The Constitution, Right to Education and, the Common School System in India

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By independence we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves.

B.R.Ambedkar

Background

B. R. Ambedkar had used appropriate words at the time of the birth of the Constitution of India to put forth the goal of building a new India on the lines of the ideals and goals embodied in the Constitution - created by her own people and representing the masses; adopted to secure the ideals of social justice, equality, and equity.

These ideals are applicable in all spheres and form an essential facet of development in India. Building a national system of education is no exception to this. Rather, a national system of education on the principles of social justice and equality creates the necessary ground for achieving the ideals of the Constitution. If we adopt the above approach to ask ourselves, as pointed out by Ambedkarji, the question as to who is responsible for the present abysmal condition of the Indian school education system - a system that is grossly unequal, hierarchical, discriminatory and class-based, then the probable answer is that all of us and the power holders and bureaucrats ruling India till present in particular are responsible.

It is true, as citizens, we are also responsible for all the misdeeds in the school education system in India at present for reason of not questioning the same. As a

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1 Quoted from Granville Austin, The Indian Constitution: Cornerstone of a Nation (New Delhi: Oxford University Press, 1999) at 308
consequence, the Indian school education system is paralyzed by gross inequality, discrimination, and multilayered hierarchical structures that breed further inequality. Furthermore, a new spectre haunts the school education system in India at present, the spectre of privatization, public-private partnership (PPP), school nurturing programs, corporate social responsibility, voucher system, and so on and so forth that encompasses the Indian school education system to dismantle and discard it in favour of free market forces and thereby to dissipate the core principles of ‘social justice’ and ‘equality’ embodied in the Constitution. The prime objective of all these initiatives is to plant the seeds of ‘greedy profit’ through ‘privatization’ and the ‘commercialization’ of school education as a new philosophy and world order. The neo-liberal forces in combination with the power holders and bureaucrats in India are tirelessly working to dismantle the public education system in India in favour of neo-liberal market forces.

According to recent statistics, the total number of government schools imparting elementary education (EE) in India was 10,02,915 in 2007-08 and that constituted an overall share of 80.18 percent of the total number of schools imparting EE in India. The term ‘government school’ includes the schools run by the Department of Education, the Tribal/Social Welfare Department, Local Bodies and other government managed schools. On the other hand, the number of private schools imparting EE was 2,43,895 in 2007-08 and that constituted a share of 19.50 percent of the total number of schools imparting EE in India.\(^2\) The system of public\(^3\) elementary education in India as compared to the system of private elementary education is gigantic and universal. The role of the private sector in EE is confined to urban conglomerations even though the influence is gradually shifting to semi-urban and rural areas. Therefore, by default, the only elementary schools available to children in rural areas are government or government aided schools.\(^4\)

\(^2\) National University of Educational Planning and Administration, Elementary Education in India Progress towards UEE: Flash Statistics-DISE 2007-08(New Delhi: NUEPA and MHRD, 2009) at 1

\(^3\) Here the term ‘public’ is used in a more real sense to indicate meaning that the system of education provided and supported by the State as against the term used by the private actors to misrepresent the term in public domain in order to attract people for their profit by appropriating the word ‘public’ but using it in a very personal sense

\(^4\) For instance, in a Panchayat where the Centre for Child and the Law, NLSIU is implementing its field extension program since 2004 witnessed that the school available to all 26 habitations in the panchayat is
This may not continue for a long time if we examine these statistics further. The numbers clearly indicate that the percentage of government schools imparting EE has reduced from 80.83 percent in 2006-07 to 80.18 percent in 2007-08. However, the percentage of private schools imparting EE has increased from 18.86 percent in 2006-07 to 19.50 percent in 2007-08\(^5\). This implies that the Indian school education system is in great danger - the danger of being devastated and demolished in order to pave way for privatization.

The above statistical input defines the agenda of privatization of education in India by the neo-liberal forces – i.e. to abdicate the constitutional mandate in favour of privatization\(^6\) on the one hand, and prescribes a new challenge before civil society actors and peoples’ movements in India – i.e. to mobilize the masses against such forces to save the sovereignty and integrity of the country.

