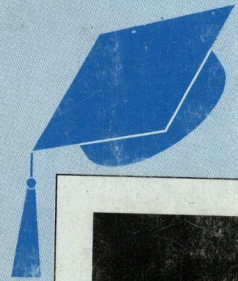
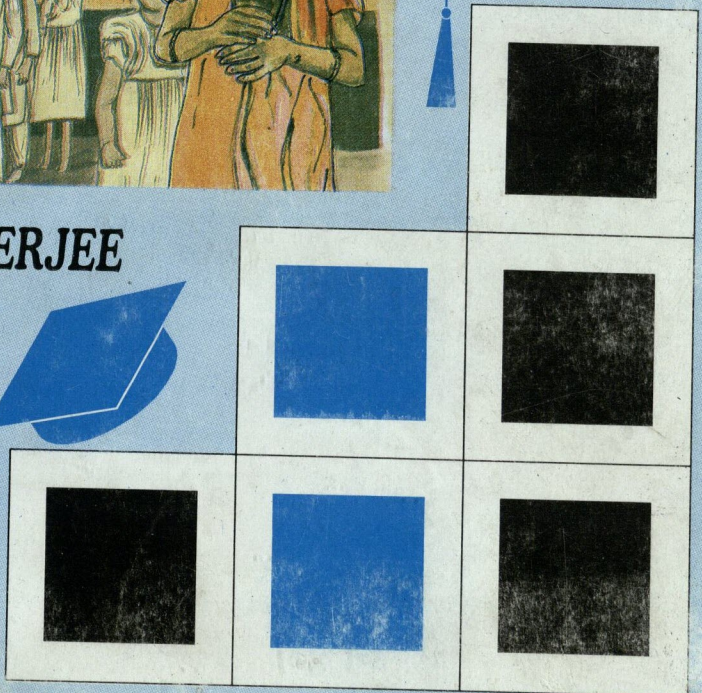
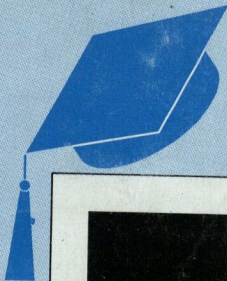


Educational Development of Scheduled Castes: Looking Ahead



S.K. CHATTERJEE



Recognising the role of education as an effective instrument for bringing about changes in Scheduled Castes in their socio-economic and socio-cultural conditions in an elaborate programme of pre-Matric and post-Matric scholarships, reservation of seats in the schools and colleges, establishment of hostels and ashram schools and many other beneficial schemes are in operation for the last five decades. It is of considerable interest to find out how these facilities have been actually beneficial for them and what is the level of their progress in the field of education. This book is aimed at knowing the truth in this regard.

In fact, the educational progress of the Scheduled Castes suffers from two deficiencies; first, they lag very much behind the rest of the population in their educational achievement and second, among them some groups have made far more rapid progress than others. The benefits of the special educational facilities for the Scheduled Castes have not accrued equitably to the most backward communities among them. As a result, severe inter-and intra-caste and inter-and intra-state differentials have

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given rise to a *separate class* among them.

This study based on the data, identifies the castes and the caste-groups which have benefited due to differential utilization of the incentives and other protective programmes and suggests measures to bring about an all round educational development of the Scheduled Castes. A bold and pragmatic step is called for to give a new orientation to the present policy of educational development of the Scheduled Castes, if we are really interested in ushering in *equality through education*.

S.K. CHATTERJEE retired from the Indian Police Service, and an anthropologist by training and inclination, has kept himself in touch with the burning social issues. During his eventful career he had opportunities to deal with highly sensitive problems, corroding the integrity of the country. He has been consistently engaged in an indepth study that includes both historical and constitutional facts and documents with a view to finding out the causes and remedies. He has authored a number of books under the pen-name of Anirban Kashyap.

