

FOOTNOTES

1. In re Kerala Education Bill, AIR (1958) SC 956.
2. State of Bombay v. Bombay Education Society, AIR (1954) SC 561.
3. M.N. Srinivas, Caste in Modern India and other Essays, 1962.
4. See Mr. Laris speech in Constituent Assembly Debates, vol. VII, at p. 902.
5. Kamani Kanta v. Gauhati University, AIR (1951) Assam 163; overruled in Re Kerala Education Bill, 1957, AIR (1958) SC 956, at p. 976.
6. AIR (1958) SC
7. 62: The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
- 63: The institutions known at the commencement of this Constitution as the Banares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.
- 64: Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
- 65: Union agencies and institutions for -
  - (a) professional, vocational or technical training, including the training of police officers; or
  - (b) the promotion of special studies or research; or
  - (c) scientific or technical assistance in the investigation or detection of crime.
8. 25: Vocational and technical training of labour.
9. In re Kerala Education Bill, 1947, AIR(1958) SC pp. 978, 979.
10. Ibid., 978.
11. AIR(1963) SC 540.
12. 41: The State shall, within the limits of its economic capacity and development, make Right to work, effective provision for securing the to education right to work, to education and to and to public public assistance in cases of unemploy-

The State is directed by this article to ensure to the people within the limits of its economic capacity and development (a) employment, (b) education, and (c) public assistance in cases of unemployment, old age, sickness, and disablement and in other cases of undeserved want. It is usual to refer to matters specified in this directive as measures of social security. It has been held that Article 41 has no bearing on the interpretation of Article 16 as it is manifest that the term "public assistance" in Article 41 has reference to economic assistance or relief to people who are unemployed or old, or sick or disabled, or in other similar cases of undeserved want. (Sukhnandan Thakur v. State of Bihar, AIR 1957 Pat. 617) But Article 41 places no liability on the State to pay compensation to workers whose continuous employment has suffered as a result of action on the part of the Government, such as short supply of electricity. (Radhakrishna Mills v. S.I.Tr., AIR 1954 Mad. 686.)

13. 46            The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- Promotion of educational & economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

In State of Madras v. Champakam Dorairajan, (AIR 1951 SC 226) the Supreme Court refused to let the fundamental right declared in Article 29(2) to be whittled down by this article. In that case, although it was not denied that the object of the impugned "communal order" of the Madras Government was to advance the interest of educationally backward classes of citizens, but that object notwithstanding, the Supreme Court held the order void for violating the fundamental right under Article 29(2). The argument was pressed hard to the court that the object of the communal order being to promote the cause of backward classes, it was in furtherance of the Directive contained in Article 46 and, therefore, could not be violative of Article 29(2). The court rejected the argument and asserted the supremacy of the fundamental right over the Directive Principle of State Policy.

The difficulty was resolved by the Constitution (First Amendment) Act, 1951. In the statement of

objects and reasons for the amendment, it is stated:

It is laid down in Article 46 as a Directive Principle of State Policy that the State should promote with special care the educational and economic interest of the weaker sections of the people and protect them from social injustice. In order that any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory, it is proposed that Article 15(3) should be suitably amplified. Accordingly, a new clause has been added to Article 15 which reads as follows (T. Devadasan v. Union of India, AIR 1964 SC 179):-

"Nothing in this article or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

14. In re Kerala Educational Bill 1947, AIR (1958) SC 896, See also Arya P. Sabha v. State of Bihar AIR (1958) Patna 359. ; Dipendra Nath v. State of Bihar (1963) Patna 54.
15. Cl. 7: Clause 7 deals with managers of aided schools. Sub-clause (1) authorises any Education agency to appoint any person to be a manager of an aided school, subject to the approval of the authorised officer, all the existing managers of aided schools being deemed to have been appointed under the said Bill. The manager is made responsible for the conduct of the school in accordance with the provisions of this Bill and the rules thereunder. Sub-clause (4) makes it the duty of the manager to maintain such record and accounts of the school and in such manner as may be prescribed by the rules. The manager is, by sub-cl. (5), required to afford all necessary and reasonable assistance and facilities for the inspection of the school and its records and accounts by the authorised officer. Sub-clause (6) forbids the manager to close down any school without giving to the authorised officer one year's notice expiring with the 31st May of any year of his intention so to do. Sub-clause (7) provides that, in the event of the school being closed or discontinued or its recognition being withdrawn, the manager shall make over to the authorised officer all the records and accounts of the school.

Cl. 10.  
& Cl.  
11(1): Clause 10 requires Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government schools and in private schools which, by the definition, means aided or recognised schools. The State Public Service Commission is empowered to select candidates for appointment as teachers in Government and aided schools according to the procedure laid down in cl. 11.

Cl. 12  
(1)(2)  
(3)(5): Clause 12 prescribes the conditions of service of the teachers of aided schools obviously intended to afford some security of tenure to the teachers of aided schools. It provides that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools whether appointed before or after the commencement of this clause. Rules applicable to the teachers of the Government schools are also to apply to certain teachers of aided schools as mentioned in sub-cl. (2).

16. Cls. 9, 11(2)  
and 12(4): Clause 9 makes it obligatory on the Government to pay the salary of all teachers in aided schools direct or through the headmaster of the school and also to pay the salary of the non-teaching staff of the aided schools. It gives power to the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service. The Government is authorised, under sub-cl. (3), to pay to the manager a maintenance grant at such rate as may be prescribed and under sub-cl. (4) to make grant-in-aid for the purchase, improvement and repairs of any land, building or equipment of an aided school.