This alarming situation demands the re-examination of the constitutional vision of the right to education vis-à-vis the existing school education system in India in order to set an agenda for restructuring the entire system and thus creating a necessary institutional condition for the achievement of long cherished constitutional mandates. To begin with, in Part I, this paper traces the brief history of the demand for the right to education prior to the drafting of the Constitution. Subsequently, in Part II, the paper examines the debates and discourses in the Constituent Assembly related to educational provisions at the time of the drafting of the Constitution and the vision reflected at the time of finalizing these provisions. Followed by this, in Part III the paper examines the notion of a ‘right to education’ as conceived in a broader constitutional framework especially to understand the ‘right’ in its broader perspective as a prerequisite for National Development\(^7\) in the manner recommended

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\(^5\) National University of Educational Planning and Administration, Op.cit, 1

\(^6\) The neo-liberal forces in the changed scenario include hundreds of East India Companies as compared to one in the past. Apart from this we have our own Indian Companies who could play the role of EIC much more effectively to push the Indian masses to new slavery.

\(^7\) Ministry of Education and Youth Service, *Education and National Development – Report of the Education Commission 1964-66* (New Delhi: NCERT, 1970) at p 3 Para 1.01; The Education Commission after thoroughly examined the problems of the education system in the country began its report with paragraph saying “the destiny of India is now being shaped in her classrooms. This, we believe, is no more a rhetoric. In a world based on science and technology, it is education that determines the level of prosperity, welfare and security of the people. on the quality and number of persons coming out of our
by the Education Commission. Finally, in Part IV, the paper explores the possible ways and means of achieving the constitutional mandate for education in its broader perspective to create a democratic, egalitarian, and socialist system, and ensuring social justice and equality, the founding principles embodied in the preamble to the Constitution of India and further elaborated in Parts III and IV of the Constitution as fundamental rights and directive principles respectively.

I. **The Right to Education Prior to the Constitution**

Indian society, based on caste division and hierarchy, was known for the exclusion of the vast majority of the masses from access to formal education. The shudras, the fourth estate, and the Antyajas, the untouchable or the lower castes, were deprived of access to formal education. Even among superior castes, the Kshatriyas and the Vaishyas, the second and third estates respectively in the Chatur Varna System received only some form of elementary and professional education. Thus, access to formal education in the past was determined by birth.⁸

It is appropriate to note Naik’s description of the situation at the end of 18th century - “The Indian society was then highly stratified, hierarchical, and inegalitarian. There was a small group of well-to-do persons at the top consisting of the feudal overlords and their dependents and supporters… the bulk of the people, however, were poor and under privileged… the Scheduled Castes who were treated as untouchables and the Scheduled Tribes who were not integrated into mainstream society formed the lowliest, the poorest, and the most exploited groups… the educational picture broadly reflected this socio-economic background of inequality… the access to the formal system of education was ascriptive, mostly based on birth, and restricted to the literary and priestly castes or classes, well-to-do landlords, money-lenders, and traders.”⁹

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⁸ See Dr. Niranjanaradhya V P, *Universalisation of School Education; The Road ahead* (Bangalore: Books for Change, 2004) at 2

⁹ See Naik J P, *Equality, Quality and Quantity, the Elusive Triangle in Indian Education* (New Delhi: Allied Publishers, 1975) at
However, during the course of the freedom struggle to overthrow colonial rule, and consequent to the growth of national consciousness, basic education was gradually recognized as an important prerequisite for the creation of an independent and united India. The demand for free and compulsory education (hereinafter referred to as FCE) was one of the early demands of the freedom struggle. For instance, in the evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothibha Phule had demanded state sponsored free education for all children.  

As the freedom movement grew in strength, the idea that it was the duty of the state to provide free and compulsory education to all children found acceptance, and FCE was recognized as a necessary and important goal of independent India. Thereafter, many initiatives were undertaken on the part of the Indians - sometimes to provide for FCE and other times to demand for a policy or legal framework in order to ensure FCE to all children. These efforts as a part of the freedom struggle finally culminated in a landmark development in the history of FCE in India where the Post War Development Plan recommended the introduction of FCE for children upto the age of eight years. Therefore, the demand for free and compulsory education for all children upto the age of fourteen years in the Constitution was the product of the freedom struggle - the people’s mandate. In the next part, I shall examine what happened to this mandate while translating the same into a constitutional mandate in the course of drafting the Constitution.

II. Right to Education while drafting the Constitution.

India achieved its independence from the foreign rule and became an independent nation in 1947. In the words of Austin - “Indians were at last free to shape their own destiny, to pursue their long-proclaimed aims and aspirations, and to create the national institutions that would facilitate the fulfillment of these aims. These tasks the members approached with remarkable idealism and strength of purpose born from the struggle for independence”. 

