

## **Failure of Formal Education in India – A Blessing for Child Labour?**

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**Abstract:** *In this article an attempt is made to examine the education policy of the State in relation to children below the age of fourteen in India. It is specifically related to child labor and more so, in the context of the need for protection of their rights through appropriate measures more particularly, via compulsory education. The discussion is wrapped in three sections. The first one brings in the influence of education on the growth and development of mankind, the second one devotes to the scheme of 'wholesome childhood' envisaged in various provisions of the Constitution and finally, the discussion exposes the dual speak of the State. The critical part of the analysis highlights the difference between formal and non - formal education and further unravels the sympathy of the State towards non - formal education to favour employment of children in the name of social justice but in reality to sustain child labour.*

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### **I. Introduction**

The human development profile across the globe more particularly in India is stagnating with the massive employment of children in deplorable conditions. The daunting task of survival stares at the faces of the millions of children. They are alien to the spirit of manhood as the human rights and fundamental freedoms have turned hostile. The governments concerned cannot look upon the spectacle silently as children constitute the foundation of the nations. Holistic rearing of children is inextricably linked to the destiny of the nation as that alone can turn children into its real assets. Otherwise liability will only be thriving as the deprived and disabled cannot be counted as citizens but only as subjects rated second class eligible only for head counts. If the numbers of the disabled soar, the governments are not worth the name.

Rajadharma of ancient India is worthy of recapitulation to underscore the fundamentals underlying principle of welfare. One of the basic duties of the King was to protect every individual in every respect and ensure his happiness. Kautilya in the Arthashastra laid down thus:

“In the happiness of his subjects, lies the happiness of the Ruler; in their welfare, his welfare; whatever pleases him the ruler shall not consider as good but whatever pleases his subjects, the Ruler shall consider as good”.<sup>1</sup>

In a fitting tribute to the revered childhood of the voiceless, Dr.Shankar Dayal Sharma, the then President of India, exhorted saying that “neither tradition nor economic necessity can justify child labor”.<sup>2</sup>

### **II. Values of Formal Education for Mankind**

#### **Education: The Influence behind Development**

Children have a particular identity as children and they also have a universal identity as human beings. It is in this context, in the first instance, the human rights and fundamental freedoms of mankind with focus on the right to life gains significance. The concern for mankind expressed unequivocally and transcending the globe will be real and moving and not mere rhetoric and ritual if and only if it begins with children, as, to quote the words of Jawaharlal Nehru, the human being counts much more as a child than as a grown up. This brings into focus the nexus between today's needs of children and tomorrow's potentials of mankind emphasising the theme of “child first”. The survival of children in the foremost, and their growth and development, the next significant in the logical pursuit, assume significance as the stratagem for the emancipation of mankind.

The concept of the “whole child” cogently expresses the need for all-round growth and development. Blessed with invaluable traits, they need to be allowed to bloom naturally rather to be put to stress and strain robbing of their childhood – a most precious possession which can never be replaced.<sup>3</sup> There is an impregnable need to look after the children, if a nation is to prosper and thrive in all spheres of human activities. Towards that end, in the life of children, growth and development assume significance next to survival as Mr. James Grant, the Executive Director of UNICEF puts it:

“Worldwide some 40,000 children die each day of malnutrition and childhood diseases that are easy and inexpensive to prevent. UNICEF's first priority is to save these young lives. Once survival is assured, however, children need protection to develop their physical, emotional and social capabilities”.<sup>4</sup>

It requires only elementary knowledge to suggest that there is need to place accent on the development of child which implies accession to skills, desirable social attitudes, emotional maturity by guiding him to express, understand, accept, and control his feelings and emotions, and stimulation of intellectual curiosity to help him understand the world in which he lives, by giving him opportunities to explore, investigate and experiment.<sup>5</sup> The tool available for the purpose is education and the State can make use of the same for influencing the development of minds of children whose formative years are highly impressionable.

The significance of influence of education is overwhelmingly acknowledged as a fundamental input in the all round growth and development of mankind and thereby, making way towards the social and economic growth of the country. This is amply obvious from the recognition of education in the Bill of Rights and other international instruments.<sup>6</sup> Swami Vivekananda also forcefully said: "Educate and raise the masses. A nation is born".<sup>7</sup> To Bertrand Russel, education is "a pursuit of excellence for public good".<sup>8</sup> In **J.P. Unnikrishnan vs. State of Andhra Pradesh and Others**,<sup>9</sup> the Supreme Court spoke of the immortal Poet Valluvar whose Thirukkural said of education: "Learning is excellence of wealth that none destroy; To man nought else affords reality of Joy". Again, in the same judgment, it recalled an old Sanskrit adage which states:

"That is Education which leads to liberation" – liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation from prejudices which blind the Vision of the Truth.<sup>10</sup>

Elaborating on the significance of education in the above case, the Supreme Court further observed:

"The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter".<sup>11</sup>

In essence, the objective of education is to bring out the latent faculties of a person. It is that education helps in unfolding inner activities of a person. It develops the mind, the skills and brings maturity in the thinking of human beings.<sup>12</sup> The multi-faceted development of man - development implicit in physical, moral, intellectual and cultural growth of the human person for a better quality of life - cannot become complete unless he is 'prepared' by education he receives. The emerging nexus between education and 'wholesome personhood' makes the functional relationship more obvious.

The concept of 'full personhood' indicates and emphasises the broad sweep of potentials and abilities which make a man worthy of some values and priceless. Such intrinsic worth or value is synonym for human dignity. It is that dignity to which an individual is entitled by virtue of, and in consequence of, being a human being. It is its existence which makes an individual really a 'human' specimen and hence, there is concern for relentless pursuit for its preservation and promotion. An individual without such intrinsic worth or value - **dignity** - ceases to be 'human' in the sense that he will stand reduced to a disgraceful state of animal existence. Human dignity is thus indispensable and hence inviolable. People devoid of worth and so devoid of dignity are aliens to the 'sea of humanity' and they are irrelevant to the scores of instruments, both international and national, promising 'human' touch to their existence. Such a state of affair is palpably derogatory of human values and negation of commitment assuring the citizens of dignity. The underlying assumption of the concept of human rights and civil liberties is the need to preserve liberty and human dignity as the precious heritage of mankind.<sup>13</sup> For that very reason, there is a duty cast on the State to relieve from great stress to which the citizens especially children are likely to put and towards that end, to provide them with all such things as may be necessary to place them on the pedestal of honour and dignity. Service to mankind to make them tall on the planet is really a honour to Rule of Law as it is entrenched in the philosophy that the freedom of the individual is crucial to the freedom of the society, that the good of the society cannot be achieved by ignoring or affronting the individual, that the dignity and the worth of the individual should be recognised as the foundation of civilised society.<sup>14</sup>

It is worth revealing that education makes difference in the quality of citizens it can contribute to the efficient functioning of the society and its development in all spheres. Enlightened citizenship is a balance wheel in a functional democratic polity. The obvious is indicated and vindicated when it is said that citizenship is one of the most vital determinants in the direction that a country takes, the speed at which it moves, and the magnitude and quality of what it achieves. It is the most important single human resource on which the future of society depends. It constitutes the ultimate basis for the wealth of nations. "... On the assumption of universal participation... all boys and girls have not only to be trained for a productive occupation but also educated for active and intelligent citizenship, and further for all the rest of the activities of life...", so observed by the Webbs in the early days after October Revolution.<sup>15</sup> Clearly, a country which is unable to develop the skills and

knowledge of its people and to utilize them effectively in the national economy will be unable to develop anything else”, said Frederick Haribson.<sup>16</sup>

Further, it is also the single most important factor which assists in improving practical skills which, in turn, raise productivity and production, and thereby, additional income and wealth. Income, in turn, is needed to finance the educational programmes. The relationship between education and economic development is therefore reciprocal.<sup>17</sup> As the contribution of human resources, the development of human capital is crucial for improving efficiency and thereby raising productivity which, in turn, promotes economic growth and improves the quality of life.<sup>18</sup> A wide range of human skills and a high level of specialised manpower are essential for fuelling the dynamics of development. In the absence of a relatively high level of human skills, it is not possible to utilize efficiently many complex forms of modern physical capital. It is needless to say that in a developing country like India which lacks both economic affluence and sufficiently trained labour force, the human resource development is both necessary and important not merely because of abundance of unskilled and uneducated labour but also for strengthening the capabilities of the human factor which interacts with all other factors of production at every stage and in varying degree.<sup>19</sup> Illiteracy is the major detriment to the adoption of modern techniques of production that originate from the advances in science and technology resulting in emergence of unskilled workers in abundance swarming the unorganised sector. Existence of too many workers for too little jobs with limited scope for absorption of skills drives the unskilled lot from bad to worse. A bee line of unskilled workers depresses the real wage of the labour force taking them to a new height of vulnerability in a poverty and hunger ridden society. The unreal wage failing to meet the needs necessary for recompensing the spent energy of the workers saps their potentialities forcing them to go waste much early. Exit from employment precedes exit from the earth given the long expectancy of life thus adding to the staggering pile of economically inactive population of the country. Thus the failure of education is sure to leave its indelible mark on the frail human specimens and, in turn, on the economy of the State.

