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COMPULSORY EDUCATION AND THE LAW

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Introduction

The status of compulsory education in Sri Lanka is an ambiguous one. The belief has been generated that education in this country is compulsory. Compulsory education has been viewed - mistakenly - as one of the causes for the tremendous 'educational expansion' that has occurred since independence. This paper commissioned on the initiative of UNICEF's Colombo office will attempt to lift this veil of ambiguity and shed some light on the legal status of compulsory education in Sri Lanka.

This paper will endeavour to sketch the position of compulsory education as it finds expression in some of the legal literature of the country. The approach adopted, is essentially a theoretical one. An attempt has been made to scan the relevant statutory provisions with a view to portraying the legal position regarding compulsory education. There often does exist though, a gulf between statutory provisions and the actual effect of such provisions. Legislating and adorning statute books is one matter; the implementation of these legislative provisions is very often a much more difficult matter. The 'ground situation' of the legislation considered here, does not form part of the subject matter of the paper.

This paper will also attempt to trace the genesis of the current legislation and explore - very briefly - the status of compulsory education under the Dutch and British colonial regimes. Attempts at introducing compulsory education in post - independent Sri Lanka will also be looked at briefly. We will also look at the aspect of reform and consider the views of a small group of academics, educationists and others, interviewed on the subject.

The Current Status

The legal system of Sri Lanka draws a distinction between the estate sector and the non-estate sector for the purpose of compulsory education. While in the former education is compulsory - at least in theory - in the latter no such corresponding legal provisions exist. The dichotomy between the estate and non-estate sector is the most salient characteristic pertaining to the current legal status of compulsory education in Sri Lanka. The country's statutory provisions as they currently exist make a clear distinction between those children schooling on estates and those schooling outside. Education is made compulsory for those within the umbrella of what is classified as the estate sector. For those outside it is not.

(a) **The Non-Estate Sector**

Education outside the estate sector is not compulsory. Apart from a few by-laws proclaimed during the early part of this century (and which have no practical effect now), there are no legal provisions currently applicable, which make education compulsory. However the legal framework to make education compulsory exists. This framework consists of regulation making powers given to the minister in charge of education. These regulation making powers include the power to frame by-laws making attendance compulsory. It is a power though which has yet to be exercised.

The relevant legal provisions are contained in the Education Ordinance of 1939 (as amended).¹ The Education Ordinance grants the Minister of education the power to make regulations.² Within the ambit of the Minister's regulation making powers is the power to frame regulations compelling children to attend school. The Minister is authorized to issue regulations

specifying the limits of any area within which efficient provision has been made for education by means of schools situated within or outside such area;³

and

requiring, subject to such exemptions and qualifications as may be contained in such regulations, the parent of any child not less than five and not more than sixteen years of age residing within such area, to cause such child to attend a school unless he has made adequate and suitable provision for the education of such child; but so however that no regulation made for this purpose shall involve the attendance at any school by any child from any distance exceeding two miles.⁴

This provision vests the fundamental responsibility of sending a child to school, on a parent of such child. It also implicitly vests a corresponding obligation on the part of the state, to provide a school within two miles from the residence of any child to whom such regulations may be applicable. However this power has not been exercised by successive ministers, and to date no regulations compelling parents to

1 *'An Ordinance to make better provision for Education and to revise and Consolidate the Law relating thereto'* - No. 31 of 1939 ; see the Legislative Enactments of Sri Lanka : (1980) Vol. XIV, Chap. 381.

2 Sec. 37, Many Acts of Parliament give powers to some administrative or executive official to make subsidiary legislation in the form of by-laws or regulations (the terms are used interchangeably). It is very often difficult to legislate exhaustively and comprehensively, and the instrument of 'subsidiary legislation' is used by legislatures as a more flexible method of the exercise of legislative power.

3 Sec. 37(2) (r).

4 Sec. 37(2) (s).

send their children to school have been framed.⁵ By-laws issued under older legislation though it would appear still continue to have legal effect, and it seems that at least in some local areas, legal provisions making education compulsory continue to exist - at least in theory. Many of these regulations though cannot be traced and are not enforced.