Rs. 675

ISBN: 81-212-0632-4

EDUCATIONAL DEVELOPMENT
OF SCHEDULED CASTES
LOOKING AHEAD

S.K. Chatterjee



GYAN PUBLISHING HOUSE

North-East
Gender and Minorities Cell
Acces. No. 73
Date 81.3.03



000073

EDUCATIONAL DEVELOPMENT OF SCHEDULED CASTES
Looking Ahead
(Education, Management)

ISBN : 81-212-0632-4

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Published in 2000 in India
by Gyan Publishing House,
5, Ansari Road, New Delhi - 110002

Printed at Chawla Offset Printers

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1

Constitutional Provisions for Educational Development

Education is the most important element in the development of any community. The role of education as an investment in human resources has been increasingly recognized in all countries. For allround development of the Indian society the importance of educational development of general masses is a well-established fact universally accepted. Social and religious reformers in India realized the importance of education and worked for the educational uplift of the people throughout the ages. Education has special significance, particularly for the weaker sections of the society; for whom, education is an input not only for their economic development but also for instilling in them self-confidence and inner strength, thereby enabling them to face the new and unforeseen challenges. The poor progress of the lowest castes, specially those suffering from the disabilities of untouchability, in the traditional Brahminical Sanskrit education in the pre-British days, was partly due to the strong caste prejudices and prevalence of the practice of untouchability. Steeped in ignorance, illiteracy and poverty, they have been target of economic exploitation, harassment, atrocities and all forms of social disabilities.

The Britishers brought with them the British liberal education system. Even then, from the records and documents on education it is seen that excepting some singular cases, there was hardly any incidence of education amongst the Harijans", the so-called lower castes before 1813 when the decision of the court of Directors of the East India Company to participate in the promotion of education in India was taken. Thereafter, in the initial stages, participation of the Company was in the form of patronage to the missionary schools only. The educational policy was focused on the expansion of higher education which obviously resulted in the education of the upper

castes. But during this phase, every now and then some philanthropic missionaries drew the Company's attention to the illiteracy of the masses and the need for opening elementary schools for the peasantry and other poorer classes. As a result, some Company officials evinced interest in the establishment of vernacular schools on European lines. As and when established, these schools gained popularity over indigenous schools. One of their characteristics was that they were secular institutions and would not mind admitting children irrespective of their caste and creed differences.¹

In 1854, the Company streamlined its educational policy. In the memorable Woods Despatch, the Company accepted systematic promotion of general education as one of the duties of the State and aimed at transmission and imparting of European knowledge. The Woods Despatch laid down the policy for the British system of education in India. Two of the policy measures were: the constitution of a Department of Public Instruction and introduction of a system of grants-in-aid. It was contemplated that these would foster a spirit of reliance upon local exertions² and would, in course, of time render it possible to close or transfer to the management of local bodies, many of the existing institutions. This policy was reaffirmed in 1859 when the administration of the Company was transferred to the Imperial Crown. Due to incentives of grants-in-aid, a number of colleges and schools were opened. Their growth was further augmented by the adoption of the Municipal system, and by some acts passed from 1865 onwards providing for the imposition of local cess for the establishment of schools. As a result, the indigenous institutions got a setback while schools and colleges providing education on the British system flourished.

In fact, it was only a beginning. The Education Commission of 1882 recommended a systematic effort for popularizing education among the lower castes. Policies were laid down and funds were earmarked. But even this reform which ought to have been accepted by all the provincial governments was accepted in different measures. Some provinces took it zealously, while some of the provincial governments did not feel convinced on the need for educating the lower castes. This diverse tendency of covering education for lower castes remained almost a feature with the administration in the provincial governments.

The policy of the British Government to work for the educational development of the lower castes was, however, not without any motive. The confidential note of Sir Sankaran Nair is a pointer to the political motives that might have been instrumental in the formulation of government policies for their education and amelioration;

If English education is imparted to the lower classes, they will be under the influence of not only members of the present type of leaders, which they already are, but also of others as well. These members of the lower classes who have received English education will get into touch with the corresponding English educated members of the other classes who speak a different vernacular. The Hindu lower classes will grow a consciousness of their moral, religious and economic servitude, and will learn that, without the permanence and assistance of the British Government they have little chance of justice at the hands of the superior classes or of their present leaders. Once, the low classes get into touch with one another, they will form a strong body of legal opinion dependent on and in hearty sympathy with the Government. This awakening to a sense of their present service and necessity of cooperation will result from British education. Such education is also essential for the emancipation of the lower classes...It is also necessary that we must enable as many among these classes as possible to avail themselves of higher education. They will realize fully their social and economic degradation due to the hostility of other classes based on religions and there can be little doubt that they will be steadfast in their loyalty to the British Government³.