India, for its part, as Ghandhiji said, admits saying: “the realisation of national goals presupposes changes in knowledge, skills, attitudes and values of the people as a whole. This is basic to every programme of social and economic betterment of India stands in need... If this “change on a grand scale” is to be achieved without violent revolution there is one instrument, and one instrument only, that is education”.<sup>20</sup> Despite such a grand knowledge about education and its impact on the individuals and the society, the State has done very little to make worth out of it. However, in an attempt to retrieve the lost ground, the former Prime Minister of India, at the Education for All Summit [EFA] held at New Delhi in December 1993, said: “It is no more a question of lighting a candle here or there, it is total electrification. The whole world has to glow with the light of literacy”.<sup>21</sup> This statement was the reflection of the sentiments of various speakers at the Summit, attended by representatives of nine countries - Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan - together accounting for more than half the world’s population and seventy percent of the world’s illiterates.<sup>22</sup> In a rare show of optimism at the Summit, the gathering invoked the vision of a future in which there would be no illiterates, gender disparities would be thing of the past and the education system would be awash with funds.<sup>23</sup> It may be recalled that the Delhi Summit was the follow-up of the World Conference for Education for All held in Jomtein [Thailand] in 1990 which launched the worldwide movement of EFA.<sup>24</sup>

### **III. Promise of Childhood under the Constitution of India**

In a unique way, India serves children and pledges to serve them better. It is unique in the sense that the nation remembers Pandit Jawaharlal Nehru, the former Prime Minister of India, every year on November 14 through glorification of children and dedication of the nation to their cause. True to its traditional spirit, India has also joined the comity of nations in successive reaffirmation of global commitment to children’s welfare and in particular, by ratifying the Convention on the Rights of the Child.<sup>25</sup>

A society where everyone may unfold his personality without inhibitions - social, cultural, economic or other - alone is truly democratic and the Indian Constitution, the founding deed of our free nation, expresses these values in its text and texture. It is a document of social revolution casting an obligation on the State to transform the *status quo ante* into a new human order in which justice - social, economic and political, will inform all institutions of national life and there will be equality of status and opportunity for all.<sup>26</sup> In this backdrop, it is all the more necessary for the State to promote social and economic welfare of the community through satisfaction of minimum needs and ensuring of distributive justice to all individuals in the society and for that purpose, the State’s intervention in every aspect and sphere of human life has become important these days and the negative attitude of being let alone stands gradually abandoned.<sup>27</sup> This marked the growing realisation of the fact that the traditional rights like those of freedom, liberty and equality could hardly be meaningfully enjoyed unless accompanied by social and economic rights or that the concept of that rights of the individual had to be tempered with the concept, “Justice - social, economic and Political”.<sup>28</sup> Nehru who is second to none in advocating for the establishment of a true democratic society cherished “that end being the raising of people... to higher levels and hence the general advancement of humanity”.<sup>29</sup> The pledge of

dedication to the service of India and her people meant for Nehru, “the ending of poverty and ignorance and disease and inequality of opportunity”.<sup>30</sup>

### **Concept of Equality**

The doctrine of equality which is the foundation of social justice is enshrined in Article 14 of the Indian Constitution.<sup>31</sup> Article 14 is a galaxy of concepts of equality before law and equal protection of law. While the former means that everyone is equal before law, that no one can claim special privileges and that all people are equally subjected to the ordinary laws of the land, the latter implies that no discrimination can be made either in the privileges conferred or in the liabilities imposed.<sup>32</sup> However, in a society of unequal basic structure, it is well-nigh impossible to make laws suitable in their application to all persons alike. So the courts have evolved and perfected the doctrine of classification to give practical content to the principle of equality, for men differ physically, intellectually and spiritually.<sup>33</sup>

The concept of equality under our Constitution is a dynamic concept sweeping every process of equalisation and protective discrimination. Indeed, the primary imperative of Article 14 is ensuring equal opportunity for all. What is fundamental, as an enduring value of our polity, is the guarantee to each of equal opportunity to unfold the full potential of his personality and given proper opportunity and environment, everyone has a prospect of rising to the peak.<sup>34</sup> Eventually, in the view of the Supreme Court, equality must not remain mere idle incantation but it must become a living reality for the large masses of people. Progressive measures to eliminate group disabilities and promote collective equality are not antagonistic to equality. The same cannot be countenanced as it would make the equality clause sterile and perpetuate existing inequalities.<sup>35</sup> This is the reason and justification for the demand of social justice that the under-privileged citizens of the country should be given a preferential treatment in order to give them an equal opportunity with more advanced sections of the community.<sup>36</sup> “It is, therefore, necessary to take into account de facto the inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality”.<sup>37</sup> The spirit underlying the concept of equality thus positively points to the obligation of the State to initiate corrective measures for public good.

### **Life with Human Dignity**

There are certain vital rights common to all men without any distinction on any ground and these rights constitute the very foundation of whole gamut of rights. The right to life and personal liberty belongs to this class. It is the most essential basic human right in a democratic society and being the basis of all the rights, the right to life provided under Article 21 of the Indian Constitution<sup>38</sup> has come to occupy the position of ‘broadening omnipresence’ in the scheme of fundamental rights under the Constitution.<sup>39</sup> It has emerged as ‘a sanctuary for human values’ and therefore, rightly termed as the ‘fundamental of fundamental rights’.<sup>40</sup> The right to life does not imply mere continuance of person’s animal existence. It takes as well within its sweep every opportunity necessary to develop one’s personality and potentiality to the highest level possible in the existing stage of our civilisation. Mere right to exist will have little value, if it is to be bereft of any opportunity to develop or to bring out what is in every man or woman. Hence, the concept of social justice as the crusader of removing all inequalities and affording equal opportunities to all, steps in for salvation of liberty as social justice without liberty leads to a dog’s life.<sup>41</sup>

Viewed in retrospect, it may be stated emphatically that it was in deference to such spirit underlying the Constitution, the Supreme Court and High Courts in India started making Article 21 a living reality for the poor and downtrodden by reading into it the concept of human dignity embracing bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.<sup>42</sup> Though the courts admitted that the magnitude and content of the components of this right would depend upon the extent of economic development of the country, they were emphatic that it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as would constitute the bare minimum expression of the human self. Hence, every act which offends against or impairs human dignity would constitute deprivation *pro tanto* of this right.<sup>43</sup>

True to the spirit of human dignity, the valiant Supreme Court stole march over the Parliament in affirming the ideals of the Constitution more faithfully and making Article 21 more flamboyant by reading right to education into it as a component of life and liberty. Provided with an opportunity in **Mohini Jain’s Case**,<sup>44</sup> a Division Bench of two judges of the apex court aggressively examined the question whether life under Article 21 having come to be given expanded meaning, takes within its sweep right to education as well. After careful consideration of Articles 38, 39(e) and (f), 41 and 45 of the Constitution, the Bench answered in the affirmative saying:

