

Education: rights and wrongs

Should parents be penalised and punished for not sending their children to school if the facilities are available?

by Kathyayini Chamaraj

Now that the 93rd Constitutional Amendment Bill making education a fundamental right has been passed by both houses of parliament (except for some technical correction that is yet to be done by the Lok Sabha), all attention needs to be focussed on the legislation that is to follow, so that this fundamental right of children is indeed translated into reality.

First of all, the meaning of the term 'free and compulsory elementary education' (F&CEE) needs to be clarified. The Amendment does not do this despite the confusion that prevails around it in India. In a clear enunciation of what 'free and compulsory' means - which turns out to be a categorical refutation of the meaning generally ascribed to the term in this country - Jaap Doek, Rapporteur of the UN Committee on the Rights of the Child, has stated the following in an exclusive interview to this writer:

"India is State-Party to the Convention on the Rights of the Child (CRC) and it is therefore appropriate to use this treaty as the basis for a policy/act/constitutional provision on education. Article 28 of the CRC clearly states that a State-party to the CRC shall make primary education compulsory and available free for all. In my opinion this means the following:

"First: the State has the legal obligation (under the CRC) to make (at least) primary education (six to 14 years) available to all children; and that this education should be free (i.e. entail no financial barriers for parents). That means, not only no school fees but also no other charges, like for school books and/or uniform and transportation, particularly not for those who cannot afford to pay that."

The 93rd Constitutional Amendment, by making education a fundamental right, has already imposed an inherent fundamental duty on the State to provide schools and to make elementary education free. If the State does not provide schools despite the Amendment, one can always take the State to court. So the State's obligation as delineated by Doek is taken care of in the Amendment. The only

requirement is to ensure that 'free' is defined and put into effect in the manner delineated by Doek above when the legislation is framed.

Most states in India understand 'free' as freedom from payment of tuition fees alone, and not other fees. Free books, uniforms, etc. are also usually restricted only to students of scheduled castes and scheduled tribes. They are seen as 'incentives' and not as part and parcel of the state's obligation to provide free education to all. Notebooks and transportation to school are currently not provided by any state to children mandatorily. Hence, there is definitely a need to expand the meaning of 'free' education in this country.

Secondly, Jaap Doek says, "The compulsion is for the parents and the child, meaning that if education is available (the first obligation of the State), parents have to make sure

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that their child attends school, and for the child, that he/she has to go to school. The right to education is a universal right and it is not up to the parents to decide whether they send their child to school or not. If school is available and they don't send their child to that school they deprive their child of a fundamental right and they should bear the consequences. *But*

compulsory education cannot be used to prosecute parents for not sending their child to

school, if a school is not available or not free." (Italics mine.)

Generally, it is believed in this country that 'compulsory' means only 'compulsion' on the state 'to make available facilities for education universally' (i.e. infrastructure) but not 'compulsion' on the child or on parents. This is severely in conflict with the meaning as understood by the rest of the world and the United Nations CRC, and as envisaged by the 93rd Amendment itself in Article 51A(k). (Whether there should be such compulsion on parents who are poor is an issue we shall come to later.)

Hence Article 51A(k), which makes it a fundamental duty of parents to "provide opportunities for education to their children/wards", is being vehemently opposed. Critics are unhappy that it implies that once this becomes law,

"parents are bound to send their kids to school, failing which they can be prosecuted". (It is almost as though they are unhappy that the child has to go to school. Interestingly, many children's associations have also declared often that parents should be punished for not sending their children to school. But the selfsame activists, who claim that children's opinions should always be taken into account, have somehow chosen not to heed the opinion of the children in this matter.)

It is being argued that by including Article 51A(k), the State is trying to push the onus of providing education to children on to parents. It is feared that the state will harass and penalise parents without providing proper schools. Exaggeratedly gruesome pictures of officials "pushing parents into jails even in cases where the school has been destroyed by a cyclone, earthquake, etc." are being drawn! But nowhere in the states that do have compulsory education laws is it said that parents may be punished even where a school is not available! The laws in several states in fact say that a child may be exempted from attending a school if there is no school within the prescribed distance (Karnataka). Most states' legislation only calls for monetary penalties on parents, and does not call for their prosecution or jailing. The penalty too is mostly a pittance (Rupee one per day in Karnataka).