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10 Dr.Niranjanradhya and Aruna Kashyap, The ‘Fundamental’ of the Fundamental Right to Education In India (Bangalore: Books for Change, 2006)at 3
11 ibid.3
12 Granville Austin, Op.cit, p xvii
The process of building a new India on values foreseen during the freedom struggle became the guiding vision for drafting the Constitution of newborn India. As a result, while drafting the Constitution, “Indian founding fathers and mothers established in the Constitution both the nation’s ideals, and the institutions and processes for achieving them. The ideals were national unity and integrity and a democratic and equitable society. The new society was to be achieved through a social-economic revolution persuaded with the democratic spirit using constitutional, democratic institutions”.

One would fully agree and endorse Austin’s view about the ideals and consciences that guided the process of the drafting of the Constitution. However, the founders of the Constitution failed to provide a due share to the children of India in general and a right to education as a ‘fundamental right’ in the Constitution in particular. As a corollary, the people’s demand for FCE that echoed throughout the freedom struggle as one of the most prominent demands put forth at various stages14 did not translate itself into a fundamental right in the Constitution and thereby deprived the children of India an opportunity to have a fundamental right to education at the time of the drafting of the Constitution of India. Instead, the right to education which before was a justiciable right was transformed into a non-justiciable right - i.e. the directive principles.

Nevertheless, the inseparable linkages between the provisions pertaining to the right to education and other provisions in the draft Constitution put forward by Ambedkar during the Constituent Assembly Debates is something noteworthy in itself. After shifting the FCE provisions from the fundamental rights chapter to the non justiciable rights chapter, draft Article 36 was taken up for debate in the Constituent Assembly on 23rd November 1948. In the course of debating draft Article 36 relating to FCE, there were two amendments proposed; one of the members (Pandit Laksmi Kanta Maitra: West Bengal–General) proposed that the reference to free primary education be deleted so that it does not contradict the reference to the completion of the age of

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13 ibid.


15 In fact, the subcommittee of the constituent assembly on Fundamental rights placed free and compulsory education in the list of fundamental rights under clause 23. But the advisory committee of the constituent assembly rejected it and sent it to non-justiciable section.
fourteen years. Another member (Naziruddin Ahmad: West Bengal–Muslim) had also contended that, in view of the expected resource crunch, the reference to the age of fourteen years be reduced to the age of ten years and the commitment of the state be limited to only primary education.

B. R. Ambedkar responding to the proposed amendments opined that “I accept the amendment proposed by my friend, Mr. Maitra which suggests the deletion of the words ‘every citizen entitled to free primary education’. But, I am not prepared to accept the amendment of my friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in Article 36 is restricted to free primary education. But, that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of fourteen years. If my honorable friend, Mr. Naziruddin Ahmad had referred to Article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in Article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of the Article 36 and that is why I say the word primary is quite inappropriate in the particular clause, and I therefore oppose his amendment”. 16 Finally, Article 36, as amended, was to be part of the Constitution of India as Article 45. 17

On another occasion during the debates over Article 18; provision relating to the ‘abolition of child labour’ in the Constituent Assembly, Prof. Shibban Lal Saksena argued for increasing the age mentioned from fourteen to sixteen years citing that in other counties the age for employment is higher and therefore in our country also the age should be increased to sixteen years. 18 It is interesting to note that at present, one of the most prominent demands of child rights groups in India is to increase the age of child from the current 14 years to 18 years in order to fall in line with international legal instruments and in particular the United Nations Convention

17 Article 45 reads as “The state shall endeavor to provide, within a period of ten years from the commencement of this constitution, free and compulsory education to all children until they complete the age of fourteen years”.
18 Constituent Assembly Debates, Op. cit, 814-815
on the Rights of the Child. However, the above proposition was not accepted. Finally, the amended Article 18 was added to the Constitution of India as Article 24.\textsuperscript{19}

It is evident from this analysis that there were different perspectives during the Constituent Assembly Debates on issues pertaining to children including the making of education as a fundamental right, the length and scope of FCE, increasing the age of the child, etc. However, as I have already mentioned, the Constituent Assembly as a whole had failed to provide a due share to the children of India and had denied them the right to education as a ‘fundamental right’ in particular. This was in fact a great injustice done to the children of India.

However, none of these developments had ever delimited or diluted the overall constitutional vision on the right to education which remained an integral part of the Constitution in its true spirit. In the forthcoming section the paper tries to capture the Constitutional vision of right to education in its totality.