“Unless the “right to education” mentioned in Article 41 is made a reality, the fundamental rights in Part III will remain beyond the reach of the illiterate majority”.<sup>45</sup>

Explaining the rationale, the Supreme Court said:

“Right to life” is the compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens”.<sup>46</sup>

The aforesaid decision was, however, reconsidered later by a larger bench of three judges of the apex court in **J.P. Unnikrishnan vs State of Andhra Pradesh and Others**.<sup>47</sup> In an exciting and remarkable judgment, the court affirmed its earlier decision substantially except for a few changes. Reference in the decision to Article 45 of the Constitution in particular, Article 26(1) of the UDHR, the observation of John Ziman and other verdicts of the courts of law were conspicuous with an emphasis on making education as a blissful reality for the majority of the under privileged.<sup>48</sup>

In this backdrop, Justice Mohan of the Supreme Court said:

“14 years [sic.] spoken to under the Article, had long ago come to an end. We are in the 43<sup>rd</sup> year of independence. Yet, if Article 45 were to remain a pious wish and a fond hope, what good of it having regard to the importance of primary education? A time limit was prescribed under this Article. Such a time limit is found only here. If, therefore, endeavour has not been made till now to make this Article reverberate with life and articulate with meaning, we should think the court should step in. The state can be obligated to ensure a right to free education of every child up to the age of 14 years...”<sup>49</sup>

Concurring with Justice Mohan, Justice B.P. Jeevan Reddy, speaking for himself and another, added:

“That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Mohini Jain* [1992 AIR SCW 2100], the importance of education has been duly and rightly stressed.... In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail...”<sup>50</sup>

Justice Jeevan Reddy through elaborate discussion on Articles 41, 45 and 46 of the Constitution elicited the importance attached by the founding fathers to education and declared the same as part of the fortress of Article 21. He also drew comfort by supplementing his conclusion with views held across the frontiers emphasising education as a mark of success in the life of mankind.<sup>51</sup> Responding to the decisions of the apex court in **Mohini Jain** and **Unnikrishnan**, the Parliament introduced in 2002 Article 21-A through 86<sup>th</sup> Constitutional Amendment providing for free and compulsory education for all children between the age of 6 and 14.<sup>52</sup>

### **Prohibition of Employment of Children**

The Constitution of India is solicitous of children’s well-being, development and their rights. First, Article 24, a fundamental right against exploitation, prohibits employment of children below the age of 14 in hazardous employments.<sup>53</sup> This Article has been placed along with Article 23 under the caption “Right against Exploitation”. Taking note of the constitutional philosophy of childhood and its protection, the Supreme Court in **Asiad Labor Case** observed: “... This is a Constitutional prohibition which, even if not followed up by appropriate legislation, must operate *proprio vigore*...”<sup>54</sup> It is equally imperative that it is the constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental rights by the private individual who is transgressing the same, as the poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.<sup>55</sup>

Secondly, the intent of protecting and promoting childhood is abundantly made clear by Article 45. It requires the State to endeavour, within the first decade of commencement of the Constitution, to provide “free and compulsory education for all children until they complete the age of fourteen years”.<sup>56</sup> Article 45

exemplifies the notion of employment of children as being by its very nature hazardous. And so keen was the solicitude of the constitution – makers that in a rare dedication they enjoined vigorous action in this regard in the very first decade of India's Constitution.<sup>57</sup>

Thirdly, the Directive Principles embodied in Article 39(e) and (f) of the Constitution reinforce the intent when they obligate the State to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

All these provisions namely Articles 24, 45 and 39 (e) and (f) on the collective plane pay reverence to childhood and its protection which is reverberated through their unmistakable intent. Giving a vivid picture of the constitutional philosophy of childhood, **Prof. Baxi** says:

“And therefore, the Constitution is crystal clear. Reading these formulations of the Constitution together we get a complete picture of the duties of the State and society towards India's children. There is not a moment's doubt in my mind that the Constitution of India prohibits child labour in all its forms. There is some possibility of quibbling about Article 24 which speaks of children being employed in hazardous professions. It is merely a quibble because what is hazardous has been identified by the formulations of the Directive Principles of State Policy which I just mentioned. If the child is denied primary, elementary education because of the need to work, it is hazard. According to Article 45 every child is not merely expected but is under a duty to be educated. The duty belongs to the State. The duty is cast upon the child. The duty is cast upon the parents. Any negation of education is hazard. Any work that entails the negation of education is a hazard. Similarly any exposure to exploitation and material abandonment- I am using Directive Principles 39 - is a hazard...”<sup>58</sup>

Echoing a similar sentiment, the Supreme Court in a significant judgment on child labour said:

“The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years. The provision of Article 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment”.<sup>59</sup>

It is amply clear that Article 45 is not rhetoric but essentially a mission, more so after **Mohini Jain** and **Unnikrishnan** and paying obeisance to Article 45 is the sacred endeavour of the State. Scrupulous observance of the same is a healthy covenant deserving commendation. Adherence to Article 45 is the observance of Article 24 under strict vigil. Thus, provision of free and compulsory education is a two-in-one principle. The constitutional mandate was to enforce this principle immediately in respect of those who were eligible for education when the Constitution was brought in force and ‘the ten-year reprieve’ was meant to take care of the backlog of illiterates who had no such opportunity under the previous dispensation. It may also be stated that the constitution makers did not feel liking to place both Articles 24 and 45 under Part III of the Constitution carrying fundamental rights for reasons which are not strange. They hoped that the warning they administered would be good enough to keep the future governments on toes forcing them to implement the directives with all seriousness and every child, consequently, would be able to enjoy, *inter alia*, the facility of formal education without there being a right to demand. The government would then have proved to be a model State ensuring all round welfare of the people and would have proved worth of its existence. As a parallel development, Article 24 would have become *otiose*.

But, plainly speaking it might not be the intent of the constitution makers to enact Article 24 without any specific mission. Its enactment was only by way of abundant caution as they were apprehending that the future government might turn deaf ears to their call for protection of childhood and eventually, children might be denied formal education as per the constitutional directive. In the event of emergence of such contingency, Article 24 may provide a sword to fight if such of those children are put to exploitation through employment at least in hazardous occupations. Equally the same, being part of chapter on fundamental rights of the Constitution, cannot fall short of an obligation simpliciter and this is nothing but a tail end opportunity - again, part of the scheme of protected childhood - provided to the welfare State to prove its worth at least by ensuring that such eventualities do not emerge.

It is indeed paradoxical to note that such a great humanising principle dedicated to the citizens of tomorrow namely Article 24 has received inapt attention even in the volumes of legal luminaries. Also, the intervention of the judiciary especially the apex court in the cause of children involving scores of violations of their rights under the Constitution is few and far between, to say the least. Even such rare interventions are not inspiring and are merely token gestures intending to take the petitions off the court without any vibrant touch. Rather it would have done well had it left literature on the philosophy of childhood which the legal luminaries failed to provide, in order to educate the honourable detractors about the constitutional imperative of educating the children.<sup>60</sup> Support for the above view may be gathered from at least two instances.<sup>61</sup>

Two more provisions are also significantly relevant. They are Article 15[3] and Article 51[e] of the Constitution. While the former enables the State to make special provisions for children, the latter directs the State to foster respect for international treaty obligations.