Jaap Doek clarifies further that "parents can be prosecuted but this is avoided as much as possible via alternative sanctions". The tendency of some to speak always of 'jailing' (and create a frightening scenario) and not of more acceptable and feasible alternative sanctions when speaking of punishments for parents seems to be another bit of disinformation. One has not heard anyone demanding that penalisation should be in the form of jailing. The point is, jailing or having alternative sanctions on parents is not the real issue behind compulsion on parents.

Explaining the rationale behind compulsion, Jaap Doek says: "If you don't have sanctions against parents, you are losing the opportunity to enforce education in cases where parents don't send their children to school although they can do it and should do it". But when parents are poor, Jaap Doek says, "the solution is to maintain sanctions because it is mandatory, and make a sub-provision for mitigating factors. You can list the mitigating factors allowing the judge or public prosecutor to prosecute or not to prosecute, to impose or not to impose a penalty. The parents can be allowed

to complain in a civil court on the charges brought against them and the judge can decide." While compelling parents, "the state should develop the criteria for eligibility upon which poor parents are to be assisted in fulfilling their duties to their child. This is also a requirement under Article 18 (2) of the UNCRC", says Doek.

The insistence on compulsion has hence less to do with jailing of parents and more with bringing them into the legal-

administrative framework to

decide through objective

criteria who, if necessary,

may claim assistance.

However, the other question

being raised is, "Our schools

being what they are, how fair is

it to compel parents and the child

to use them?" Jaap Doek says:

"The introduction of compulsory

primary education is an

obligation the state of India

accepted when ratifying the

Convention on the Rights of the

Child (CRC). It is not a convincing

argument to say that education can

only become compulsory if the quality

is perfect and progressive, because

there is no perfect world. And if we want

to wait till everything is OK, we will

never have compulsory education.

Compulsory education is a very good

tool for putting pressure on the

government (via parents/children) to

improve the quality". The question of

quality and relevance is one that the

state needs to address simultaneously

even while compelling parents. But a

discussion on these is beyond the

scope of this article.

It is also to be noted that all those opposing compulsion on parents

have so far maintained a deathly

silence on how poor children, who

are being denied their fundamental right to education by

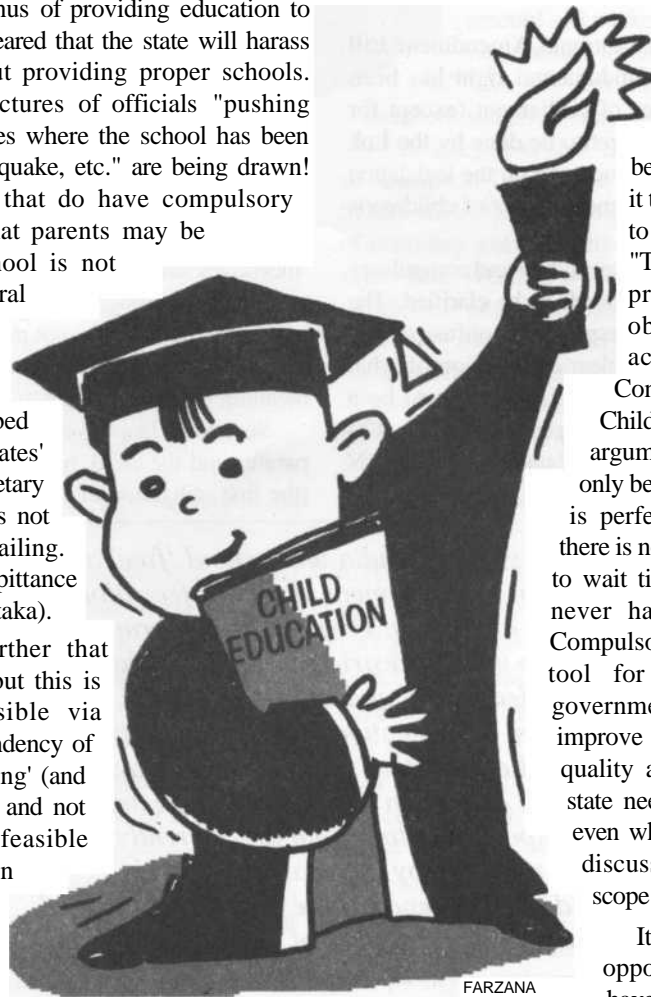
their parents, are to be educated. (It is another matter that