Cl. 12(4): Sub-clause(4) provides that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the manager without the previous sanction of the authorised officer. Other conditions of service of the teacher of aided schools are to be as prescribed by rules.

17. M.B.M.Higher Secondary School v. D.F.T. (1963) 2 Lab.L.J. 496(A.P.)

18. Cl. 14 & 15: Clause 14 is of considerable importance in that it provides, by sub-clause (1), that the Government, whenever it appears to it that the manager of any aided school has neglected to perform any of the duties imposed by or under the Bill or the rules made thereunder, and that in the public interest it is necessary so to do, may, after giving a reasonable opportunity to the manager of the Educational agency for showing cause against the proposed action, take over the management for a period not exceeding five years. In cases of emergency the Government may, under sub-cl.(2), take over the management after the publication of notification to that effect in the Gazette without giving any notice to the Educational agency or the manager. Where any school is thus taken over without any notice the Educational agency or the manager may, within three months of the publication of the notification, apply to the Government for the restoration of the school showing the cause therefor. The Government is authorised to make orders which may be necessary or expedient in connection with the taking over of the management of an aided school. Under sub-cl.(5) the Government is to pay such rent as may be fixed by the Collector in respect of the properties taken possession of. On taking over any school the Government is authorised to run it affording any special educational facilities which the school was doing immediately before such taking over. Right of appeal to the District Court is provided against the order of the Collector fixing the rent. Sub-cl. (8) makes it lawful for the Government to acquire the school taken over under this clause if the Government is satisfied that it is necessary so to do in the public interest, in which case compensation shall be payable in accordance with the principles laid down in cl. 15 for payment of compensation. Clause 15 gives power to the Government to acquire any category of schools. This power can be exercised only if the Government is satisfied that for standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided

educational institutions in any area or for bringing education of any category under their direct control and if in the public interest it is necessary so to do. No notification for taking over any school is to be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly. Provision is made for the assessment and apportionment of compensation and an appeal is provided to the District Court from the order passed by the Collector determining the amount of compensation and its apportionment amongst the persons entitled thereto. Thus the Bill contemplates and provides for two methods of acquisition of aided schools, namely, under sub-cl.(8) of cl.14 the Government may acquire a school after having taken possession of it under the preceding sub-clauses or the Government may, under cl. 15, acquire any category of aided schools in any specified area for any of the several specific purposes mentioned in that clause.

19. AIR(1958) SC 956, at p. 984. See also M.B.M.Higher Secondary School v. D.P.T.(1963)2 Lab.L.J.496(A.F.)

20. IR (1954) SC 561.

21. IR (1958) SC 956, at pp.984-985.

22. 45:           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 fourteen years.

Provision for	
free and	
compulsory	
education for	
children.	

The State, this article directs, shall take steps for free and compulsory education for all children up to the age of 14 years. It is obvious that children mean children of school-going age and not infants in arms. There is no particular significance in choosing the age of 14 years as the limit at which the obligation of the State for free and compulsory education is to cease. But most of the countries have fixed that age.

The Constitution puts a time limit, i.e., January, 1960, within which the ideal set forth in the article is to be achieved.

23. Sidhraj Bhai v. State of Gujarat, AIR(1963) SC 540 at p.545.
24. J.Calliam v. D.P.I. AIR (1959) Kerala 331.
25. State of Bombay v. Bombay Educational Society, AIR (1954) SC 561, Pp.566; State of Madras v. Champakan Dorairajan, AIR (1951) SC 226, at p.227.
26. AIR (1954) SC 561.
27. See also AIR (1951) SC 226, p. 227.
28. AIR 1951 SC 226 p. 227.
29. Bamesh Chandra v. Principal BBI College, AIR (1953) Allahabad 90.
30. Bansidhar v. University of Rajasthan, AIR (1963) Rajasthan p. 172.
31. AIR (1951) SC 226.
32. Prakash Chandra v. State of M.P., AIR (1962)M.P. p.48.
33. See State of Bombay v. Bombay Education Society, AIR (1954)SC 540.
34. Anjali v. State of W.B., AIR 1952 Cal. 822.
35. University of Madras v. Shantabai, IR(1954)Mad.67.
36. AIR (1954) SC 540, at p.
37. AIR (1951) SC 226.
38. AIR (1963) SC 649.
39. "In these regions of human life and values the clear-cut distinctions of cause and effect merge with each other. Social backwardness contributes to educational backwardness; educational backwardness perpetuates social backwardness; and both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition." : State of Kerala v. R.Jacob AIR (1964) Kerl. 316, at p. 316.

- 38B. Caste is only a relevant, not the compelling or important, circumstance in ascertaining the backwardness of a class, and the authority concerned is not precluded from determining the social backwardness of a group of citizens, if it can do so, without any reference to caste: Chitralkha v. State of Mysore A.I.R. (1954) S.C.1823. This approach is criticised by Mr. Radhakrishnan in a note: Units of Social, Economic and Educational Backwardness: Caste and Individual, 7 J.I.L.I.(1965)262.
39. AIR (1963) SC 649; See also Ramkrishna Singh v. State of Mysore, AIR(1960) Mysore 338.; Jacob Mathew v. State of Kerala, AIR(1964) Kerl.39, reversed in State of Kerala v. R. Jacob A.I.R. (1964) Kerl. 316.
40. AIR (1958) A.P. 129.
41. AIR (1961) Mysore 220.