#### **National Policy for Children, 1974**

Right through the ages, care for children has been one of the causes to which Indian policy has remained committed. Significantly, Government of India adopted a National Policy for Children in 1974. The policy document declares:

“The nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would score our larger purpose of reducing inequality and ensuring social justice”.<sup>62</sup>

Further, the policy reaffirming the constitutional provisions, recalling the Resolution on a National Policy on Education, adopted by the Indian Parliament and reiterating its allegiance to the U.N. Declaration of Rights of Child declares:

“it shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth”.<sup>63</sup>

With the passage of time, the government felt that legislation alone would not be sufficient to tackle the problem of child labour. The said constraint, to which the government was subjected, was notably felt subsequent to the adoption of a comprehensive legislation on child labour in 1986. Then the government reacting with promptitude to the needs of time and the needs of employed children formulated a National Policy on Child Labour and the same was announced in the Parliament in August, 1987.<sup>64</sup> The said policy displays an action plan envisaging the legislative action plan, focussing of general development programmes for benefiting child labour wherever possible and project-based plan of action in areas of high concentration of child labour engaged in wage/quasi-wage employment.<sup>65</sup>

### **IV. Deliveries in reality by the State to its Children**

#### **Profile of Basic Education in India**

It is beyond anybody’s doubt that employment at premature age deprives the children of their education. It is more obvious that the children who are kept engaged in the workshops in the pretext of poverty are forced to stay away from the mainstream of formal education since employment cannot co - exist with that of formal education. However, dauntless efforts are being made by the enthused State to help the children have a bit taste of literacy. Hence they are stretched to the ‘bye - lane’ stream of non-formal education. In reality, it is nothing but a strategy to stave off criticism levelled against the State and the employer of exploiting children through deprivation of education. As part of this strategy, the State has made non-formal education a component of pilot projects implemented in child labour - intensive areas, the third arm of the National Policy on Child Labour referred above.

In the humble reckoning of the State, non-formal education is a good substitute or equivalent - equivalent means identical and equal in value - to formal education. Ironically, such a reckoning of the State is not out of good intentions but it is only to make its failure of complying with the mandate under Article 45 of the Constitution of providing free and compulsory education less conspicuous.<sup>66</sup> Again, to make it less cynical and more equitable, the employer is made to bear the brunt of providing non-formal education as a social cost of production. Despite such good manoeuvring, the equalisation process between formal and non - formal

education could not have smooth sailing in view of academicians' genuine belief that non - formal education is not a real but poor substitute.<sup>67</sup> It is both strange and shocking to every one's surprise that the same has not made the State to feel perturbed even the least as is evident from its talk of the ambitious plan of achieving literacy through non - formal education. Such an all - out support of non - formal education by the State is nothing but indignation meted out to formal education.

The induction of non - formal education into the National Policy on Education in 1986 has marked the allowance of legitimacy to it. The policy for its part has acknowledged the failure of the constitutional directive of universal elementary schooling for all children up to the age of 14. However, as a measure of recompense, it has chosen the path of non-formal education for out-of-school children.<sup>68</sup> Non - formal education is not a virtuous choice but brilliantly rolled out for the purpose of avoiding any harm to the policy of child labour. In consoling voice, a professor well-known for his studies of the problem of drop - outs said: "The big program in Indian education now is to expand non-formal education, so children at work can get some education".<sup>69</sup> He further said:

"We don't speak of 'compulsory' education anymore. We have eliminated that word. We now speak of education for all, or universal education, not compulsion. We cannot compel education. The government has enacted laws to punish parents who do not send their children to school, but they do not work. The public does not want compulsion. We are trying to develop an interest in education, but we are against compulsion... And we want more children in the non - formal program".<sup>70</sup>

The status of legitimacy favored by the State to the less deserving has thrown to winds the constitutional scheme of formal schooling for children under the age of fourteen. Nonetheless, it is the overwhelming hope of the State that the constitutional directive could be rehabilitated with the support of deviational mode of non - formal education. Hence, it is beyond any doubt that the State is committed more to literacy rather than education.<sup>71</sup> The shift in emphasis was all the more complete with the substantial funding of part-time education commencing with the sixth and seventh five year plans.<sup>72</sup> The same stood confirmed by the speech of the then Prime Minister at the summit of nine high population countries held in New Delhi in December 1993. The perceptive change in the policy of education significantly coincides all along with the policy of the State, either declared or undeclared, on child labour. It is quite interesting to note that both have emerged as logical companions more particularly after the State has chosen to favour legitimization of child labour through Child Labour [Prohibition and Regulation] Act of 1986 in the guise of veiled threat from the portals of poverty.<sup>73</sup>

The poor show on the front of formal education up to the age of 14 is also attributable to poor quality of education the system has been providing so far. The reflective index of the poor system is worth revealing. Many who have stayed away from schools are not employed. They remain idlers.<sup>74</sup> And many have stayed away from school for being employed, not because the employment is productive but education is not worth pursuing. The dismal picture on the quality of education is quite indicative of the attention the State has bestowed in fulfilment of the constitutional directive. In contrast, the State while reaching out to the critics on this issue claims credit urging that it has done its best despite heavy odds, obviously stretching its accusing finger towards poverty. Thus poverty is made to take the blame which will not be so in reality.

### **Poverty and Mass Education**

It would be naïve to assume that the socio-economic reality of massive poverty has forced the State to stray from the constitutional imperative of compulsory education under Article 45. Rather it is only an exaggeration to hide the design of neglecting the vital social sector consciously. It is noteworthy that the causal connection between poverty and education is conspicuous by its absence. Unfortunately, the reality is the other way. Poverty has never proved to be a stumbling block in the expansion of mass education or in making primary education compulsory anywhere. Many countries of Africa with income levels even lower than India have expanded mass education with impressive increases in literacy rate. China, which had an illiteracy rate comparable to that of India forty years ago, now has half the illiteracy rate of India. South Korea and Taiwan, both poor countries with high illiteracy rates a generation ago, moved towards universal and compulsory education while their per capita incomes were close to that of India. Adult literacy rates in both countries are now over 90 per cent.<sup>75</sup>

The historical evidence de - linking mass education from the level of national and per capita income is also persuasive. In many countries, the diffusion of mass literacy preceded the industrial revolution, and governments often introduced compulsory education when levels of poverty were high.<sup>76</sup> A number of Asian countries experienced spectacular primary-school attendance rates prior to their rapid economic growth. In the short span of thirty years, between 1873 and 1903, the Japanese government increased elementary school attendance from 28 per cent to 94 per cent. By 1913, 98 per cent of the age group was attending school. South Korea with only a third of its children in primary schools in 1941 universalized primary education by the early



1970s. Its literacy rate increased from 55 per cent in 1944 to 90 per cent. In China, primary school education expanded rapidly after 1949. In 1979, China enrolled close to 147 million children in 920,000 formal schools, an enrolment ratio of 93 per cent, compared with 25 per cent in 1949. The literacy rate among the population aged 15 and above is 72.6 per cent, an increase of 52 percentage points since 1949.<sup>77</sup> An acquaintance with the smart and excellent performance of the State of Kerala with a per capita income no different than that of the rest of India helps to discard firmly any allowance of relationship between the two.<sup>78</sup> Low per capita income apart, the scale of expenditure earmarked by these countries on education also counts much to discount any guided belief that the poverty has taken its toll by forcing resource constraint. These countries whose per capita incomes are comparable to India, spent equal or higher proportions of their Gross National Product on education. But the stunning level of literacy these countries have achieved is quite illuminating, successfully keeping at bay the relevance of expenditure to the level of literacy.<sup>79</sup> With the same level of expenditure, India is struggling with a staggering school survival rate. What makes the scenario more distressing is the fact that a few countries which spent even less than the one spent by India achieved higher literacy rates than India and a higher proportion of children completing primary school.<sup>80</sup>

With the exit of the per capita income and the public expenditure as having no material bearing on the level of literacy, the shocking ground reality confronting India poignantly refers to the lopsided policies underlying the design to push down primary education to the state of indignity. The design takes root in the apportionment of public expenditure between primary education and higher education. In South Asia, according to the World Bank, less than half of the public expenditures on education between 1965 and 1980 were spent on primary education, a proportion well below that of the countries of East Asia and of East Africa. India ranked second [after Egypt] among the twenty-one largest developing countries in the proportion of its young people going on for higher education, but ranked fifteenth in overall literacy and twelfth in the percentage attending primary school. In other words, India committed less of its national resources to the development of its primary schools than most other low-income countries with higher literacy rates and higher primary-school enrolments.<sup>81</sup> The design is so entrenched that successive governments both at the centre and in the states have miserably failed to work in all earnestness for primary education. Eventually, India sets the record as the State with the largest single producer of the world's illiterates.<sup>82</sup> Indeed, it is a sad story of neglect at all levels of such an important issue involved in the national-building venture.