The Minister is also given the power to appoint officers to secure the attendance of children at schools in areas in which regulations for their compulsory attendance are in force and for the payment of the salaries of such officers.⁶

The legislation further permits The Minister to frame regulations regarding the power of such 'attendance officers' to demand and obtain information with regard to children who are required by such regulations to attend such school and to require the production of such children before them for inspection⁷

and regulations pertaining to the entry by such officers upon any premises and the search thereof for the purpose of gaining or verifying information with regard to any such children.⁸

The regulations made under these sections are of no effect until they have been approved by Parliament and such approval has been published in the gazette.⁹

A parent is deemed to have made 'adequate and suitable provision' for the education of his child in the following circumstances.¹⁰

- (a) if he proves that his child is in regular attendance at a school approved by the Director General or Chief Education Officer as providing adequate and suitable education; or
- (b) if he proves that he has made such other provision for his child's education as the Director General or Chief Education Officer shall certify to be adequate and suitable; or

⁵ Confirmed in conversation with Education Ministry officials. Also see Swarna Jayaweera, *Educational policies from the Mid-twentieth Century to 1977*, Occasional Papers in Education, No. 2 (Maharagama, Sri Lanka : National Institute of Education, 1988), P. 8 ; and J.E. Jayasuriya, *Educational Policies and Progress During British Rule in Ceylon (Sri Lanka)* (Colombo : Associated Educational Publishers, 1977) P. 448.

⁶ Sec. 337(2) (o).

⁷ Sec. 37(2) (p).

⁸ Sec. 37(2) (q).

⁹ Sec. 37(3).

¹⁰ See Sec. 38.

- (c) if he produces a certificate from the Director General or Chief Education Officer recommending that the child be exempted from compulsory attendance; or
- (d) if he produces a certificate from the Director General exempting his child from compulsory attendance on the ground that the Director-General is unable to procure the admission of the child into a school conveniently situated in the area in which he resides; or
- (e) if he proves to the satisfaction of the court that he had reasonable cause for not causing such child to attend school; or
- (f) if he proves that the child is prevented from attending by sickness or other unavoidable cause.¹¹

Under the Education Ordinance then, the power to legislate making education compulsory in areas outside the estate sector, is permissive and not mandatory. The act of making education compulsory is one which falls entirely within the discretionary powers of the minister in charge of education.

The legislation aims at providing compulsory education in specified local areas in conditions where sufficient facilities exist. Legislation making education compulsory would be of no effect unless adequate facilities exist and a recognition of this factor underlies the provisions contained in the Education Ordinance. It appears that the framers of the 1939 legislation perceived that by-laws or regulations enacting compulsory education should only operate in areas where adequate schools exist. Hence the adoption of the instrument of 'subsidiary legislation', in an attempt to make education compulsory only in areas where such facilities existed. It seems that the administration at the time the Ordinance was enacted was reluctant to decree compulsory education in an environment in which there may have been an inadequate number of schools. However in the current context of almost 10,000 schools islandwide - such a justification cannot hold. Sweeping and all encompassing legislation, would have imposed upon the state a corresponding obligation of providing more schools - an obligation it seems the state was unwilling to assume at the time the 1939 Ordinance was enacted.

This factor - the reluctance of the government to invest a larger sum in the sphere of education - seems to be the chief reason why compulsory education was made optional and not mandatory by the Ordinance of 1939. It also appears to lie at the heart of the distinction between the estate and non-estate sectors. In the estate sector (as we shall see) the responsibility for providing an education to the children

11 *Ibid.*

of the estates was vested on the owner of the estate. A responsibility which was devolved on the management of the estates in the early part of this century (see below).

In the non-estate sector there was no readily available corresponding body on which a similar responsibility could be devolved. In the 1800s the colonial government had sought the assistance of the local authorities in the provision of education - an unstable alliance which never secured its objectives (see below).

The Ordinance also envisages the use of 'attendance officers' to enforce compulsory attendance. These officers would police local areas in an attempt at roping in defaulters. The Ordinance provides for 'a fine not exceeding one rupee', and in the case of a continuing offence 'an additional fine not exceeding fifty cents a day', in situations where any of the Minister's regulations are flouted.¹² Fines were viewed as a potent enough sanction, to 'cajole' parents into sending their children to school.

(b) The Estate Sector

Statutory provisions encompassing the estate schools are more explicit. Here education is compulsory - at least in theory.

The legislation provides that

where the parent of a child not less than five and not more than fourteen years of age is resident on an estate, he shall cause the child to attend school.¹³

A parent who contravenes this section is liable to be convicted of an offence, and upon conviction is liable for a fine of one rupee, and in respect of a continuing offence to a fine of 50 cents in respect of each additional day the offence is continued!

One of the reasons for the distinction between the estate and non-estate sector, appears to lie in the fact that in the case of the estate sector, the responsibility for providing infrastructural facilities is vested on the owner of the estate. The Ordinance clearly provides that the owner of an estate shall provide a school building, a 'habitable house' for a married teacher and a playground.¹⁴ The owner is then under a duty to permit the Director-General of Education to establish and maintain a school on the premises.¹⁵ After the nationalization of the estates in the seventies, ownership of the bulk of them is vested in the state.