\textbf{III} \hspace{1em} \textbf{Right to Education and the Constitutional Vision}

It is the preamble from where the Constitution of India commences and it is the preamble that embodies its spirit and backbone.\textsuperscript{20} The preamble promises to secure for all citizens of India;

\begin{itemize}
  \item Justice; social, economic, and political;
  \item Liberty of thought, expression, belief, faith and worship;
  \item Equality of status and opportunity;
  \item and to promote among them all
  \item Fraternity assuring the dignity of
  \item Individual and the unity of the Nation
\end{itemize}

Despite the fact that there is a sense of reason and direction in the wordings of the preamble, a serious reading as a researcher in education reveals that neither justice

\textsuperscript{19} Article 24 reads as “no child below the age of fourteen years shall be employed in any factory or mine or engaged in any other hazardous employment”

\textsuperscript{20} Justice R C Lahoti, \textit{Preamble; The spirit and Backbone of the Constitution of India} (Lucknow: Eastern Book Company, 2004) at 2
of any kind nor liberty of any sort nor equality and fraternity can be practiced in the absence of meaningful education. A society steeped in ignorance and illiteracy or a society with glaring disparities, inequalities and discrimination on the lines of caste, religion, gender, language, social status etc., can hardly ensure and practice the ideals embodied in the preamble.

Most probably, this inseparable linkage between the ideals embodied in the preamble and the role of education in translating them into reality might have influenced the Chief Justice S.R. Das in the advisory opinion of the Supreme Court in the Kerala Education Bill, 1957 to express that “one of the most cherished objects of our Constitution is to secure to all its citizens the liberty of thought, expression, belief, faith and worship. Nothing provokes and stimulates thought and expression in people more than education. It is education that clarifies our belief and faith and helps to strengthen our spirit of worship”.

Therefore, there is reason to state that it is education and education alone that can translate constitutional ideals into practice. Therefore, the right to education should be a prerequisite for the translation of the goals and ideals in the preamble into concrete realities.

Till the decision of the Supreme Court in Ms. Mohini Jain v. State of Karnataka in 1992 followed by Unnikrishnan J.P. v. State of Andhra Pradesh in 1993, education was not a fundamental right at all but an important time bound provision under the Directive Principles of State Policy. In other words, there was no compulsion on the part of the state to provide for education. Nevertheless, Articles 39(e) & (f), 41, 45, and 46 unambiguously direct the state to protect the interests of children and also to provide FCE. In continuation, Article 37 provides that though the provisions in Part IV of the Constitution of India shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the state to implement these principles in the course of making laws. Furthermore, the verdicts given by the High Courts and the Supreme Court from time to time unequivocally established the organic and inseparable link between

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For instance, as back as 1958, in the advisory opinion in the matter concerning the Kerala Education Bill, a special bench of the Supreme Court speaking through Justice S. R. Das, the Chief Justice, while affirming the primacy of Fundamental Rights, also qualified the same with the following observation - “nevertheless, in determining the scope and ambit of the fundamental rights relied upon by or on behalf of any person or body, the court may not entirely ignore these Directive Principles of State Policy laid down in Part-IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible”.22

Furthermore, in Keshavananda Bharati v. State of Kerala, several learned judges adverted to this approach. In the words of Justices Hedge and Mukherjee - "the Fundamental Rights and Directive Principles constitute the conscience of the Constitution… to ignore Part IV is to ignore the sustenance provided for in the Constitution, the hopes held out to the nation and the very ideals on which our Constitution is built… there is no anti-thesis between Fundamental Rights and Directive Principles… one supplements the other”.23

Finally, taking the discourse on the relationship between Part III, the Fundamental Rights, and Part IV, the Directive Principles of State Policy to its logical end, the Supreme Court of India in the case Unnikrishnan J. P. v. State of Andhra Pradesh in 1993 affirmed that Part III and Part IV of the Constitution of India not only mutually supplement and compliment each other but one also flows from the other. This is considered to be a path-breaking verdict in the history of the right to education which provided the status of a fundamental right to the right to education for all children until the age of fourteen years.24

It is evident from the foregoing discussion that the right to education in the Constitution should be seen as an end and a means in itself. The right to education as an important entitlement within the Constitution has bearing on the ideals laid

23 ibid.
24 ibid. Para 180(1)
down in the preamble to the Constitution on the one hand and the rights guaranteed and principles invoked in the Fundamental Rights and Directive Principles on the other hand. In the absence of the right to education, the larger goals and ideals of the Constitution cannot be accomplished. Therefore, the right to education is the means to achieve the ideals of the Constitution. Furthermore, basic education as an entitlement of each individual nurtures the capabilities of each individual to protect the other rights guaranteed under Part III and to demand the incorporation of the provisions provided in Part IV as a part of the development process. Therefore, education is an end in itself.