### **Education and Child Employment**

Paradoxically, the commitment rate of primary education places India in the position of contradistinction. Higher outlay on primary education by many countries marking the commitment for holistic development of children is the result of implicit recognition of the nexus between education and child employment. The relationship between the two is so invincible that the recognition it has received has been generous globally. Reiterating the ILO's stance on child labour, the Annual Report (1983) of the Director-General of the ILO, Mr. Francis Blanchard, singularly emphasised the "close correspondence between school attendance rates and the incidence of child labour", which underscored the ILO's 1973 minimum - age recommendation that "full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively ensured up to an age at least equal to that specified for admission to employment".<sup>83</sup> Review of the past literature would reveal that all the advanced industrial countries and others adopted a system of compulsory, universal, largely [though not exclusively] state-run education, and a ban on the employment of children under fourteen, with restrictions on employment of adolescents over fourteen. Similarly, successful examples of state intervention among contemporary developing countries are liberally available from the current literature.<sup>84</sup> Dissection of policies so adopted tallying with the varied interests of the industrially developed and contemporary developing nations fairly discloses common minimal agreement. Discernible from the consensus is the emphasis on making child labour laws prohibiting employment effective through compulsory education. In particular, ban on child labour was very much on the cards when it was realised that child labour forced wages down and displaced adult workers.<sup>85</sup> However, a faint plea of ineffective implementation of these laws was broadly focused on the ground that the number of establishments and small shops was so large. But in reply it was firmly asserted that they could be enforced if education was made compulsory legally. Explaining the relative importance of the compulsory education laws, reformers noted:

"That enforcing school laws, though by no means simple, was easier than enforcing child-labour laws and factory acts. Teachers, social workers, truant officers, school census takers - the school bureaucrats responsible for the enforcement of compulsory - education legislation - knew their community. Once a child was enrolled in the local school, truant officers could go to the child's home if the child failed to appear. Parents were also less willing or able to bribe truant officers than employers were to bribe

factory inspectors. Moreover, parents of young children in the six-to-ten or six-to-twelve age group were less likely to resist the pressures for compulsory education than the parents of older children”.<sup>86</sup>

Nations which perceive education as an instrument for social development, take pride in having achieved near total literacy and correspondingly low levels of child labour. Their pride is India’s envy as compulsory education still eludes children below the age of fourteen. Planners and policy makers in India, on one hand, hitherto ignored compulsory education in the pretext that schools are not attractive to children of poor parents and that they are economically active. Explaining the rationale, they say with vehemence that the schools do not fit the bill as they train them only for ‘service’ or ‘white collar occupations’ which is not conducive for the country already facing a mounting unemployment problem.<sup>87</sup> Pursuing the other lead, it is claimed that poor parents need the income of their children and it is a matter of social justice that the children of the poor be allowed to work.<sup>88</sup> Giving a finishing touch to the issue, it is said that school drop outs and child labour are a consequence, not a cause, of poverty and eventually, it can be inferred from the arguments, that the abolition of child labour and provision of compulsory education for all must await a significant improvement in the well-being of the poor.<sup>89</sup> The banner of poverty is once again raised by the State, as observed earlier, to avoid being caught napping for its failure to honour its constitutional obligation. This only tantamount to rewriting the history of other equally poor countries that have achieved high literacy without eliminating poverty altogether. Nor is poverty laying a trap for the poor to shun education. The proven record to the contrary makes the plea of poverty contentious with no force to carry the conviction any more in this regard. The fall out is the rebuke the State has been receiving, of late, from human rights organisations within and outside the country. In a bid to rejuvenate its image, the State has **recommitted** itself to the cause of education. The year of 2000 A.D. was set as target for withdrawal of children at least from hazardous employment in order to make way for their education, to begin with. Reposing faith on the promise, children thought that they were just a handful number of years away from the promised childhood. Unfortunately, now it is eight years behind the schedule, still the promise of education eludes them.

#### **Recommitment to Education through National Child Labour Project?**

The hidden story behind child labour points to the tacit acquiescence of the State in the perpetuation of child labour if reports carrying indictment of State for its apathy in black and white are taken any indication. The unwritten policy of child employment was continued so long as the State was able to keep it under the carpet but the lid was blown off to its utter dismay. In an apparent subjugation to the mounting pressure against employment of children from various quarters, the State ultimately realised that child labour could not be continued any more as clandestine and thrust its views on the public, both national and international, that child labour was not prevalent in India. Nonetheless, it wanted the practice to be continued unending - *status quo* to be maintained - apparently to appease the vested interests. Eventually, the decision of legitimizing child labour emerged from the policy makers for the first time,<sup>90</sup> a course no one ever thought of. It was the new twist to the problem of child labour. The much sought for cover of legitimacy to the new twist is provided by the policy framework of the ILO envisaged in the Resolution adopted by the International Labour Conference in its 65<sup>th</sup> Session [1979] at Geneva. Invoking the policy framework of the ILO, India claims that it is firmly committed to its progressive elimination over a realistic time-frame. This is nothing but a farce.<sup>91</sup> It is really disheartening to note the course of action initiated by the policy makers commenced with legitimacy to non - formal education and ended with legitimacy to employment of children. The eloquently styled ‘harsh reality’ marked the shift in the strategy. The often repeated argument of poverty perpetuating child labour and the grim reality arising out of such employment have come shot in the arm of the protagonists of child employment to demand legitimisation in order to compel the employer to provide a good working environment and pay just wages.<sup>92</sup> Their ostensible claim is to give a better deal to the child workers through a comprehensive legislation regulating their working conditions and providing formal/ non-formal education.<sup>93</sup> Seizing the opportunity to its advantage, the State put the theme of legitimacy virtually on the sell out with a fabulous claim of achieving eradication of child labour ultimately. The naïve assumption on which such claim was based is that by enforcing minimum wages, shorter working hours, leave, compensation, non-formal education etc., the employer would gradually discover that child labour is not so cheap after all and would be forced to substitute adult labour.<sup>94</sup> Such a claim can only be utopian as it is the common knowledge of everyone that how effectively labour legislations in India are enforced. They are honoured more in breach is history and history is a good teacher.<sup>95</sup>

In the meantime, two projects under the National Child Labour Programme [NCLP] were proposed in child labour intensive areas of Sivakasi and Bhadohi – Mirzapur belt. The main objects of the NCLP are to raise the income levels of the families of child workers by covering them under the programmes such as the Integrated Rural Development Programme, the National Rural Employment Programme [NREP] and the Rural Landless Employment Guarantee Programme [RLEGP], give non-formal education to child workers and their parents, provide better health care to child workers and improve the conditions of work and terms of

employment of children apart from providing one meal a day to child workers. The project in Sivakasi was inaugurated in April 1986 with an outlay of Rs.13.89 crores. It was first of its kind in the country. As part of the programme, non-formal education centres were established.<sup>96</sup>

As the programmes were on as part of the new strategy, the new law as demanded by the protagonists namely, “Child Labour [Prohibition and Regulation] Act, 1986 came to be enacted repealing, the half-a-century old, the Employment of Children, Act, 1938. Immediately, the National Policy on Child Labour [1987]<sup>97</sup> was announced in tune with the new child labour legislation and the National Child Labour Programme initiated in 1986. Later, the NCLP was modified providing for establishment of special schools to accommodate children who have hitherto been working in industries and have since stopped working, with facilities like stipend, free clothes and nutritious meals. Such special schools were later established in Sivakasi.<sup>98</sup>

### **Non-formal Education: A Poor Substitute**

The liberal policy of literacy needs to be analysed for its efficacy in the specific context of the needs of children and their protection as there is a view widely prevalent among the bureaucrats and some academicians that non-formal education is not derogatory of the constitutional directive of providing compulsory education and will also be in true compliance with the spirit behind it.<sup>99</sup> It is submitted that the said view is wholly misconceived and unpalatable legally. Besides, it lacks substance qualitatively.