12 Sec. 37(2) (u).

13 Sec. 43.

14 Sec. 40(1).

15 Sec. 41.

This position reflects a change from that which obtained prior to the amendment of 1947.¹⁶ Under the original legislation of 1939 an obligation lay upon the superintendent of an estate to 'make such provision as may be prescribed for the education of the children' of the estates. This obligation was removed by the 1947 Ordinance. Under the present law the owner is merely required to permit the Director of Education to set up and maintain a school on the premises set apart for such school. Jayasuriya writes that

an implication of the (above amendment is that it is) no longer necessary for the management of an estate to engage a teacher and provide education. By law, it (has) only to provide the physical facilities and leave it to the Director to establish and maintain a government school using the facilities provided by the estate.¹⁷

Under the original legislation of 1939 the responsibility on the owner of the estate was much greater. It included not merely the provision of physical facilities, but also the provision of education. As we noted above, it seems that it was the availability of a body on whom the responsibility for providing education could be devolved (in this case the management of the estates) that lies at the root of the distinction between the estate and non-estate sectors.

The owner of an estate not complying with these provisions is liable, after due notice, to be convicted of an offence, and liable to a fine not exceeding five hundred rupees, and to a further fine of fifty rupees for each additional day on which the offence is committed.¹⁸ The Director-General is also given the power to enter the estate 'with such assistants, servants, implements and materials, and do such acts and take such measures, 'in the event the owner does not comply with the obligations stipulated in the Ordinance.¹⁹

An estate is defined as 'any estate in which labourers are employed and of which ten acres or more are actually cultivated'.²⁰

In respect of the non-estate sector, the Education Ordinance does not devolve on any authority or institution, the responsibility of providing either the infrastructural facilities or the responsibility of running and maintaining schools. There does not appear to be any other piece of legislation either, which vests in any authority in Sri Lanka, the 'responsibility for providing education' (outside the estate sector).²¹

16 Ordinance No. 26 of 1947.

17 Jayasuriya, 468.

18 Sec. 45(3).

19 Sec. 40(3).

20 Sec. 46.

21 Confirmed in conversation with Dr. Swarna Jayaweera, one time Professor of Education in the University of Colombo, and presently Co-ordinator, Centre for Women's Research (CENWOR), Sri Lanka.

In this country the responsibility is currently being discharged - primarily by the state - not as part of its legal or constitutional obligations, but as part of its moral and political commitment to education.

A Historical Sketch

This section will attempt to chronicle briefly, the attitudes of the Dutch and British colonial administrators to the issue of compulsory education gleaned primarily from their legal diktats. It will also look very briefly at attempts in post-independent Sri Lanka, in introducing compulsory education.

Under the Dutch, education was compulsory and was used more as an instrument of religious domination, than one of imparting knowledge or honing powers of analysis. Under the British, attendance was never really compulsory outside the estate sector. Enabling legislation to make attendance compulsory existed - which except by a few local government authorities in the early part of this century - was never made use of.

a) The Dutch Period

Education under the Dutch was compulsory till the age of 15 and extended in a less rigid form till the age of 19.²²

The thrust of the educational policies under the Dutch was aimed at converting 'the natives' to the Dutch Reformed Church. There was recognized the value of education as an efficient moulder of values of 'the governed', and this is reflected in the educational policies pursued by the Dutch. The employment policies of the Dutch functioned as a corollary to this philosophy and in the recruitment of officers to public posts, membership of the Dutch Reformed Church was viewed as a vital criterion.²³ Many people professed Christianity in order to seek admission to such posts.

'Attendance was compulsory until the age of 15 years and was enforced by means of a fine.'²⁴ After this age a student was required to attend school about twice a week to receive religious instruction for a period of two years. Occasional visits were then required for a further period of two years and at the age of 19 a student's duty to attend school was complied with. Jayasuriya notes:

22 Jayasuriya, 25.

23 *Id.* 24.

24 *Id.* 25.

Little else appears to have been taught besides religion, not even the Dutch language as the majority of the teachers were not competent in it. It would seem that for the majority of the students for most of the period of compulsory attendance, school was no more than a reporting station to which students came to testify to their adherence to the church and recapitulate some of the religious instruction they had received.²⁵

b) The British Period

The commitment of the British to the expansion of education in Sri Lanka was lukewarm. The British educational philosophy was motivated primarily by its own interests as a colonial power - interests which often did not blend with those of the country it governed.

