' in the proposed amendment, the committee feels it appropriate to leave it to the Government to either make a reference to quality aspect in the proposed amendment or not. The Committee, however, strongly recommends that all efforts should be directed towards providing quality education. Teacher training programmes are not very much oriented for effective utilisation of human resources. They do not give stress on techniques and activities that make learning joyful for students. Lack of follow up measures make them forget and not utilise whatever they had learnt during their pre-service training programmes. Without primary level teaching or research experience, particularly on rural schools, teacher educators are poorly prepared to educate. Most of the teacher educators imparting training in elementary teacher training institutions do not have primary level teaching/research experience. This affects the quality of training imparted by them. The methods of transaction of theory classes of these teacher educators are generally devoid of active teaching learning approaches. There is no specific teacher educator preparation programmes. Teacher educators also need continued assistance for their professional development. The UGC provides assistance for professional development of teacher educators in teacher training colleges and departments of education of universities. But such facilities are at present not available for elementary level teachers educators. The Committee accordingly recommends that teacher training

should be given sufficient importance and emphasis should be laid on improving the training component.

15.3. The Committee takes note of the fact that the words compulsion and enforcement as proposed in Article 21 A do not go with the theme and spirit of the Fundamental Right. A right is not given in a spirit of enforcement. The Secretary's clarification that the compulsion is being looked at as compulsion on the part of the State Government, is an acceptable proposition. But it should be made amply clear in the proposed amendment to clear all doubts.

15.4. The Committee understands it well that with elementary education becoming a justiciable Fundamental Right, the possibility of increased litigation cannot be denied. The citizens would have every right to go the courts of law if their fundamental right is violated. The Committee, therefore, urges upon the Government to find out ways and means to face this challenge.

15.5. The current education pattern has formal certification after the successful completion of standard 10th only. This, therefore, means that the children who cannot get education except when it is free, will have to discontinue their studies before formal certification, thus closing their further avenues of earning and employment. Thus, suggestions received by Committee were either to extend the age-limit up to 16 years or certification may be issued at the end of Eighth standard. The Committee, however, feels that increasing the age limit may not be a viable proposition because of enormous resources that are required and due to other compulsions of the Government. The Members discussed this at length. Many Members were of the opinion that it would not be appropriate to put such a heavy burden on the Government. However, a child should be able to receive some sort of certificate so as to easily get a gainful employment. The committee, therefore, feels that the Government may introduce formal certification at the end of standard 8th to enable the children who come out of the school after 8th to join some gainful employment or pursue some technical vocational courses with the help of the certificate. Several Members, however, felt that it may not be advisable to introduce another Public examination.

15.6. As regards follow-up legislation, there are divergent views. Some Members of the Committee felt that there should be a separate central legislation providing for the basic structure and the details could be made out by the respective states. Whereas the others did not feel the necessity of a central legislation. The Secretary, stated that the central legislation may not be able to take care of the requirements and specific needs of the states. After a thorough discussion in this matter, the Committee feels that the Centre should not leave everything to the states. The Centre could make one simple legislation with some skeletal framework which may also indicate the Central share in the financial burden. The details can be formulated by the respective states according to their requirements. The Central Government may, therefore, consider working out the necessary legislation.

15.7. Imposition of penalties on parents is one aspect which has agitated the minds of the Members. The Committee agrees that the penal provision would lead to harassment of the parents. It is true that the proposed amendment does not talk of any penalty, but many states in their existing legislations have made penal provisions. Accordingly, the new follow up legislations may also have similar provisions. After considering the pros and cons of this, the Committee strongly desires that such penal provisions on the parents should be avoided in the follow up legislation to be made. The Centre may make necessary provision to this effect either in the follow-up legislation or in the guidelines that may be issued to the States. The Committee feels that compulsion should be on State Governments to provide for essential facilities for UEE rather than on the parents, majority of whom are struggling for their survival."

15.8. Providing free education is another important aspect in the proposed Article 21 A (1). On this, the Committee takes note of the fact that the bill does not define free education. The Committee understands that there is confusion over the provision of free education. Many states are already providing free education, but the components vary from state to state. The Committee has noted that there is a general feeling that free education means exemption from payment of fees. The Members were, however, unanimous that free education should not confine just to exemption from payment of fees. The Committee desires that free education should also include various other components such as text-books, stationery, uniform, one meal and transportation wherever necessary etc. The Government may consider including all these components in the free education.

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15.9. Financial implications is another important aspect of the Bill. In the Financial memorandum, the Committee has noted that the estimated financial expenditure to implement the obligation is forty thousand crores rupees every year. The Committee is constrained to note that the allocations, made to education every year have so far been very insufficient. From such a situation to go up to Rs. 40,000 crores, in the Ninth Plan is a gigantic task. The Committees strongly recommends that the required amount should be allocated to achieve the goal. Unless this is done, a mere constitutional amendment and providing a fundamental right is not going to serve the purpose. Besides increasing the allocation, Government may also take steps to reduce unnecessary expenditure to reduce unnecessary burden on the State's exchequer.