Firstly, non-formal education lacks substance making it deficient in quality. As the inputs vary with the object, so also does the quality. A broad assessment of these factors with an impassionate outlook will make it substantially different from formal education. Hence, it cannot be a real substitute for formal education. Apprehensions expressed in certain quarters about the possibility of the neo-literates relapsing into illiteracy confirm the dubious value of the non-formal education.<sup>100</sup> In tune with the object of education, it must be provided in the formative years of the child. Any thrust at the subsequent stage will be without desirable consequences and that is why those who failed to gain education in the formative years, are only made functionally literate later. This is the much claimed object behind non-formal education. It is nothing but the process of recycling the waste in reality. True assimilation of the above may also be put in a different way to ponder over. Planners, policy makers, academicians and the like who are in the age of the Constitution would not have been what they are today had they not been provided with formal education but only with non-formal education. It is sad that people who have already gained significantly want others to be the losers.

Secondly, formal consideration of the issue in the legal context makes two things relevant namely, appropriate placement of children and quality and content of education. While the former is the implicit mandate of the Constitution and the latter is visualised as the underlying spirit of the all-round development of the child contemplated under Articles 45, 24 read with Article 39(e) and (f). The statement of intent of the framers of the Constitution may be quoted profitably to emphasise that formal education alone is solicited. Children below the age of 14 shall not have place anywhere except in the school is what Dr. Ambedkar sought to convey about Article 45 while replying a question in the constitutional debate.<sup>101</sup> This settles the controversy in as much as there is no question of children of that age group taking up employment and receiving education provided by the employer as a component of the work programme. For the same reason, the argument that Article 45 does not maintain any distinction between formal and non-formal education cannot also stand. Also, anything that is imparted for an hour or two after tortuous schedule of work cannot be relevant to the constitutional philosophy of childhood. Non-formal education can only make ‘second class’ citizens eligible only for head counts as the same cannot emerge as a real substitute for formal education. Second class citizens are not real assets of the nation as they cannot participate effectively in the functioning of democracy. As well, the power centres take advantage of the absence of the instrument of education to avoid accountability to those who are deprived by omissions and commissions on the part of the State. A picture of contrast is woefully present testifying to the skilful management by the State of policies on education and employment. While it always makes apparent that it is serious about eradication of poverty through empowerment of the poor, admittedly it does little to make them really productive through acquisition of knowledge and skill.

Formal education is ultimately the true and active response to the spirit of human dignity eulogized in the Constitution. So sure are we that free and compulsory education is a political, legal and economic necessity as well that we never spare a moment to question or re-examine its validity. Unfortunately, as the ‘shadow policy’<sup>102</sup> has been vigorously protecting for long the employment of children irrespective of their age and capacity, the State has not been in mood to relent. Hitherto, formal education has been kept away from children completely in order to promote their employment. Now, it is the turn of non - formal education which has been ushered in under the pretext of promoting literacy and it is a different strategy with the mission to keep the flow of children into employment uninterrupted. All along, the policy is the same - to keep wide open the doors of factories and sweat shops for employment of children and to shut the doors of schools. According to the State,

twice deprived is the best deal for its assets - deprivation of education and deprivation of their potentials through premature employment.

### **Formal Education: The Springboard for Human Dignity**

Denial of education is not without legal consequences. It is an inescapable conclusion that denial attracts violations of provisions of the Constitution. Education up to the age of 14 is a fundamental right under Article 21 of the Constitution.<sup>103</sup> Presumably, corresponding obligation is cast on the State to establish and maintain schools in adequate numbers within reasonable access to facilitate the enjoyment of the right. Administrative inconvenience or financial constraint cannot prevail over the obligation. Nor can the right be allowed to be waived. For the same reason, the State must ensure compulsory education for all children below the age of fourteen.

Denial of education as shown earlier is not denial *simpliciter*. It is denial by design. It is the considerable view of the official machinery of the State that children through employment centres as they belong to the brand of poor. The process of elimination of child labour is slowed down as a mark of commitment to social justice. Hence, they cannot forcibly be removed to schools even though the State is more obliged to honour its commitment to provide free and compulsory education. When the State is drawn into the conflict seeking to justify its action encouraging employment of children in the context of the mandate under Article 45, it always draws comfort lavishly from two things. Firstly, it strongly contends that Article 45 is not an enforceable right<sup>104</sup> and secondly, that employment of children under 14 is not prohibited except in cases enumerated under Article 24.<sup>105</sup> The projections the State make, displays its anxiety to play down the consequences. It is nothing but a mischief the State seeks to foist with the blessings of the Constitution.

With respect to the first, it may be stated that there is always double talk by the State on Directive Principles of State Policy. Evidence on this count is not lacking. An all-familiar attitude of the State is that when it wants to impose responsibility on its citizens, it does so with great zeal. For that purpose, it enacts laws and canvasses for their constitutional validity before the courts squarely invoking the Directive Principles of State Policy. When the stage, however, is set to put the State on the receiving end, it talks diametrically opposite urging the courts to persuade themselves to accept that Directive Principles are not enforceable. This stance promptly hints at the attitude of the State dragging its cold feet when responsibility is sought to be fixed. This policy of 'dualism' is contemptuous.

The allegiance of the State to Part IV of the Constitution carrying Directive Principles of State Policy as any other part is not under challenge and it cannot be so also. As a practical consequence, the State must accept both pleasure and pain. It cannot reject the latter as inconvenient obligations. Of course, citizens generally may not be entitled to claim entitlement to all those enumerated under this Part even if they are intended for the benefit of the community. But certainly they would be entitled to call upon the State to explain what steps it took to implement those directives as implicit obeisance is the mandate. This is to fix accountability on the State for its acts of commissions and omissions which is, of late, gaining momentum in the decisions of the courts of law. The crux of the principle is to give a person the right to demand that policy be directed towards securing the objective of making free and compulsory education a realisable one, even if that objective cannot be achieved immediately. This is a right of a different kind - the right to such a policy carrying with it objective of achieving free and compulsory education for all children up to the age of 14.<sup>106</sup> Making the administration judicially accountable is to incorporate in the policy corrective measures if any warranted by the letter and spirit of the Constitution.<sup>107</sup> When any challenge to the policy is adequately made, it is but fair and reasonable to require the State to explain the rationale of the policy as the exchequer of the State is put into stake in its implementation. Unfortunately, till the decision of the Supreme Court in **Unnikrishnan Case** the State has conveniently used the difference between the Part III and Part IV of the Constitution to make education a charity for children below the age of fourteen.

This uncharitable interpretation of Article 45 has made education irrelevant for majority of the child population in India as there is absence of adequate logical support i.e. infrastructure to facilitate the enjoyment of the facility of education. The 'operation denial' becomes complete with the active encouragement by the State of participation of children in productive employment in the name of helping them to fight poverty. Legal sustenance of the protective policy of employment of children below the age of 14 is sought to be drawn from the restrictive prohibition envisaged under Article 24. Reference only to Article 24 to draw solace can only be pretence as the State cannot be taken to be unaware of other provisions by which it is equally bound. Knowledge is not only power but also implies responsibility. It may be recapitulated that the provisions under Article 34(e) and (f) are theological companions of Article 45 for assuring childhood to reach ultimately full personhood with the guarantee of human dignity. On proper construction, these provisions in their plain meaning connate 'implied prohibition' of employment of children below 14 years of age in activities not expressly covered by Article 24. Article 24 carrying express prohibition of employment of children in the activities enumerated therein is only a caveat. Reading Article 24 in isolation is to cause violence to the noble cause of protecting the

vulnerable. The view of ‘implied prohibition’ is not perverse as it furthers the enjoyment of fundamental rights and freedoms and social and economic rights as well. The ‘implied prohibition’ which is the make up of Article 45 and Article 39(e) and (f) also bears relevance to the concept of right to development which is currently enjoying over whelming subscription. Such a holistic recipe under the Indian Constitution cannot be undermined without attracting legal consequences.

### V. Conclusion

The law on free and compulsory education though passed after a gap of nearly six decades since the adoption of the Constitution, its relevance even today makes it indispensable and hence, it is cherished as a gift to children. The law has opened the portals of education for all those children between the age of six and fourteen. The unprecedented wait for such a long time even for the glimpse of such a vital law may be one without parallel but such a long wait has made everyone to feel that even this simple event of law making has to be hailed as an act of commendation.