organisations such as MV Foundation have proved that it is

only attitude and not poverty that determines whether or not

a child is sent to school.)

There has also been resistance to the idea of payment of any monetary or other incentives to parents in need and to the idea of the State taking charge of such children and placing them in free government hostels. All these days, the simple logic that if poverty is not considered a deterrent to education, there has to be compulsion on parents, and that if poverty is accepted as a deterrent, then these families have to be assisted to enable them to send their child to school



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mandatorily, has been lost sight of. (MV Foundation too assists them indirectly when it places the children in free government hostels where their food, clothing, shelter and education are assured.) In Brazil, the government is paying parents the equivalent of a minimum wage in order to enable them to send their children to school.

If parents are not to be compelled, penalised or assisted, and the State too is not supposed to take charge of the child, how then is this child to be educated, whose best interest and fundamental right and duty it is to be educated? But now, at long last, a demand is being accepted - no doubt because it is being voiced by no less a person than the venerable Upendra Baxi, former Vice Chancellor of Delhi University - that "the State has to outline measures on how poor and other marginalised children are to be brought to school". This will necessarily mean bringing the parents into a legal-administrative process as delineated above and converging various services of several departments on the poor child's household.

But according to some, even after receiving these incentives, there should not be any compulsion on parents because "parents should have the freedom to decide whether or not they wish to make use of the school facilities provided". And if the child still remains out of school, the new demand is that the teacher should be penalised for not universalising elementary education!

With what justification can one ask that the State provide all necessary finance for school infrastructure as is being demanded - complete with one room per teacher per class, toilets, drinking water, free midday meal, uniforms, books, stationery, transport, and now incentives - and yet leave it to parents to decide whether or not they wish to make use of these facilities? Such investment, if provided, without any guarantee that the child is going to be really sent to school will cause enormous wastage of resources.

The India Country Report too, submitted to the UN Committee on the Rights of the Child, fears that compulsion is "undemocratic" and that only persuasion is democratic, overlooking the fact that compulsion on parents and the child is a necessary dimension of the compulsory education laws of even the most liberal and democratic Western nations. All these countries believe that education is a 'public good' and hence the child has to undergo education whether or not it wants to.

Gunnar Myrdal, writing in the sixties itself in "Asian Drama", has pointed to the lack of will to enforce F&CEE in India. He says, "...almost nowhere are these laws enforced, and this is true even of areas where sufficient school facilities can be provided for all children. The responsibility of parents for keeping their children in school has not become a firm part of the mores in most South Asian countries ...and no country has an administration prepared to enforce laws that could radically change these mores. ...Until discipline becomes the general pattern in government...and in the life of the people, it is doubtful whether this particular evil can be combated by means of legislation. At the same time, '...the tardiness in enforcing compulsory primary education in most areas and a minimum school-leaving age fails to inject urgency into the community'... Unfortunately, the South Asian countries - being 'soft states' - are not yet prepared to meet this problem."

One cannot help feeling that those who are against compulsion on parents are merely being politically correct (which requires that one should not find fault with parents or impose obligations on them), rather than being genuinely interested in protecting the rights of children.

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Photographer Rajesh Vora is willing to devote his time and talent for social causes. NGOs, social and voluntary organisations interested in photographically documenting their activities may approach him to workout the necessary mutually agreed arrangements.

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