Sir Nair's argument was like Lord Macaulay's assumption. But his opinion that one of the advantages of higher education to the lower castes would be uniting them as a distinct minority "dependant on and in heavy sympathy with the Government" came to be true. In India, where the languages of the people differ from one part of the country to another, it is necessary to have one or two common languages for exchange of ideas. At that point of time, such a language could only be English which was also the medium of instruction for higher education.

With the acceptance of the Principle of Diarchy in 1922, education was transferred as a provincial subject to the control of

an Indian minister. This created a public enthusiasm for education. The transference policy on education advised the provincial governments to attach more importance to the educational advancement of the Depressed and Backward classes.⁴

After World War I, the attitudes of the British Government towards the policy of universal compulsory education also softened. Vithalbhai Patel took up the unfinished task of Gokhale, and, as a result, the Patel Act (1918) was passed by the Bombay Legislative Council. Other provinces followed suit, and by 1930, 12 Bills, eight of them official, were enacted. Bombay, Bengal, Bihar, Orissa, Punjab, United Provinces, Central Provinces, Madras and Assam, legislated Compulsory Education Acts. But the response to the legislation on compulsory primary education varied from province to province and from area to area. The apathy of the lower castes to compulsory primary education was revealed by the Compulsory Education Committee, set up under the Chairmanship of Sir Narayan G. Chandarvarkar in 1921, by the Bombay Government to review the scope of existing compulsory education both in municipal and rural areas. It was reported by the Committee that communities like *Chambhar*, *Mahar* and *Mang*, were divided among themselves and the majority of them were against compulsion. In Konkan, communities like *Vakkal*, *Kharvi*, *Mocoi* supported compulsion for boys only. One witness from the *Mahar* community said that books and slates should be supplied free. There was appreciable opposition to the system of compulsory education for either or both the sexes from such communities as *Chamar*, *Metri*, *Sunnagar* and others. In Gujarat and Sind also, a large majority of the backward classes opposed compulsion.⁵ The question arises is that, at a time when public opinion was strongly in favour of compulsory education, for what reasons did these communities show reluctance to accept the idea? A possible explanation could be their extreme poverty.

The introduction of Provincial Autonomy in 1937 and the assumption of power by the Indian National Congress in seven out of the eleven provinces enlivened the hope that the new leadership would do speedier work for the welfare of lower castes. The scope of developing education among the lower castes also expanded. A study⁶ showed that the efforts for the spread of education in the general population also gave a fillip to the lower

castes for education, despite the social taboos and economic hardships. The lower castes pupils accounted for 9.46 per cent of the total number of pupils in all educational institutions in the provinces of British India in 1936-37.

Independence ushered in a new era of national development based on the acceptance of a socialistic pattern of society which would secure equitable distribution of wealth and equality of opportunity for all, without any distinction of caste, race, religion, sex or place of birth in education, employment and cultural development. The Directive Principles of State Policy include universal education to all children up to the age of 14 years, promotion, with special care, of the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and protection from social injustice and all forms of exploitation. The Constitution has also made safeguards to protect the interests of the Scheduled Castes and Scheduled Tribes against any injustice in the matter of establishment of and admission to educational institutions and grants from State funds.

Constitutional Provisions

Articles 15(4), 29, 30, 45-46 and 350-A are the relevant provisions in the Constitution pertaining to educational development of the people. While Article 29 relates to protection of interests of minorities, Article 30 deals with rights of minorities to establish and administer educational institution which also figure under a separate heading 'Cultural and Educational Rights' in the Fundamental Rights chapter of the Constitution. Article 350-A lays down facilities for instruction in the mother tongue at primary stage. Since these three Articles formed the subject matter of a previous study* these provisions are not being discussed again. Moreover, none of these Articles confer any special rights and privileges on the Scheduled Castes. The present study therefore, is confined only to Article 15(4), 45 and 46.

The Constitutional provisions relating to the educational development may be grouped under two categories: provisions

* Chapters II and VII of the *Disintegration and Constitution* by the author may be seen.

which are applicable to all the citizens including the Scheduled Castes and Scheduled Tribes, such as Article 45; and Articles which have been specially provided to protect the interest of the Scheduled Castes and Scheduled Tribes, like Articles 15(4) and 46.