The present law would not have been on the statute book but for the hard hitting judgment of the Supreme Court in **Unnikrishnan Case** pronounced in 1993. The decision is the reflection of true intent of the makers of the Constitution in enacting Article 45 along with other provisions namely Article 39 (e) and (f). Undoubtedly, the said decision is a major breakthrough in the history of compulsory education law giving a jolt to the hostile attitude of the State. It has, adopting holistic approach towards development of children, removed the well thought out mischief engineered by the State to avoid its obligation all along. The State having no courage to overturn the judgment has fallen in line and taken a principled stand to honour its commitment through appropriate legislative measures.

After a span of nearly nine years since **Unnikrishnan**, the 86<sup>th</sup> Amendment to the Constitution introduced in 2002 has incorporated free and compulsory education for children under the chapter on fundamental rights [Art. 21 - A]. It is another seven years thereafter, the law on compulsory education is enacted in order to operationalize the fundamental right for free and compulsory education guaranteed under Article 21 - A. The Union Cabinet also recently decided to amend the Child Labour (Prohibition and Regulation) Act of 1986 prohibiting employment of children up to the age of 14. While the **Unnikrishnan** decision is thus honoured in letter after a gap of sixteen years, its honour in spirit is expected. This move of the State after the decision of the Supreme Court in **Unnikrishnan** is at total variance with the ideology it has hitherto practised. Though the ideology pursued till recently has been proved to be wrong, the policy makers have no regrets for the injustice caused to millions of children.

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- <sup>18</sup> *Ibid.* 1
- <sup>19</sup> *ibid.* 6
- <sup>20</sup> The Hindu, August 17, 1993, 19
- <sup>21</sup> See *Frontline*, 11(1), January 14, 1994, 99
- <sup>22</sup> *ibid*
- <sup>23</sup> The Hindu, December 17, 1993, 1

- <sup>24</sup> The year 1990 was observed as the United Nations International Literacy Year and in the same year, the World Conference for Education for All was held in Jomtien [Thailand]
- <sup>25</sup> The Hindu, November 14, 1994, 15
- <sup>26</sup> Dr. R.G. CHATURVEDI, JUSTICE NATURAL, SOCIAL, ECONOMIC AND POLITICAL, 22 (The Law Book Company (P) Ltd., Allahabad, 1990)
- <sup>27</sup> SUDESH KUMAR SHARMA, DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS: RELATIONSHIP AND POLCY PERSPECTIVES, 9 - 10 (Deep and Deep Publications, New Delhi, 1990). Distributive Justice is explained as justice which is not confined to a fortunate few but takes within its sweep large masses of disadvantaged and under-privileged segments of society, justice which not only penetrates and destroys inequalities of race, sex, power, position or wealth, but is also heavily weighed in favour of the weaker sections of humanity; justice which brings about equitable distribution of the social, material and political resources of the community
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- <sup>30</sup> SUDESH KUMAR SHARMA, DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS: RELATIONSHIP AND POLCY PERSPECTIVES, 9- 10, *ibid*
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- <sup>33</sup> *ibid*
- <sup>34</sup> Pradeep Jain vs. Union of India [1984] 3 SCC 654, 672
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- <sup>38</sup> Article 21 states: “No person shall be deprived of his life or personal liberty except according to procedure established by law”
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- <sup>41</sup> K. SUBHA RAO, SOCIAL JUSTICE AND LAW, Dr. SHYAMA PRASAD MOOKERJEE MEMORIAL LECTURES, CONSTITUTIONAL AND PARLIAMENTARY STUDIES), 118, *ibid*
- <sup>42</sup> Francis Carolie Mullen Vs. Delhi Administration, AIR 1981 SC 746, 753
- <sup>43</sup> *Ibid*
- <sup>44</sup> Mohini Jain vs. State of Karnataka and Others. [1992] 3 SCC 666. This case involved the challenge against charging of capitation fee in consideration of admission to educational institution as amounting to denial of citizen’s right to education and arbitrary and violation of Article 14
- <sup>45</sup> *ibid.* 667-78
- <sup>46</sup> *ibid.* 679-80
- <sup>47</sup> AIR 1993 SC 2178. The decisions in **Mohini Jain** and **UnniKrishnan** are based on Article 45 as it stood prior to the Constitution (86<sup>th</sup> Amendment) Act, 2002
- <sup>48</sup> *ibid.* 2197-2198
- <sup>49</sup> *ibid.* 2196-97
- <sup>50</sup> *ibid.* 2230
- <sup>51</sup> *ibid.* 2230-31
- <sup>52</sup> The Constitution ( 86<sup>th</sup> Amendment ) Act , 2002 which received the assent of the President of India on 12<sup>th</sup> December, 2002, became operational on 1<sup>st</sup> April, 2010
- <sup>53</sup> Article 24 reads: *Prohibition of employment of children in factories*, etc. “No child below the age of fourteen years shall be employed to work in any factory or mine, or engaged in any other hazardous employment”
- <sup>54</sup> People’s Union for Democratic Rights Vs Union of India and Others. AIR 1982 SC 1473, 1480
- <sup>55</sup> *ibid.* 1490
- <sup>56</sup> Discussion in this article is based on the provision of Article 45 as it stood prior to the Constitution (86<sup>th</sup> Amendment) Act, 2002. The said amendment has, inter alia, substituted a new provision in Article 45. The original provision envisaged under Article 45 reads as follows: **Provision for free and compulsory education for children**: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years
- <sup>57</sup> Upendra, Baxi, *Unconstitutional Politics and Child Labor*, 31 (47) *Mainstream*, 17 (1995)
- <sup>58</sup> JOSE VARGHESE, LAW RELATING TO THE EMPLOYMENT OF CHILDREN IN INDIA, 39 (Socio Legal Resource Centre, Secunderabad, 1989)
- <sup>59</sup> M.C. Mehta vs. State of Tamil Nadu and Others (1991) 1 SCC 283, 284 -85
- <sup>60</sup> The **Asiad Labor Case** is the pioneer in the arena of the abolition of bonded labor and child labor besides other major labor issues. The said decision came in 1982 and later, the Supreme Court intervened as and when PILs were filed on labor issues including child labor.

Mostly these petitions were disposed of without any detailed discussion and this has proved to be a major obstacle in the understanding of the constitutional philosophy of childhood

<sup>61</sup> The response of the Supreme Court in two petitions relating to child labour filed by this author was not encouraging. Summary disposal of the PIL **K.Chandrasegaran Vs. Union of India and Others [W.P.No.8778/83]** without any discussion on merits or alternatively without monitoring the problem on the basis of the report of the Committee [the Haribhaskar Committee constituted in consequence to this petition] came as a shot in the arm of the Government of Tamil Nadu to wrap the said report under cover. The second petition of this author also met the same fate but with a difference. Granting of three years' time in this case (**K. Chandrasegaran Vs. Tamilnadu and Others [1992] 1 SCC 222**) to the State Government of Tamil Nadu to phase out child labour in beedi factories was disappointing and contradictory as well in the light of its own observation that the employment was hazardous and eventually, the enforcement of the provisions of the law was to be accelerated. Consequently, the other direction of the apex court in the above case requiring the employer to insure the children against the risk of harmful employment would also lose significance

<sup>62</sup> Government of India, Department of Social Welfare, *National Policy for Children*, (1974)

<sup>63</sup> *ibid*

<sup>64</sup> Government of India, *National Policy on Child Labour* (1987)

<sup>65</sup> *ibid*

<sup>66</sup> See Poromesh Acharya, *Universal Elementary Education: Receding Goal*, 29 *Economic and Political Weekly*, 27 (1994)

<sup>67</sup> The Ramamurthi Committee appointed for review of the National Policy on Education, commented as under: "It is clear that the POE itself places NFE at a level lower than the formal school. A feeling widely persists, legitimately or not, that NFE is some kind of a second-grade education for the poor, while the formal school is meant for those who are relatively better off. This feeling has grown in the public mind notwithstanding the fact that formal schools themselves are in poor shape and provide, by and large, what can be fairly described as second grade education". Poromesh Acharya, *Universal Elementary Education*, 29 *Economic and Political Weekly*, 27 (1994)

<sup>68</sup> *ibid*.27.