Mass vernacular education did not rank very high in the priorities of the colonial government. To the British there was no advantage in educating the masses of the country. The colonial government required a small, reasonably well educated class - groomed in its own image - to help push the wheels of administration along, and its educational policies were geared towards this end.

Education did expand during the British period - but the expansion was unplanned and uncoordinated, and a quality education was available only to a small minority.²⁶ The British were glad to let the missionaries play a leading role in education, the missionaries in turn seeing education primarily as a tool of religious conversion.

Low priority was given to educational expenditure and it seems for this reason the British were reluctant to make education compulsory. Attempts were made to forge links with local authorities in the implementation of educational policy - links however which were very often brittle and tenuous and did not succeed in translating policy into deeds. Jayaweera in a survey of these 'linkages' writes that 'the colonial administrators were never successful in utilizing the machinery of local government in the execution of their educational plans.'²⁷

In 1871 the colonial government enacted the Village Committees Ordinance.²⁸ This ordinance gave Village Councils the power to make rules 'for constructing and repairing school rooms for education of boys and girls, and for securing their

25 *Ibid.*

26 *Id.* 535-38.

27 Swarna Jayaweera, 'Local Government Institutions and Education in Ceylon 1870 - 1930, (1966) 24 *University of Ceylon Review*, 29. (subsequently : Jayaweera, Local Government).

28 Ordinance No. 26 of 1871.

attendance at school.' This power was exercisable only by Village Councils and similar powers were not devolved on other local authorities such as municipalities.

The effect of this piece of legislation was chequered and depended to a large extent on the initiative and enthusiasm of the local officials. Some Village Councils did make the relevant rules and due mainly to the enthusiasm of individual headmen, were enforced to a large degree within their jurisdictions.

However there still remained large parts of the country where the ordinance was of no effect.²⁹

The early part of this century saw two vital pieces of educational legislation secrete from the colonial desk - the Town Schools Ordinance (No, 5 of 1906) and the Rural Schools Ordinance (No, 8 of 1907). These two pieces of legislation flowed from the recommendations of the Wace Commission submitted in 1905.³⁰

The Wace Commission had recommended that in areas where sufficient schools exist, education should be made compulsory. The Commission also suggested that where the population is sufficiently dense, the establishment of schools for boys should be made compulsory. With regard to the estate sector the Commission did not recommend compulsory education. Instead it suggested that an obligation be devolved on the planter community to ensure that children of the estates receive some sort of education 'as is reasonably feasible'.³¹

The Town Schools Ordinance provided for compulsory vernacular education in 'Municipal and Local Board Towns, and in Towns under the operation of the Small Towns sanitary Ordinance, 1892'.³² In order to make the Town Schools Ordinance applicable to a particular local area the Governor had to issue a proclamation.

The Ordinance provided that, if the local authority so desired, it could establish and maintain schools to provide for the education of children in the vernaculars. The Ordinance also made provision for the introduction of compulsory education by the relevant local authority. However the mandate - both for the provision of educational facilities and the enforcement of compulsory attendance - was permissive and the decision to introduce compulsory education was one which rested solely within the discretion of the local authority.

29 See Jayaweera, Local Government 31-32, and Jayasuriya, *Educational Policies and Progress*, Chapter 31.

30 Sessional Paper No. 28 of 1905.

31 See the speech of Governor Blake to the Legislative Council on 2 July 1907, *Hansard (LC)* 2 July 1907. Cited in Jayasuriya, 342-43.

32 Jayasuriya, 344.

The Ordinance provided that in the case of children between the ages six and twelve, and in the case of 'Mahamadan and Tamil' children between six and ten, regulations could be framed to compel their attendance at schools.

The impact of the Town schools Ordinance on expanding education was meagre. It failed to produce the impact the government had envisaged. This was due primarily to two reasons. First, the reluctance of the local bodies to assume responsibility for education given the vast investment of resources such a decision would require. Secondly, the failure of the government to proclaim it in all local areas it could have been applied in. By 1914 the ordinance had been proclaimed in only seven Local Board Towns and a part of the Kandy Municipality.³³ In 1916 a motion was introduced in the Legislative Council calling for all Municipal and Local Board Towns to be brought within the operation of the Town Schools Ordinance. This motion was defeated and the Legislative Council finally adopted a watered down resolution stating that 'it was desirable that all Municipal Local Board towns should be brought within the operation of the Town Schools Ordinance'.³⁴

The other vital piece of legislation which was introduced at around the same time was the Rural Schools Ordinance (No, 8 of 1907). This Ordinance was intended to provide for the vernacular education of children from outside the areas covered by the Town Schools Ordinance. The Rural Schools Ordinance had a greater impact in terms of democratizing education than the Town Schools Ordinance.