Article 15(4) finds place in the Fundamental Rights chapter of the Constitution while Articles 45 and 46 have been included in the chapter on Directive Principles of State Policy.

Article 15(4) provides that, "Nothing in this article or in 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."

The object of clause (4) of Article 15, added in 1951 by the Constitution (First Amendment) Act, 1951, is to bring Articles 15 and 29 in line with Articles 16(4), 46 and 340, and to make it Constitutional for the State to reserve seats for backward classes of citizens, Scheduled Castes and Scheduled Tribes in the public educational institutions, as well as to make other special provisions as may be necessary for their advancement. The immediate object of this amendment was to override the decision in *State of Madras V. Champakam (1951) S.C.R. 525*, to the effect that Article 29(2) is uncontrolled controlled by Article 46 and that the Constitution does not intend to protect the interest of the backward classes in the matter of admission to educational institutions. But though the amendment would validate reservations for the backward classes and the Scheduled Castes and Scheduled Tribes, it would not support the distribution of seats according to communities so as to discriminate between classes who are not backward, *inter se*, in short, the amendment would not sanction any *communal order*.⁷

Clause (4) is an exception to Clause (1) which forbids discrimination on grounds of 'race' or 'caste'. It is also in the nature of an exception to Article 29(2). Being an exception to Clause (1) of Article 15, it cannot be so extended as to in effect destroy the guarantee in Clause (1). Unless the test of backwardness is objectively satisfied, mere good faith of the authorities cannot protect a discriminatory provision under Clause (4).⁸

Article 15(4) is an enabling provision, like Article 16(4), and the reservation, under either provision, should not exceed legitimate

limits.⁹ It does not create any fundamental right in favour of a member of the classes specified in Article 15. Where, therefore, the Government reserves a percentage of seats for members of backward classes, such reservation will not be applicable if, such members already secured the reserved number of seats by competition on their merit; it will be called in aid only to the extent of their deficiency on the merit list.¹⁰

In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of the citizens. A special provision under Article 15(4) must, therefore, strike a reasonable balance between several relevant considerations and proceed objectively.¹¹

It follows that in making special provision for the weaker sections for higher education, the State cannot weaken standards of education or lower the efficiency of the scholars to the detriment of national interest.¹²

Article 15(4) speaks of 'classes of citizens' for whom the State can make special provisions to promote, Scholars to the detriment if they are socially and educationally backward. Such provisions may also be made for Scheduled Castes or Scheduled Tribes. The Scheduled Castes, the Scheduled Tribes and other Backward Classes are three different categories whose classification is based on different indices, and the classification of the third-named among them may vary from time to time with reference to the nature of backwardness which is sought to be remedied by the special provisions in respect of it.¹³ The Scheduled Castes and the Scheduled Tribes, however, constitute a protected class, apart from any condition of backwardness, as specified in Article 15(4). Hence, the State is entitled to do everything for the uplift of members of these Castes and Tribes, to make reservations for their admission to educational institutions and to impose such conditions as would make the reservation effective.¹⁴ It follows that the Government may relax the rules for admission to such institutions, say, by lowering the minimum qualifying marks or other conditions.¹⁵ Similarly, the State cannot be compelled to make provisions in this regard. It is left to the discretion of the State.¹⁶

Article 15(4) is, however, wider than Article 16(4) in as much as several kinds of positive action programmes can also be evolved

and implemented thereunder, in addition to reservations in educational institutions and other walks of life, to improve the conditions of Socially and Educationally Backward Classes, Scheduled Castes and Scheduled Tribes, whereas Article 16(4) speaks only of one type of remedial measure, namely, reservation of appointments/posts. But even these programmes of positive action under Article 15(4) may sometimes involve a degree of discrimination. For example, if a special residential school is established for Scheduled Castes or Scheduled Tribes at State expense, it is a discrimination against other students, upon whose education a far lesser amount is being spent by the State. It is another matter that such discrimination is not unconstitutional for the reason that it is designed to achieve an important governmental objective.¹⁷