It is important that the ideals of social justice and equality of opportunities form an integral part of the right to education in the Constitution. This is further specifically linked to Article 21 of the Constitution to give broader meaning to the right to life saying that it is not just the right to a life but the right to a dignified life. In light of this, the notion of a ‘right to education’ in the Constitution is a conglomeration of various provisions provided in Part III and Part IV of the Constitution. However, as we discussed earlier, the values enshrined in the preamble to the Constitution form the central thesis of the right to education.

To sum up, right to education in the Constitution means - the core principles of the preamble – i.e. social justice and equality, Article 14 - equality before law, Article 15 - prohibition of discrimination, Article 16 – equality of opportunities, Article 21 - right to dignified life, Article 21 A – right to education, Article 23 – prohibition of human trafficking, Article 24 - abolition of child labour, Article 39(e) & (f) - protection of children, Article 41 – right to education, Article 45 - early childhood care and education, and Article 46 - promotion of the educational interest of SC/STs and other weaker sections of society.

In corollary, the constitutional vision of the rights of children in general and the right to education in particular constitutes -

- Social justice, equality and equity in all actions related to children
- Right to dignified life through education
- Right against all forms of discrimination and exploitation
- Right to equitable care, protection and education
Therefore, it is important to locate the discussion on the right to education and the Constitution in its historical perspective in order to better understand the paramount importance of the right to education in the context of the aspirations and ideals of the Constitution. Furthermore, the Constitution of India is itself a byproduct of the freedom struggle and reflects the common aspirations of the people. The education system in any society is a prerequisite for building such a society and also becomes a dynamic driving force to achieve the ideals of the Constitution.

Therefore, without much hesitation, I could say, at least in the Indian context, that the Constitution is subservient to the larger aspirations and ideals of the people that constitute the people’s mandate and the right to education is an integral part of the Constitution as per such a mandate. The implementation of the Constitution of India is nothing but realization of the goals and ideals that guided the freedom struggle to create an egalitarian society on the principles of social justice and equity. Therefore, the building of a national system of education on the principles of social justice and equity is a prerequisite to give a meaningful effect to the implementation of the Constitution. Therefore, it is not a right to education in the Constitution but a right to education and the Constitution.

However, the irony of our time is that the legislature has thoroughly failed to understand the constitutional vision of the ‘right to education’ and its various organic linkages within the Constitution of India – i.e. the preamble, the Fundamental Rights, and the Directive Principles. As a result, instead of giving effect to the constitutional vision of ‘right to education’, the right to education has been diluted, distorted and finally negated through a constitutional amendment. The next section examines that unfortunate portion of the history of the right to education.

IV. The unconstitutional “86th constitutional” amendment act

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25 Justice R C Lahoti, op.cit, at 4
The principles of equality and non discrimination go hand in hand in the Constitution of India. These two principles are the guiding elements that determine the content and spirit of the Constitution in the course of substituting, removing or inserting provisions through the amendment process.

As we discussed at length, many provisions of the Constitution in general and Article 21, 24, 39(e) & (f), 41, 45 and 46 constitute the vision of the right to education in the Constitution. Article 45 was the only provision that stipulated the time for the fulfillment of the constitutional mandate towards education. The wording of Article 45 clearly states that all children up to the age of fourteen years are entitled to free and compulsory education. Obviously, this group includes children from birth to six years that are eligible for Early Childhood Care and Education entitlements. Article 39(e) & (f) further strengthen the ECCE component of Article 45. Furthermore, Article 46 directs a special focus and protection towards children coming from the SC/STs and other weaker sections of society.

In addition, the Supreme Court verdict in Unnikrishnan J. P. v. State of Andhra Pradesh opened a new chapter in the history of the right to education through the shifting of the debate on FCE from the arena of Directive Principles to Fundamental Rights. In fact, the verdict of the court is considered to be the peaceful revolution in the area of school education led by the judiciary. The Supreme Court blended two chapters of the Constitution, the Fundamental Rights and the Directive Principles to declare that the fundamental right to education flows from the fundamental right to life and the right to dignified life and the right to education were inseparable.