The areas under its purview were divided into school districts and District Schools committees were established for every school district. After satisfying itself that adequate educational provision existed in the relevant school district, the district Schools Committee could make by-laws compelling attendance for children between the ages of six and twelve and in the case of Muslim and Tamil children between the ages of six and ten.³⁵

The Ordinance also contained a provision - absent in the Town Schools Ordinance - placing the onus of providing education to estate children on the superintendent of the estate. Section 29 stated that

it shall be the duty of the superintendent of every estate to provide for the vernacular education of the children of the labourers employed on the estate between the ages of six and ten, and to set apart and keep in repair a suitable schoolroom.

33 Jayasuriya, 348.

34 *Hansard* (LC) 12 July 1916. Also see Jayasuriya, 348-49.

35 Sec. 20.

This was probably the only provision in the entire spectrum of educational legislation existing at that time, (albeit a very narrow spectrum) which placed on any person or organisation, the responsibility for providing education. The children of the estates were unique at that time in that they were the only group to whom a person or organisation owed the legal responsibility of providing education. Even in the early part of this century then it was only in respect of the estate sector that specific legislative provision existed, devolving on a person the responsibility for providing education.

This again illustrates the huge gulf that often exists between legal reality and social reality. Despite the existence of provisions of this nature from the early part of this century, education in the estate sector has remained stagnant and woefully inadequate. In the absence of the political and social will to translate legislation into tangible action, enactments of this nature will have only a marginal impact.

Both the introduction of these two pieces of legislation, and the special place given to the estate sector, may have been influenced to a degree by the various pressure groups operating within the country and in England at around that time.³⁶ The 1901 Census drew attention to the fact that only about one fourth of the school going population was enrolled in schools. This report drew a critical response both within the country and in England. The criticism was directed at the educational policies of the colonial government, and called for the channelling of a large sum of resources towards education.

In England the issue of educational reform came up for discussion in the House of Commons and featured periodically in their debates for about three or four years after the Census Report.³⁷

Within the country too groups such as the Ceylon Social Reform League brought together interests, who campaigned intensely for a greater investment in the sphere of education. The expansion of facilities to the underprivileged and the poor, and the introduction of compulsory education were some of the issues which formed part of their platform.³⁸

The Town Schools Ordinance and the Rural Schools Ordinance then were feeble and half-hearted attempts on the part of the colonial government to expand education. The colonial government, reluctant to assume a larger responsibility than it already had, sought to rope in the local authorities in the provision of education. The response of the local authorities however was also feeble and

³⁶ This was pointed out in conversation with two academics - Dr. Swarna Jayaweera of the Centre for Women's Research, and Dr. Rachel Kurian of the Institute of Social Studies in the Hague.

³⁷ Jayasuriya, 330.

³⁸ Jayasuriya, 331.

half-hearted for the most part, with the result that the two ordinances did not contribute much towards expanding education.

One of the major factors militating against the introduction of compulsory education in the 19th century was the absence of a 'conscience clause'. If education was to be made compulsory then it would be grossly unfair for children of one religious denomination to have to receive religious instruction in a different faith. It was imperative that some legislative provision be enacted to give children of one religion, the option of deciding whether or not to receive instruction in a different religion.

The Wace Commission recommended the introduction of a conscience clause in its report of 1905. A diluted version of the recommended version found legislative expression a few years later.³⁹ In its report the Wace Commission had recommended that the consent of the parents should be obtained before religious instruction is imparted to the student. The provision that finally found legislative expression though placed the onus on the parent to place objections before the school if he did not wish his child to receive religious instruction. Jayasuriya notes that few parents 'dared to incur the wrath of the school authorities' and seek exemption for their children.⁴⁰

The 1920 Education Ordinance was the next major legislative enactment of the British colonial regime. It was also the precursor to the current ordinance. Until the introduction of the 1920 Ordinance, there was no single comprehensive legislative enactment dealing with education and this enactment sought to consolidate all previous enactments.

The genesis of the 'distinction' between the estate and non-estate sectors appears to lie in the provisions of the Rural Schools Ordinance and the obligations it placed on the superintendent of the estate to provide for the education of the children of the estate. As we saw this obligation was unique to the estate sector. The Rural Schools Ordinance however left the issue of compulsory attendance optional, and the local authority was free to decide whether to introduce it or not.

The 1920 Ordinance carried this one step further, by making attendance compulsory for those within the estate sector. For those outside it was left optional. Section 34 provided that education for estate children was to be compulsory, and parents who failed to send their children, aged between six and ten, to school were liable to be fined. These provisions - without much modification are repeated in the current (1939) ordinance.

