

Between the Lines

Writes and Wrongs in Education Bill

By ANILSADGOPAL

/CONSIDER a poor woman who approaches a court with an appeal that her three-year-old child gets access to early childhood care and nursery education provided by the government free of cost. She contends that 80 per cent of the human brain develops by age three and pre-school education through the playway method is critical for preparing the child for elementary education. If the courts are approached today with such a petition, it is highly likely that the government will be ordered to make these facilities available to the child immediately.

The basis of such a favourable court order will be the now famous Supreme Court judgment given in 1993 in the Unni Krishnan, J P vs State of Andhra Pradesh wherein the court ruled that the Article 45 of Part IV of the Constitution must be read in conjunction with Article 21 (right to life and personal liberty) of Part III. This harmonious construction of Article 45 with Article 21 gave fundamental right to education to all children (including the disabled) 'until they complete the age of 14 years'.

However, the above plea is unlikely to be met if the proposed 93rd Constitutional amendment Bill is passed by Parliament in the winter session. The Bill proposes to give fundamental right to education only to those children who are in the six-14 age group. This implies that almost 16 crore children in the zero-six age group will lose the fundamental right to education already granted to them in 1993 by the Supreme Court. In this sense, the new Bill is also anti-girl child as most poor girls are engaged in sibling care which deprives them of school education. By bringing the Bill to Parliament, the NDA government's Constitutional obligation emerging out of the Unni Krishnan judgment is reduced.

Consider another poor woman who petitions the court to order the state government to make a functioning primary school available to her child with at least three teachers, three reasonably large rooms, essential learning materials and a school library. Such a primary school was envisaged by the National Policy on Education (as modified in 1992) under its Operation Blackboard. While agreeing to provide education to the child, the government has anything but a school in mind. It is prepared to organise a non-formal education centre, allow the child in adult literacy classes or provide a facility

under the so-called Education Guarantee Scheme wherein a para-teacher will be appointed. The para-teacher scheme, already operating in a number of states, appoints under-qualified, untrained and under-paid youth as teachers on a contract basis.

What is worse is the possibility that the government might inform the court that it will do what the NCERT has recently proposed (November 2000) i.e., teach children in the six-14 age group through correspondence. Not even a para-teacher will be appointed. Rather, a postman will do. Today, the court is likely to reject all of these government proposals for cheaper and low quality alternatives as these violate the principle of equality and justice enshrined in the Constitution.

This would have also been the stand of the courts even if the 83rd amendment Bill, pending in the Rajya Sabha since July 1997, was passed by Parliament. But not after

IN BRIEF

- In its present form, the education Bill leaves out 16 crore children
- The Bill could actually legitimise parallel streams of education for the poor
- The government is attempting to shift the onus of ensuring education for children onto parents

the 93rd amendment Bill. This is because the new Bill has cleverly re-written Article 21A, proposed originally in the 83rd amendment Bill. The previous Bill had proposed to give the fundamental right to education to all children in the six-14 age group without any qualifying condition. The 93rd amendment Bill proposes to give this right 'in such manner as the state may, by law, determine'. This addition of a qualifying phrase to the provision of fundamental right cannot be dismissed lightly, especially in view of the now established policy of instituting parallel streams of education for poor children.

A common school system was advocated by the Kothari Education Commission (1964-66) which was incorporated in the first National Policy on Education in 1968 and again in the second policy in 1986 as well as its modified version of 1992. The 1986 and 1992 policy statements were also approved by

Parliament. What the various governments have done in the nineties is to give up on the concept of the common school, without seeking any explicit approval of Parliament in effecting this policy change. The dominant policy now is to provide various poor sections of society with cheaper and parallel streams of education under all sorts of euphemisms.

The 83rd amendment also had this qualifying phrase but in the second sub-clause of Article 21A dealing with enforcement of the fundamental right. The latest Bill has cleverly deleted this second clause of Article 21A, proposed in the 83rd amendment Bill, and attached the qualifying phrase to the main sub-clause of Article 21A which deals with the very provision of 'free and compulsory education'. Thus the 93rd amendment Bill will dilute the 83rd amendment Bill by allowing the government to abdicate itself of its obligation to ensure a minimum quality of education.

What is worse is the likelihood of the courts ordering the petitioner parents to ensure educational facilities for their children out of their own resources, failing which they would invite penal action under state legislation. The courts will be so persuaded because of the addition of a sub-clause (k) as a fundamental duty of such parents in Article 51A, as proposed in the Bill. Sub-clause (k) makes it a fundamental duty of all parents not just to send their children to a school but, much worse, 'to provide opportunities for education' which will be read by the courts as the provision of educational facilities being a fundamental duty of the parents, and not a compulsion on the state. It prepares the ground for transferring in a gradually incremental manner its Constitutional obligation towards education of the children, to their parents.

The Bill is thus clearly designed to fulfil the dictates of the structural adjustment programme of the IMF and World Bank. Fortunately, many are beginning to question this Bill and seek that the government redrafts it to plug these loopholes. It can only be hoped that political parties and civil society will understand the imperative to have as reasonable a Bill as possible on a vital subject like elementary education.

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