<sup>69</sup> MYRON WEINER, THE CHILD AND THE STATE IN INDIA: CHILD LABOR AND EDUCATION POLICY IN COMPARATIVE PERSPECTIVE, 68 (Fourth Impression, Oxford University Press, Delhi, 1994)

<sup>70</sup> *ibid*. 68-69

<sup>71</sup> The aim of the literacy mission is to make people not covered by the formal school system functionally literate. A person is said to be functionally literate when he can "engage in all those activities in which literacy is required for effective functioning of his group and community". See V. Vanaja, *Where are the women? Review of Adult Education Primers*, 29 *Economic and Political Weekly*, 665 (1994). The aim of education received through formal education system is fundamentally distinct in the sense that it ensures the multi – faceted development of man

<sup>72</sup> MYRON WEINER, THE CHILD AND THE STATE IN INDIA: CHILD LABOR AND EDUCATION POLICY IN COMPARATIVE PERSPECTIVE, 12, *ibid*

<sup>73</sup> As a follow-up to the new policy on child labour, the Education Ministry concluded that in lieu of compulsion, alternative voluntary, non-formal education should be provided for working children. See MYRON WEINER, THE CHILD AND THE STATE IN INDIA: CHILD LABOR AND EDUCATION POLICY IN COMPARATIVE PERSPECTIVE, 12, *ibid*

<sup>74</sup> While the estimated out-of-school children in the age group 6-14 was as high as 24 million, the estimated figure of working children below 14 years of age was only 14.5 million comprising 5.5 per cent of the total child population. Government of India, Education For All, Department of Education, 1993, 6, in Poromesh Acharya, *Universal Elementary Education: Receding Goal*, 29 *Economic and Political Weekly*, 27 (1994)

<sup>75</sup> MYRON WEINER, THE CHILD AND THE STATE IN INDIA: CHILD LABOR AND EDUCATION POLICY IN COMPARATIVE PERSPECTIVE, 14, *ibid*

<sup>76</sup> *ibid*

<sup>77</sup> *Ibid*

<sup>78</sup> *Ibid*

<sup>79</sup> "In the mid-1980s India was spending 3.6 per cent of its gross national product on education, about average for low-income countries. Many low-income countries with higher levels of literacy spent equal or higher proportions of their GNP on education: Sri Lanka, with 86.1 per cent literacy, spent 3.5 per cent; Zaire (61.2 per cent literacy, 3.4 per cent); Tanzania (85 per cent literacy, 4.3 per cent); Kenya (59.2 per cent literacy, 6.7 per cent); and Morocco (70.7 per cent literacy, 7.9 per cent)." *Financing Education in Developing Countries: An Exploration of Policy Options* [Washington, D.C.: World Bank, 1986]. See also Aklilu Habte, George Psacharopoulos, and Stephen P. Heyneman, *Education and Development: Views from the World Bank* [Washington D.C.: World Bank, 1983]. MYRON WEINER, THE CHILD AND THE STATE IN INDIA, *Ibid.*, 159-160

<sup>80</sup> *ibid*. 160

<sup>81</sup> *ibid*.

<sup>82</sup> *ibid*. 4

<sup>83</sup> *ibid*. 88

<sup>84</sup> *ibid*. 126

<sup>85</sup> *ibid*. 118

<sup>86</sup> *ibid*. 121

<sup>87</sup> *ibid*. 5

<sup>88</sup> *ibid*. 13

<sup>89</sup> *ibid*

<sup>90</sup> The State knew that certain Indian industries could not survive without child labour. Also, the state might have felt ashamed of admitting the prevalence of child labour in spite of having a host of legislations about which it is always proud of. A position paper issued by the Ministry of Labour before the Child Labour [Prohibition And Regulation] Bill was tabled in the Rajya Sabha, said: "Under the present legal framework, no protection is available to the children who are working in the banned sectors of employment and whose conditions of work

are almost unsatisfactory. Therefore, it is necessary to make the law realistic and enforce it wholeheartedly after clearly defining the areas where employment of children is to be banned and where it is to be permitted with adequate protection and welfare measures". The report also proceed to say: "We will legally be permitting Child Labour in many areas where it is banned at present..." Nirmal Mitra, *Child Labour: Freeing The Young Slaves*, Sunday 33 (1986)

<sup>91</sup> The Hindu October 6, 1994, 3

<sup>92</sup> Anjali Mathur, 'Children and the Law: Power Without Accountability', Indian Express, February 24, 1985, 3

<sup>93</sup> Indira Menon, and Taisha Abraham, *Thoughts Too Deep For Tears*, The Hindu, July 3, 1986

<sup>94</sup> ibid

<sup>95</sup> It is observed: "Politicians and bureaucrats just draft new laws, with more clauses, more committees, more government servants. The public shrugs its shoulders and notes that this will just mean more public expenditure, more bribes and no fewer child laborers" Dharm Kumar, *What Can We Do*, Seminar, October 1988, 34

<sup>96</sup> Indian Express, April 21, 1986; The Hindu, April 21, 1986

<sup>97</sup> The Policy was announced in Parliament on August 12, 1987

<sup>98</sup> The NCLP envisages special schools and non-formal education centres. Special schools are meant for children who have hitherto been working in the match industries and have since stopped going. These schools were opened in and around Sivakasi with facilities like stipend, free clothes, nutritious meals and vocational training besides the normal literacy components. Non-formal education centres are for the benefit of the child labourers engaged in match industries in the project area. See The Hindu, December 12, 1987. The Hindu, April 5, 1988

It is submitted that the establishment of residential schools similar to special schools of NCLP was one of the suggestions made by this author in his submission to the Haribhaskar Committee appointed by the State Government to study the problem of child labour in Tamil Nadu (India). As observed earlier, this Committee was appointed in consequence to the PIL filed by this author in the Supreme Court.

<sup>99</sup> Poromesh Acharya, *Universal Elementary Education: Receding Goal*, 29 Economic and Political Weekly, 27 (1994)

<sup>100</sup> It was reported that the astonishing total literacy achieved in Kerala could not be sustained and it was alarming to learn that about half the neo-literates in that State had been slipping back into illiteracy. The same regressive pattern had also been observed in Burdwan in West Bengal, the first district outside Kerala to have achieved total literacy. Indian Express, February 4, 1993, 8

True to such apprehension the President of India in his address to the Joint Session of Parliament on 21<sup>st</sup> February, 1994 emphasised the counter strategy evolved by the State in this regard and said: "In the 32 districts which have already successfully concluded the Total Literacy Campaign, Post Literacy Campaigns have been launched to ensure that the neo-literates do not lapse into literacy". The Hindu, February 22, 1994, 6

<sup>101</sup> CONSTITUENT ASSEMBLY DEBATES, VOL.7, 540

<sup>102</sup> Shadow policy is the informal and undeclared policy of the State as opposed to the formal and declared policy

<sup>103</sup> J.P. Unnikrishnan vs. State of Andhra Pradesh and Others. AIR 1993 SC 2178

<sup>104</sup> This view is based on the provision contained in Article 37 which reads as follows: "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws". It is stated that Part referred to above is Part IV of the Constitution dealing with Directive Principles of State Policy

<sup>105</sup> Emphasis is sought to be laid on the expressions "in any factory or mine or engaged in any other hazardous employment" [Article 24]

<sup>106</sup> For a detailed discussion on this issue, See AMARTYA SEN, THE RIGHT NOT TO BE HUNGRY, in P. ALSTON, & K. TOMOSEVSKI, (eds), THE RIGHT TO FOOD 69 (Martinus Nijhoff Publishers, SIM, 1984.

<sup>107</sup> Delhi Science Forum and Others Vs. Union of India and Others [1996]2 SCC 405, 413