However, history repeated itself in India and this time the bourgeoisie were not even tolerant enough to accommodate the peaceful revolution of the judiciary. There were strong efforts initiated to dilute the judgment and then subsequent to the same there were efforts to negate it as a whole. The desired result was obtained through the ‘unconstitutional’ 86\textsuperscript{th} Constitutional Amendment Act that amended the Constitution to deprive children under the age of six years of the fundamental right to ECCE and permitted the state to abdicate the responsibility to ensure the right to education and place the same on the parents of the children.

\footnote{See Article 14 and 15 of the Constitution.}
The annulment of the progress made towards the full right to education did not end at that step as the Central Government used the predetermined and purposefully added phrase - ‘as the state may, by law, determine’ to retain the overall power of determining the content and substance of the future legislation passed to give effect to the fundamental right. In light of this deliberate negation of the progress made towards the full right to education, one can understand that the purpose of the draft bill tabled in the Rajya Sabha was not to provide a fundamental right to education but to take away the fundamental right already provided by the judiciary as per the decision in Unnikrishnan J. P. v. State of Andhra Pradesh.

This unconstitutional action on the part of the legislature calls for a review from civil society consisting of primary stake holders, academicians, teachers, legal experts, representatives from the people’s movements, and all others that aspire for building an egalitarian society founded on the principles of social justice and equity. The last part of this paper briefly examines the measures to be adopted in the future in order to realize the positive constitutional vision of the right to education.

V. The road ahead to realize the vision

The constitution is the supreme law of the land and all other laws must conform to the same in order to be valid and binding. The Constitution of India is the guiding document for the building of modern India on the ideals of the Constitution. Having adopted the core philosophy of justice - social, political and economic; equality of status and of opportunities; fraternity that ensures the dignity of the individual and the unity and integrity of the nation itself, the Constitution of India strives to build an egalitarian society in modern India.

According to Justice Lahoti - “justice has three facets; social, economic and political, again in that order of significance. Without social justice the Constitution would not be able to secure economic justice to the people. It is only such citizenry which has been able to secure social justice and economic justice for all its citizens that would deserve, claim and assert political justice for all its citizens”. If one goes on the principle that social justice determines the extent of economic and political justice

27 Justice R C Lahoti, op.cit.,1
28 ibid.10
then it implies that a necessary condition has to be created to secure social justice and equality as a precondition to secure the other forms of justice.

When goals are clearly stated then one should adopt proper means to achieve this goal. There is no room for confusion or justification for vacillating from the desired goals - the prescribed constitutional mandate. As rightly expressed by Austin - "when considering the effectiveness of a constitution, it must first be understood that it has real existence only in the way it is used. A constitution can be judged only by its adequacy to the situations it was designed to meet and by the extent to which the situation it might reasonably be expected to meet were foreseen and by the extent to which it commands the allegiance of those who are to govern themselves by it".²⁹

I would say that the allegiance of the ruling class to the Constitution in relation to the creation of a National System of Education that is the corner stone for the final achievement of the ideals enshrined in the Constitution is almost zero. Even simple measures like the adoption of the recommendations of the Education Commission (1964-1966) to create an education system on the lines of the Common School System (CSS)³⁰ would have taken India to new heights in terms of social justice and equality. Unfortunately, many such recommendations were deliberately neglected by the ruling class that must be blamed for the sorry state of affairs in the education system at present.

It is worthy to recapitulate some of those recommendations at this juncture. To begin with, back in 1949, the University Education Commission had emphasized the need for clear knowledge of the social order for which the youth is being educated. The social order sought to be created by the Constitution of India is an order based on equality and social justice.³¹

Later, in 1964-66, the Education Commission in unequivocal terms recommended the common school system. The Commission had warned policy makers about the

²⁹ Granville Austin, Op.cit, p 309
³⁰ For the clarity of the term CSS , I quote the latest definition of CSS used in the Report of the Common School System prepared by the Common School system Commission of Bihar which defines the Common School System as "a system of education providing education of an equitable quality to all children irrespective of their caste, creed, community, language, gender, economic condition, social status and physical or mental ability .In fact, the report says that the above definition draws heavily from the Report of the Education Commission of 1964-66.
tendencies for segregation based on inequalities in the school education system. The gravity and objective of this recommendation was aptly summarized by Naik - “the recommendation of the commission regarding the common school system is the integral part of the programme to promote the education of the poor, reduce its dual character in which haves receive one type of education and have-nots another, and to create a socially cohesive and egalitarian society”.32 (Emphasis added)