39 For a more exhaustive discussion of the issue of a conscience clause, see Jayasuriya.

40 Jayasuriya, 406.

Under the 1920 Ordinance the Board of education - which had existed from 1896 but had no legal status - was empowered to make regulations pertaining to several areas.⁴¹ Within the Board's regulation making powers was the power to regulate in areas impinging on compulsory education. The Board was given the power to appoint attendance officers to secure the attendance of children in areas where by-laws mandating compulsory education were in force and the power to permit such officers to demand information and enter premises in the discharge of their duties.⁴²

The Ordinance also established Educational Districts and set up District Committees for each Educational District.⁴³ The District Committees were empowered to frame regulations compelling attendance where 'efficient provision' had been made for elementary education.⁴⁴

The estate management's responsibility of educating the children of the estates was not removed and the ordinance charged the superintendent of an estate with the duty of providing for the 'vernacular education' of the estate children between six and ten.⁴⁵ The superintendent had to appoint competent teachers and to set apart and maintain an appropriate schoolroom.⁴⁶

The Ordinance broke new ground by prohibiting the employment of children between six and ten before 10 in the morning.⁴⁷ The superintendents were entrusted with securing the observance of this provision. This provision raises the implication that the sort of education envisaged by the framers of the ordinance at least where estate children were concerned - was of a limited nature. What the framers had in mind, it seems, was a couple of hours or so, of education a day. This attitude to the education of the plantation sector would be consistent with British colonial policy of the day. The plantations - especially tea - were vital cogs in the colonial machine and were the biggest source of revenue for the government of that time. The government would have been very keen to ensure that production levels were maintained or even surpassed. The children of the estates were also a useful cog - chiefly as a source of cheap labour. Hence wider legislation banning the employment of children of school going age totally, would have run counter to the economic interests of the colonial regime.

41 See Sec. 10.

42 Secs. 10(l) (g) (h) and (i).

43 Secs. 17 and 18.

44 Sec. 25.

45 Sec. 32.

46 *Ibid.*

47 Sec. 33.



The special legal protection given to the estates began with the Rural Schools Ordinance in 1907 and was continued by the 1920 Ordinance, through to the 1939 Ordinance which still governs these issues.

Compulsory education then did exist on a limited scale during British times. It appears that few local authorities made use of the legislative provisions in the 1906, 1907 and 1920 ordinances to make attendance compulsory in their areas. Some of these by-laws may have been enforced till as recently as the fifties or early sixties. In the course of this study, reports of the existence of attendance officers in the fifties and early sixties were given to us by many of the respondents. However these by-laws are now obsolete and many of them cannot be traced.

c) The Post-Independence Period

This historical sketch shows that the old order is still to change. The gist of the legislation has remained in roughly the same form as that which existed prior to independence. A few amending ordinances have attempted to adorn it - but the core provisions have remained broadly the same.

In 1966 a committee chaired by Professor J.E. Jayasuriya recommended the introduction of compulsory education.⁴⁸ The committee recommended that there be eight years of free and compulsory elementary education for all those between six and fourteen.⁴⁹ It was suggested that a duty be devolved on the parents to ensure that their children attend school.⁵⁰ The failure of the parents to perform this duty to be punishable by a fine.⁵¹

In 1967 a bill was introduced in Parliament to revamp comprehensively the system of education. Among the provisions of the bill was one to make education compulsory. However the bill remained in that state and was never passed.

The area of compulsory education has obviously ranked very low in the eyes of the political elite. Whether the introduction of compulsory education is desirable or not is a moot point, and is something that will be considered in the next section. It cannot be denied though that there is a need for clarification and reform in this area of the law. The current legislation is a reflection of a different era, another epoch. The need for a different set of legal norms to govern what are very different social conditions today, is a crying need.

48 See *'Proposals for Reforms in General and Technical Education'* (Colombo : Government Press, 1966).

49 Chapter I, para 3.

50 Chapter I, para 4.

51 Chapter I, para 5.

Reform

One of the objectives of this study was to explore avenues of reform. In what way or ways can the Sri Lankan educational system spread its net so as to catch and retain a larger section of the school going age? Is the legal avenue worth pursuing? Or are there other more relevant and appropriate strategies?

The 1981 Census showed us that approximately 84 per cent of the population between five and fourteen were enrolled in schools. Of that about 70 per cent proceed to Grade 5 and about 50 per cent to Grade 8.