10. The Committee feels that financial burden may be shared by both the Centre and the States. Administrative responsibility should be left to states for implementation according to their convenience.

15.11. The proposed Article 21 A (1) provides that the State shall provide free and compulsory education to all citizens of the age of six to fourteen years. The Committee understands that there is a lot of controversy over the restriction of age limit of the children between 6-14 years of age. It is true that this provision seeks to take away the rights of children in the age group 0-6 years. The Committee is, however, aware that an infant's education in the age group 0-6 is an enormously complicated one. Much of the education imparted in this age group is non-formal through the mother

and it is difficult to standardise it. It is all the more difficult to make it a justiciable Fundamental Right. The Committee is also aware that the Departments of Women & Child Development and Family Welfare are already working to take care of the requirements of the children in this age group. The controversy in this regard has arisen because Article 45 does not make any mention of age restriction whereas Article 21 A (1) seeks to restrict the age to 6-14 years. The proposal also includes deletion of article 45. As regards deletion of Article 45, the Committee deals with it in the succeeding paragraph. Coming to Article 21 A(1), the Committee takes note of the fact that it is proposed to be included in the chapter III, which provides fundamental right. Due to various practical difficulties, the provision in the present Article may be allowed, providing for free education to children of 6 to 14 years in the fundamental right. But Directive Principles should be followed wherever possible.

15.12. Now, the Committee will deal with the proposal to delete Article 45. The Committee is not convinced by the reply of the Secretary, Education, that this has been done on the advice of the Law Ministry that after it is made a fundamental right, Article 45 becomes redundant. The Directive Principles, of which Article 45 is a part, were incorporated in the Constitution with an objective of seeking to achieve the ideal of a democratic welfare state set out in the preamble. This also embodies the object of the State. They are directed towards the ideals of building a true welfare state.

15.13. Therefore, the Committee feels that by providing a fundamental right, the very philosophy of the Constitution which is embodied in the Directive Principle (Article 45) should not be removed. The purpose of a fundamental right is different from that of the Directive Principle. The Directive Principle is not merely a moral precept but is a positive mandate to the State. Article 45 provides a directive on the State to endeavour to provide free and compulsory education. No conflict should be seen between the Fundamental Right and Directive Principle. Both are complementary to each other. Similarly, proposed Article 21 A seeks to provide Fundamental right to free and compulsory education to the citizens in the age group 6-14 at present. However, Article 45 seeks to provide free education to all up to the age of 14 years without any age restriction. Therefore, Article 45, besides, giving a directive on the state to provide free education and explain the object and philosophy of the Constitution, also takes care of the children in the age group 0-6 as well. In view of the forgoing conclusions, the Committee feels that Article 45 is required to be retained in the Constitution. The Government may, therefore, reconsider its proposal to delete Article 45.

15.14. Clause (3) of the proposed Article 21 (A) prohibits the State from making any law for free and compulsory education in relation to educational institutions not maintained by the State or not receiving aid out of state funds. This issue was discussed by the Members of the Committee at length. The Members were in agreement that even though the so called private institutions do not receive any financial aid, the children studying in those institutions should not be deprived of their fundamental right. As regards the interpretation as to whether the private institutions should provide free education or not, the Committee is aware of the Supreme Court Judgement given in the Unni Kxishnan case. This judgement

provides the rule for application and interpretation. In view of the judgement, it is not necessary to make a clause in the Constitution. It would be appropriate to leave the interpretation to the courts instead of making a specific provision in black and white. Some Members, however, felt that the private institutions which do not get any financial aid, provide quality education. Therefore, it would be inappropriate to bring such institutions under the purview of free education. Those members, accordingly, felt that Clause (3) should not be deleted.

15.15. The Committee, however, after a thorough discussion feels that this provision need not be there. The Committee recommends that clause (3) of the proposed Articles 21 (A) may be deleted. Smt. Hedwig Michael Rego, M.P., a Member of the Committee gave a minute of Dissent. It is appended to the report.

15.16. The Committee recommends that the Bill be passed subject to the recommendations made in the preceding paragraphs.

Minute of Dissent

Vehemently oppose the State wanting to introduce free and compulsory education in private, unaided schools.

Clause 21 A (3) must be inserted as I do not wish the State to make laws regarding free and compulsory education in relation to educational institutions not maintained by the State or not receiving aid out of State funds.

A Committee of State Education Ministers have already considered the issue in view of the Unni Krishnan case, and found it not feasible to bring unaided private educational institutions within purview of the Bill.

Hence, I state once again that the proposal Clause "21 A (3)" must be retained in the Bill.

Yours sincerely,

(**MRS. HEDWING REGO**)