Furthermore, an official policy commitment was made by the government in the 1968 Policy on Education. The government committed itself to take strenuous efforts to equalize educational opportunities. Elaborating further, the policy document states that to promote social cohesion and national integration, the CSS as recommended by the Education Commission should be adopted”.33 The commitment for the CSS was reiterated in the 1986 Policy on Education and the Revised Policy on Education 1992.34

The idea of the CSS was advanced through the efforts of the Commission appointed by the State Government of Bihar to recommend a framework for the CSS from the standpoint of ensuring children’s fundamental right to free and compulsory education under Article 21A of the Constitution of India. The Commission did a commendable job of contextualizing the CSS in the context of Bihar on various issues like - the teachers in the CSS, positions of the different types of schools in the CSS, the administration of school education & the management of schools in the CSS, teacher education, curriculum and pedagogy, norms and standards, the financial implications of the CSS, etc. These efforts advanced the debate on the CSS after a considerable gap of almost 20 years since the 1986 Policy on Education.35


34 Government of India, *National Policy on Education 1986-As modified in 1992* (New Delhi: Ministry of Human resource Development, 1998) at 5; Para 3.2 of the policy document reads as "The concept of a National System of Education implies that, up to a given level, all students, irrespective of caste, creed, location or sex, have access to education of a comparable quality. To achieve this, the Government will initiate appropriately funded programmes. Effective measures will be taken in the direction of the Common School System recommended in the 1968 Policy.

35 For details please refer the *Report of the Common School System*(2007), Government of Bihar, Patna
However, despite these several official policy commitments, the ruling class and the bureaucracy continued to ignore the recommendation for the CSS in order to create a national system of education and in its place sought to promote a blatant unequal, multilayered and unfair school education system that not just breaches constitutional mandate but also promotes privatization and commercialization of education itself. The present education system all said and done is widening the gap between the rich and the poor through glaring discrimination and in this manner practices a new form of apartheid - an apartheid based on caste, class and economic status. Those that are affected the worst through this practice are the poor in general and the SC/STs, minorities and other subaltern communities in particular.

There is an urgent need to restructure and rebuild the Indian education system on the lines of the CSS to ensure equitable and quality education to children irrespective of their sex, caste, place of birth, social and economic status, and the type/s of management in which they are being educated, in order to adhere to the values and principles embodied in the Constitution.

In an unequal and unjust society such as ours it is not surprising if children are born unequal but it is a crime to deny these children their right to education of equitable quality. The problem doesn’t lie in the Constitution but lies in the people that seek to implement it and the masses that are not demonstrating their unity in order to demand the CSS as a matter of constitutional right.

The true reason for our failure to build a national system of education based on the values of social justice and equality since the implementation of the Constitution or more evidently after the recommendation of Education Commission followed by the official policy commitments in 1968, 1986 and 1992 is the lack of political will and the sheer negligence of the ruling class. To add further, the lack of vibrant political constituencies that could demand the implementation of the CSS as an unconditional and non-negotiable demand is also the reason for the non commitment and non implementation of the CSS. The masses that are send their children to government, government aided and local body institutions are socially, political and economically are very weak and voiceless as compared to the elite, rich, upper middle class and the middle class that are comfortable with the present system as their interests are least affected in the present free market economy.
The only way forward is to build a national system of education on the lines of the CSS where the different players irrespective of their affiliation to type and nature of management can co-exist as long as they are committed to providing an equitable quality education to all children - genuinely free, honestly empowering and truly nation building on the principles of egalitarianism.

This is the right time to mobilize the Indian masses to protect the gigantic public education system and to restructure the same in order to ensure equitable quality education to all children on the principles of social justice and equity, and thereby to uphold our constitutional values and to protect and promote the sovereignty and integrity of the nation. The only option available is the immediate implementation of the common school system.

It is appropriate to conclude this paper by quoting Naik who said - “The Indian society, especially the Hindu society, has been extremely in-egalitarian, and this is one value on the basis of which this society can be humanized and strengthened. In fact, the issue is so crucial that the Indian society cannot even hope to survive except on the basis of an egalitarian reorganization”.36

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36 Naik JP, op. cit, 7