If the non-school going population is to be harnessed and trained, in what direction should we channel our efforts? What are the causes of non-attendance? Is it within the compass of legal reform to remove some of these causes? These were some of the questions put to a small group of academics, lawyers, social workers and others, interviewed as part of this project. As an aspect of this project and in an endeavour to identify possible avenues of reform we spoke to this small group. The interviews were more in the nature of informal conversations and were conducted without the aid of a pre-formatted questionnaire or similar device. It was sought to elicit their response to the issues of educational expansion and compulsory attendance, and to seek their opinions on possible strategies for change.

The interviews centred on compulsory education : would the introduction of a law making attendance compulsory help in democratizing and enhancing access to education? Several strands of opinion emerged, some of which this section will attempt to collate. These interviews were conducted on the premise that the expansion of the formal education system was an objective worth pursuing and a desirable aspect of social policy.

The study drew a whole spectrum of views - from the outright rejection of legislation, to seeing legislation as being vital in the effort at democratizing education. The majority of those interviewed came down against the use of legislation as a possible strategy. Legislation was seen as having only a marginal contribution to make, and the thrust of the reforms, it was suggested, lie outside the legal umbra.

The nebulous phenomenon of poverty was seen as the primary obstacle, and legislation making attendance compulsory would not help in any way in alleviating this condition. Children do not attend school for several reasons. (1) They cannot afford to fund ancillary items like clothes and stationery, which are not provided free by the state. (2) Because they are employed and their income is necessary for the existence of themselves and/or their family unit. (3) They need to stay at home to look after younger children and so free both parents to work. (4) For some other social, economic or physical condition.

If these are some of the major causes of non-attendance, then legislation would not make a big impact. Attempts should be made to overcome specific poverty related problems the children and their parents encounter, it was argued. More welfare measures such as free or subsidized clothing and stationery was suggested as one method of attracting and retaining children in school. The provision of more creches where parents could keep their young was also another measure. Such welfare measures it was suggested, should not be introduced across the board, but a more positive and selective discrimination policy should be followed. Such facilities should be available only to the most underprivileged and marginalised sections of society.

The educational system of Sri Lanka already goes a long way in providing ancillary provisions to school children. For a third world country, the package of educational incentives offered to children to attend school and educate themselves is impressive. Tuition from primary to university is free, text books are free at primary and secondary level, a free mid-day meal is now provided to primary and secondary students, and so is subsidized travel. At university level - slightly under half the annual intake receives a stipend towards their living expenses under the Mahapola Scholarship scheme and of the other, a considerable portion are awarded bursaries.

However despite the existence of this impressive basket of facilities, approximately 14 per cent of the school going age do not enrol in schools. And of the figure that enrolls, 30 per cent drop out by grade V and 50 per cent by Grade VIII.

Some of those interviewed recommended that this strategy of providing welfare facilities be pursued - but more selectively. Such facilities - for example subsidized travel - should not extend across the board to all school children, but only to those who are genuinely saddled with social and economic difficulties. Positive and selective discrimination (if such a strategy is workable in practice) was suggested as one method of helping to cure some of the poverty related problems and thereby attract the children back to school. However the problem with this strategy is identifying this 'underprivileged' segment. How is one going to ascertain the bona fides of the children and their parents and select those to whom special facilities should be extended? In India for example, programmes of positive discrimination to assist historically deprived castes and classes, have given rise to several problems.

It is of interest to note that the Bogoda Premaratne Committee too rejected the use of legislation making attendance compulsory, and instead recommended that a package of educational incentives be offered to attract children to school. The Committee wrote:

It was suggested to us that the legal provision available to compel attendance of children should be enforced. We believe, instead, in making the teaching programme as attractive as possible to the average child of this age -group

and in providing inducements for the disadvantaged children by way of free books and meals. It is also helpful to organise community programmes to enlist the co-operation of the parents concerned in encouraging their children to attend school.⁵²

There was another strand of opinion - argued very convincingly - which felt that there was a genuine and compelling need in our educational system for compulsory education legislation. The lack of such legislation was a gap in our system and an obstacle in efforts at universalizing and democratizing education.

The view was expressed that there exists among the non-school going population (which includes those who enrol in school and drop out at some stage) a significant section who do not attend school for reasons of indifference and apathy. These children are neither employed nor too poor to purchase the requisite stationery and clothes etc. - but still fail to attend through a combination of laziness and parental indiscipline. It is this segment of the non-school going population which legislation could help harness.

A former Education Ministry official cited the example of the slums of Colombo where a great many children do not attend school for reasons of indifference on the part of the parents. He also cited the specific example of the slums situated adjacent to the Ministry of Education, at its former premises in Slave Island, Colombo. He observed that his own experiences were that often, there were large groups of children - who should have been in school - cavorting and gambolling in the backyards and playgrounds. These children were not employed, nor were they undertaking any family responsibility like looking after younger children. For these children, mild coercion is needed, and legislation could play this role to a great extent it was argued. The threat of a sanction - the mere hauling up before a magistrate may suffice - would have some effect on inducing these children to attend school.