Except for reserved seats in the Legislatures, the quantum of preferential treatment is unspecified in the Constitution. The Constitution does not explicitly provide any maximum or minimum limitation on the quantum or extent of preferences. The Courts have been unresponsive to claims attempting to establish some minimum quantum of compensatory discrimination; on the other hand in *Balaji v. State of Mysore* the Supreme Court has attempted to supply a constitutional limit to the extent of preference.¹⁸ Proceeding from the notion that Articles 15(4) and 16(4) are provisions of a special and exceptional character, rather than principles that can be given general operation, the Court finds that these provisions should be read as completely excluding or ignoring the fundamental rights of all citizens. It characterized the purpose of these special provisions, not merely as conferring special privileges on the backward classes, but as serving the interests of the whole society by promoting the advancement of the weaker elements. Thus, any scheme for preference can be weighed in terms of the interests of the whole society. In considering reservations in institutions of higher education, it is necessary, then, to balance the policy of advancing the backward against the national interest in the full utilization of talent. Lowering of the quality of graduates, says the Court, is the "inevitable consequences of reservation."¹⁹ But the need for technical, scientific and academic personnel "is so great that it would cause grave prejudice to national interest if considerations of merit are completely excluded by wholesale reservation of seats in all technical, medical, or engineering colleges or institutions of that kind"²⁰. Thus, special provisions for the

backward must be within "reasonable limits," "the interests of the weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole²¹."

Although recognizing the difficulty of adjusting these competing claims, the Court experiences no difficulty in finding that reservation of "practically all the seats available in all the colleges clearly would be subverting the object of Article 15(4)."²² While reluctant to set definite limits, the Court indicates that "speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50%, would depend upon the relevant prevailing circumstances in each case²³". The view expressed in *Balaji case* that reservation in excess of 50 per cent will be plainly inconsistent with Article 15(4) has been upheld in *Jayasree v. State of Kerala A. 1976 S.C. 2381*, *Devadasan v. Union of India*, AIR 1964 SC 179 and in many other cases. As a rule, reservation of seats for the Scheduled Castes, Scheduled Tribes and 'socially and educationally backward classes' in excess of 50 per cent of the available seats would be invalid and unconstitutional, while reservation of less than 50 per cent would be upheld. The recent attempt of the State Governments of Tamil Nadu, Karnataka and others of raising the quota of reservation to considerably more than 50 per cent has been scuttled by the Supreme Court when it again reiterated emphatically that the reservation of seats in excess of 50 per cent would be violative of the spirit of the Constitution.²⁴

In the chapter on Directive Principles of State Policy, there is a direction in Article 46 which postulates;

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.

The expression "the State" which occurs in this Article or other Articles in the chapter on Directive Principles of State Policy is defined in Article 12 to include the Government and Parliament of India, the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 46 embodies the concept of 'distributive justice which connotes, *inter alia*, (1) the removal of (a) educational inequalities, and (b) economic inequalities, and (2) protection from (c) social injustice, and (d) all forms of exploitation of (i) the weaker section of the people, and in particular, of (ii) the Scheduled Castes and (iii) the Scheduled Tribes. Though the term 'weaker sections of the people' has been used in this Article, it has not been defined anywhere in the Constitution. As a matter of fact, even the Framers did not know what this term 'weaker sections' actually denoted*. Dr. Ambedker felt that the expression 'weaker section' meant 'backward classes' or such other classes who for the moment could not stand on their own legs ie the Scheduled Castes and the Scheduled Tribes,²⁵ while Sir B.N. Rau, the Constitutional Adviser, who actually drafted this provision, thought that the emphasis was not so much on the backwardness as on the lack of strength to resist exploitation.²⁶ It was pointed out at the time of framing of the Constitution that as the 'weaker sections' were not defined anywhere in the Constitution, the apprehension was that the whole attention would be directed to 'Scheduled Castes', and, 'weaker sections' would not mean anything at all.²⁷ Since the 'weaker sections' have not been defined, this has to be decided by the court in each case as to whether it is a weak section of the body politic requiring discriminative protection against other sections. Since there is no ambiguity so far as the Scheduled Castes and the Scheduled Tribes are concerned, the provision of this Article, as apprehended by Sardar Hukam Singh in the Constituent Assembly, is generally invoked in relation to the Scheduled Castes and the Scheduled Tribes.

