

Common School System

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Though Common School System was proposed long back by Kothari Commission, it was not implemented for the last four decades and so. The only reason that can be cited to this non-implementation of this proposal of the commission is the lack of political will on the part of the successive governments. With the Supreme Court raising the status of the right of the child education to a fundamental right, in 1993 in its judgement on Unnikrishnan case, there developed a momentum in different democratic circles in favor of the long cherished dream, the Common School System. Even after such an epoch making judgement of the Apex court, successive governments at the Centre could drag on the issue and could complete their tenures without bringing legislation to ensure right to education.

The State, after British rule, that came into existence in India, represented vested interests of certain privileged classes throughout. Naturally, such a state would like an education system aimed at social reproduction for maintaining class relations and the prevailing economic order instead of one which can help the transformation of the society. The political parties which all wielded power either at centre or at provincial level did only run the system in the best interests of those very classes. The successive governments did not use the relative freedom within the system to achieve the democratic goals set in the Constitution. However, people of this country still hope to achieve the long cherished goal of right to education through Common School System. So the debate and activism are alive. Supreme Court Judgement, certainly, continues to give strength to the debate and activism in favor of child's right to education and related issue of common school system.

The hope of the people for common School system is not completely baseless. The egalitarian preamble of the Constitution gives them the hope. So also, people of this country achieved many demands by waging heroic battles against different governments in the post-independence period. People of this country, workers, peasants, women, dalits, tribal, teachers and students all fought against the successive governments for protection of their rights against ongoing corporate globalization. They were successful, of course, partially. So, the pioneers of the movement for common school system can keep all the confidence in the people of this country to achieve the goal. One can be certain that the peoples' movement can achieve necessary amendments for the Constitution within the scope of its preamble and can also restrain the ongoing corporate globalization to realize the dream of Common School System. Of course, one has to think where to start and how to proceed in building such a historic nationwide movement.

The Constitution of India gives the religious and linguistic minorities the right to establish and run educational institutions of their choice (Article30) and further it confers right to profession and occupation to all citizens (Article19). These fundamental rights are extensively misused to commercialize education sector by vested interests. One cannot oppose these rights conferred on minorities and all citizens, but one shall have to find ways and means to restrict the misuse of these rights. Kothari Commission also raised this very issue and concluded that private schools which do not seek aid could not be

brought under common school system and the commission thereby expressed its inability to curb commercialization of education. The commission proposed that by strengthening government schools and aided schools which come in the ambit of common school system and by providing quality education there, the children can be attracted to common school system of public education and thereby unaided and fee collecting private schools could be rendered irrelevant gradually. After the four decades of Kothari Commission report, today, the situation is still worse. While quality of education in government schools further deteriorated, the number of private schools increased manifold. If one takes Andhra Pradesh for example, one out of three school students are in unaided private schools (47 out of 135 lakhs of students in 2007-08 academic years). The menace of unaided private schools was not nipped in the bud and now it has gained monstrous proportions. Vested interests are inter-woven with this sector of unaided private schools. It is late, but, may not be too late for establishing a common school system across the country. The misuse of the referred fundamental rights provided in Article 19 and 30 require being immediately checked for the purpose.

The Minorities' right : Protection of minorities is the first duty of any civilized nation. The Constitutional protections to that affect are to be guarded with all care. However, at the same time, one has to see that the same provisions are not misused by vested interests. Some states, say Andhra Pradesh, earlier tried to restrict the misuse of this provision is the point here. The government of Andhra Pradesh, under public pressure, made it a condition for recognition of minority institutions established under Article 30, that they should enroll minimum 85% of the students from the same minority community. This condition delivered good results for some time. Private operators could not open as many educational institutions as they wanted to make big profits by enrolling students from majority community due to this condition. However this condition was liquidated later in favor of educational tycoons. The point here is that there can be some legislation at all India level, on the above lines, to see that the article 30 is not misused. One may even suggest a suitable amendment to Article 30 of the Constitution for the purpose.

The Right to Profession and article 19: The text of article 19 of the Constitution of India reads as follows. "19. (1) All citizens shall have the right — (g) to practise any profession, or to carry on any occupation, trade or business." How Supreme Court interprets the Article 19 of the Constitution of India in 1992, [Unnikrishnan -vs- Government of Andhra Pradesh AIR 1993 SC 2178 : 1993(1) SCC 645 : 1993(1) SCR 594] deserves serious attention :

Para-64: While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g), perhaps, it is we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive.

Para-67: Teaching may be a profession but establishing an institution employing teaching and non-teaching staff, procuring the necessary infrastructure for running a school or college is not 'practising profession'. It may be anything but not practising a profession.

From the above paragraphs, one understands that the right to trade or business provided in article 19 is not applicable to education. So also, one understands that no citizen does have fundamental right to establish an educational institution employing teaching and non-teaching staff and run it under his 'right to profession'. However, Supreme Court was not ready to give a precise meaning of the phrase 'carrying on an occupation' with reference to the said article. At the end, while vehemently opposing trade and business in the field of education, the SC allowed individuals and associations to establish educational institutions and to run them and even to collect fee from the students. The court was of the opinion that recognizing and affiliating public authorities have a right and duty to see that the admissions of students are in conformity with right to equality and other provisions of the Constitution and do have the right and duty to regulate fee structure and quality of institution in an appropriate manner. This judgment was weak because it allowed individuals and associations to establish educational institutions on non charitable basis even. Such an allowance, though not allowed as fundamental right as the petitioners appealed, ultimately leads to the commercialization of education. That is what all happened.

Coming again to the question of 'right to profession', as explained by 'Unnikrishnan', it does not give a fundamental right to citizens to establish an educational institution and employ teaching and non-teaching staff and earn money or otherwise. Yes, article 19 does not give a fundamental right to citizens to establish an educational institution, but every citizen does have a fundamental right to practice a profession of his choice. And, also it is to be noted that the right to practice a profession invariably includes earning a livelihood out of that. If a qualified person practices teaching profession and charges from the beneficiaries some fees against his service, he cannot be penalized for that. So, in conjunction, it can be said that a citizen has a fundamental right to practice teaching profession which may include collecting fee from his students but do not have fundamental right to establish and run an educational institution by procuring infrastructure and by employing others. It means self employment in a profession including teaching profession is a fundamental right. Further, if a few qualified teachers form into an association, run a school, teach lessons there to the students and collect fees from them, how can they even be penalized? They can invoke right to profession and right to association, both provided in article 19, in their favor. From the above discussion it is understandable that, there is no way but to allow so formed cooperative bodies to establish and run educational institutions. 'Unnikrishnan' did not explain the above Article because it allowed individuals and associations to establish educational institutions even on a wider basis. Allowing individuals and associations to establish educational institutions even outside right to profession, as the judgment did, may lead to the wide spread commercialization of education. The fifteen years' experience after the judgment necessitates a fresh look at the issue. Now, it may be required to restrict the scope of allowance to individuals and associations to establish educational institutions only under the right to profession in conjunction with the right to association. In other words, to see that education service is not converted into trade, there shall be an amendment to the Constitution effecting that no individual or association is allowed to establish educational institutions on any basis other than charity basis. There can be

only two exemptions to that namely; article 30 and right to profession in conjuncture with right to association as elaborated above.

Co-operative associations of professionals : There can be a legislation to restrict the misuse of the provision of right to profession and right to association in the context of establishment and administering of educational institutions. Such legislation, however, shall make provision for the professional associations formed out of teachers, karmacharies, and other personnel required to run an educational institution to establish and administer an educational institution and collect fees from the students. It means, only those who would work in the educational institution form an association and the association establishes and administers the institution on its own and collect fees from the students both against the fixed and recurring expenditure of the school including their salaries. The membership of the association shall be restricted to only to those who practice one or other profession in the educational institution and also no person working in the educational institution shall be denied of the membership. Such legislation, while safeguarding the right to profession and right to association even in this context, at the same time restricts practice of trade in education. Such educational institutions established and administered by professional associations may be called as cooperative educational institutions and in the case of a school, it can be called a cooperative school.

(6) Nothing in sub-clause (g) of the said clause (19) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

So, the sub clause 6 is clear and, it allows the state directly or through a corporation owned by it to carry on any trade, business, industry, or service, whether to exclusion, complete or partial, of citizens or otherwise. Many advocates of common school system invoke this clause for their purpose. This clause was very much there when Kothari Commission gave its report. But Kothari found it difficult to invoke this clause to bring the un-aided public schools into the ambit of common school system in the then obtaining understanding of the Constitution. However, this clause was interpreted by Supreme Court, later, in many a case in favor of public interest. Former Chief Justice, Chandra Chud was quoted in Unnikrishnan vs. Govt. of AP (supra) for his outstanding understanding of the essence of the Constitution.

"Those rights (Fundamental Rights) are not an end in themselves but are the means to an end. The end is specified in PART IV."

One can safely conclude here that the state has all the authority to nationalize all the educational institutions in the wider public interest on the basis of the provisions of the Constitution.

If banks can be nationalized, why not education ?