It may be noted that two provisions relating to Fundamental Rights, viz., Articles 15 and 29(2), have, however, been amended by the Constitution (First Amendment) Act, 1951, in order to give effect to Article 46, notwithstanding the existence of those two Fundamental Rights, to the contrary. By virtue of this amendment, thus, it is now possible for the State to make a special provision, notwithstanding the bar against discrimination on the ground of caste.²⁸

* For a detailed discussion, please see chapters VI and VII of the Second Volume of the *Scheduled Castes of India* by the author.

There is a significant difference between Articles 46 and 15(4). Article 46 enjoins on the State to devote special care for the educational and economic interests of the weaker sections of the people, while Article 15(4) enables the State to make special provision only for the advancement of 'socially and educationally backward classes of citizens'. The backwardness under Article 15(4) must be social and educational. It is not either social or educational. It is both social and educational. Article 46 gives stress on 'economic and educational, weakness, while Article 15(4) lays stress on 'social and educational' backwardness. It is possible that a 'socially and educationally' backward section of people may not be 'economically' weak and vice versa. Further, in an educationally backward class, there may be no economic backwardness in which event, Article 46 may not apply, while Article 15(4) will apply.

The Directive Principle contained in Article 45 of the Constitution enjoins that:

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.

Article 45 declares the objective of the State, and, like other Directives, does not confer any justiciable right. Though the Courts are not competent to compel the Government to carry out the Directive or to make any law for that purpose, for example, to provide for free and compulsory education within the time limited by Article 45,²⁹ this Article nevertheless casts a duty on the State to follow both in the matter of administration as well as in the matter of laws.

Even though the Directive enshrined in Part IV of the Constitution *per se* cannot be enforced by the Court nor can the Court compel the State to undertake legislation to implement a Directive, the Supreme Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by non-implementation of the Directives. The Directives are thus being enforced, indirectly, by the Court by issuing directions.³⁰

It may be noted that this Article does not discriminate between any section of people based on religion, caste, race, sex, or place of

birth and directs the States to provide (a) free and (b) compulsory education for all children until they complete the age of (c) fourteen years. The education for all children up to the age of 14 years should not only be free but also compulsory, i.e., the State should take such measures as are considered necessary so as to ensure that all children up to the age of 14 years are put through elementary education. It may be pointed out that there are provisions in the Constitution of countries like Russia, Eire, Myanmar, France, former Czechoslovakia, Germany and Costa Rica that enjoin the State to provide free and compulsory primary education.³¹

Article 23(1) of the United Nations Declaration of Human Rights posits:

'Elementary and Fundamental Education shall be free and compulsory.'³²

Article 46 of the Indian Constitution, however, does not make any distinction between primary and upper primary education. In other words, the education need not be confined to the primary level only. It may go up to the upper primary stage, so long as the child comes up to the age of 14 years. In that sense, Article 45 is an improvement on the United Nations Declaration of Human Rights. It was pointed out in the Constituent Assembly that what was intended by this Article was compulsory 'primary education', because the State could not undertake to give compulsory education of a secondary character.³³ But Dr. Ambedkar explained that this Article was not restricted to free primary education. Every child should be kept in an educational institution under training until the child was of 14 years. The rationale behind this age limit is that Article 24 forbids any child below the age of 14 years to be employed. "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 Article 45".³⁴

Of these three Articles, Articles 15(4) and 46 specially concern the Scheduled Castes, while Article 45 concerns all sections of people, including the Scheduled Castes.

In order to find out how far the objective of Article 45 has been achieved during the last 50 years of independence, we propose to examine first the level of literacy and then the progress in Universal

Elementary Education. Needless to say that had the provisions of Article 45 been implemented in letter and in spirit, illiteracy would have been eradicated completely by this time, because all the children up to the age of 14 years would have had free education up to the upper primary stage. Since Article 45 does not postulate discrimination, it would not have been possible to practise discrimination on the basis of caste, creed, religion, income or the like. That is the reason why, while discussing the level of literacy and the progress in Universal Elementary Education, we propose to focus particular attention on the Scheduled Caste population *vis-a-vis* the general population. Other measures taken so far in pursuance of the provisions of Article 15(4) and Article 46 for the educational uplift of the Scheduled Castes will be discussed in later chapters.

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