But the mute question is that shall the democratic sections of the society allow the state to monopolize education process. Will it not pave path for regimentation of education and culture by the state. Shall opposition to commercialization of education and multi-tier system of educational institutions lead people to accept absolute state control on education? Can one accept state control as synonymous to public interest in a country with all possible forms of inequality and with the track record of the state in its pro-hegemony conduct? The people who believe in transformation of the present system based on inequalities may require establishing and running alternative educational institutions. So also, is it not the responsibility of the democratic sections of the society to demand a suitable amendment to the Constitution to state clearly that education neither be a trade or business nor it can be an occupation? Further, is it not required to demand again to clearly state in the Constitution with suitable amendment that right to profession with respect to teaching and medicine is more sacrosanct? Shall not one plead for right to profession and right to association and for the use of both of the rights in conjunction to establish and run educational institutions as elaborated earlier? While concluding the discussion on article 19 it can be stated that, as it is given now, the article 19 allowed SC to interpret it in favor of self financed colleges with 'reasonable' margin of profits. This article 19, as it is given now, can also allow the state to exercise complete control over education process if it is so needed to restrict and regiment education as the German Nazis did. The Article 19 is required to be suitably amended to protect the right to teaching profession and also to plug the holes of commercialization in the name of right to occupation. In a word, with respect to education, while right to profession is to be fully fortified, the right to occupation along with right to trade and business are to be completely liquidated.

If there is an effective ban on commercialization of education by suitable amendments to the Article 19 of the Constitution, one will have schools of only three categories as far as ownership is concerned. (1) Schools run by central, provincial and local governments, (2) schools run by charitable trusts and (3) Co-operative and self-financing schools run by associations of teachers and karmacharies. These schools can co-exist in the same neighborhood. Here one can introduce the neighborhood concept. Legislation that is to be made for neighborhood school may provide that the parent/guardian can enroll their child/ward in any of the schools available in the delimited neighborhood only. While the first and second category schools would not collect any fees from the students, the third category schools which are essentially self-financing schools collect fee from the students as the appropriate authority may fix time to time. However, all schools, irrespective of the category to whichever they belong, shall follow the same syllabus, same teaching and examination methods, same service conditions for the teachers etc.

However, in the above scheme of things, a relative choice is offered to the parents. They can enroll their children in any of the schools in the delimited neighborhood. One restriction imposed in the above scheme of things is that a parent /guardian can not send her child/ward outside the delimited neighborhood. He has to choose only one of the available schools in the neighborhood if there are more than one school in a given neighborhood.

Universal and Compulsory Stages: The age group of child is now defined to be 0 to 18 years all over the world. India is a signatory to the declaration of

UNESCO which reiterates the same. So, the universal right to education should be extended up to age of 18 years of the child. Bihar Commission on Common School System recommended the same. A child can complete two years Pre-School, five years primary school, five years of lower secondary school and two years senior secondary school courses before she completes age 18. While it shall be compulsory on the part of the state to provide all the said four stages of education to all children, as far as child and parent are concerned, the pre-school education and senior school education (+2 levels) shall be made voluntary. The logic behind the proposal is that the state cannot impose compulsory education on young child of below 6 years age and so also, formal structure of education cannot be made compulsory to the children of adolescent age, say 16 to 18 years where the young child develops her own personality on her own imagination. However, the responsibility of the state to provide education to all children 4-18 age group remains all the same.

Bihar Commission on CSS took a historical stand when it suggested that no child shall be an orphan in the country. It suggested that if the child does not have her own guardians, state itself should become the guardian of the child. It should also be understood that the responsibility of the state extends to the children who have guardians but whose guardians are poor and not able to give her nutritious food, decent cloths and who are not able to meet non-fee educational expenditure. The state shall provide every child whatever it requires to continue its education. Some children may require food, shelter, clothing, education material and health services, they shall be provided all their needs. It means they require government residential schools. Majority children do not require residence, they can well stay with the parents, but, they require other things including nutritious food for three times a day. They shall be provided those needs through school. That is the only way to arrest drop out and achieve high rate retention of the children in schools. Mid day meal programme in Andhra Pradesh helped an increase in retention of children in schools. This shows very clearly how such support programmes can increase retention. Bihar Commission on CSS recommended certain measures in support of the children from poor families. What this paper proposes is that the state shall support every child according to its needs to enable it to continue its education. This paper further proposes that the state support to child to continue her education shall be guaranteed by Constitution with suitable amendment to Article 21A.

Ban on trade in education, ban on different forms of Public-Private Participation, ban on establishment of private schools on non-charitable basis only with exemption of Article 30 and right to profession as elaborated earlier, extension of universal education up to age 18, strengthening of government schools and taking measures to enable every child to continue her/his education on regular basis seem to be the issues of paramount importance to achieve the goal of universalization of child education and for establishment of common school system of public education on the basis of neighborhood concept. □□□