It must be emphasized again that these responses were elicited by way of ad hoc and informal interviews. This section is intended to give a broad indication of some of the problems and issues in this area and explore possible avenues of reform. A more exhaustive sociological survey would probably be able to identify more specifically and accurately, the causes of non-attendance.

The comment was made in the course of this study that the most effective method of evaluating the effectiveness of legislation would be to "try it out". It is submitted here that as a prelude to any form of reform and as an adjunct to this study, a study be made of other Third World jurisdictions - especially other Asian

⁵² *'Towards Relevance in Education'* : Report of the Education Reforms Committee of 1979 chaired by Bogoda Premaratne (Sri Lanka : Department of Government Printing, 1982) Pg. 59 para 75.2.

jurisdictions - having similar social, economic and cultural backgrounds. The experiences of these countries should be useful in providing guidelines for reform here.

The comment was also made that legislation would create the environment in which some of the problems regarding non-attendance could be more effectively addressed. It would help assemble the framework within which specific problems relating to non-attendance could be identified and then hopefully overcome. The suggested strategy was of broadly the following shape:

- (a) That the practice of marking attendance registers be enforced strictly.
- (b) If the local government officials in every division furnish a list of the school going population in that division, it may be possible to identify those who fail to attend school for some reason.
- (c) Once this group is identified, it may be possible through the use of local Education Ministry, or some other officials or a group consisting of parents and others, to meet the children and their parents and ascertain their specific problems and the reasons why the children fail to attend school. In this way problems could be addressed on an individual basis.

It was suggested that fines and penalties be used as a last resort. Only in the event that children fail to attend school through indifference or apathy should fines be resorted to. Though this strategy may sound impressive on paper, in practice the sheer gigantism and scope of the strategy will undoubtedly pose problems. Further this strategy may be pursued even without the support of legislation.

A proposal which emanated from many people spoken to was the need to restructure and reshape the content, nature and style of our educational system. This suggestion has two aspects. First, the need to make education socially relevant to the large bulk of the population. They need to see education as something attractive, something to be pursued and more importantly, something that promotes social mobility.

The second aspect is the need to fashion educational strategies which will take account of the particular geographical area in which schools are located. There is a need to schedule school time tables and sessions bearing in mind the sort of environment in which schools are situated. The occupational habits and life style of a particular village community may require that the hours of school be modified. For example, it was suggested that the timetables of schools situated in a village where a large number earn their living through the fishing industry, may need to be modified so as to permit the children to assist the family members in their industry.

Similarly in areas where the large bulk of the population is engaged in farming, schools may need to tailor their hours of attendance and vacations to take account of harvesting or sowing seasons - during which periods children may be required by their families.

The view was also expressed that if legislation is introduced, the concept of 'education' be construed in its broadest sense, Education should be interpreted to mean not just formal schooling, but also non-formal and part time classes. It is better that a child receive some sort of education - even if it is only three hours a day and three times a week - than none at all. Non-formal classes it was suggested, may act as a bridge in helping children cross the gulf to formal education. The thrust of this argument was for flexibility - not just with regard to hours of attendance and school vacations; but also in the style, nature and structure of education.

Another proposal which also drew a fair amount of support was one to entrench constitutionally, the right of a child to education. The right to education has for long been seen globally as a fundamental human right. It is also one of the rights contained in the recent Convention on the Rights of the Child. Giving it constitutional protection it was suggested, would help create an awareness, conducive to democratizing education.

It might be relevant, at this point, to digress and consider briefly, the position education occupies in the second Republican Constitution of 1978,

The constitution lays down in Chapter VI under the sub-head 'Directive Principles of State Policy' that

the state is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.⁵³

However these directive principles are not legally enforceable and are subject to the qualification contained in Article 29 that

the provisions of this Chapter (VI) do not confer or impose legal obligations, and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal.⁵⁴

53 Article 27(2) (h).

54 Article 29.

The constitution then in its present form, although it has as one of its objectives the right to 'universal and equal access to education', does not make this right enforceable against the state. The constitutional provision is more in the nature of a directory provision, meant to guide and shape state policy.

After the passage of the 13th Amendment to the constitution and the introduction of provincial councils into the administrative fabric, the provision of educational facilities, it appears, is a function which falls within the purview of the provincial councils.⁵⁵ In this respect if compulsory education is to be introduced, it would be more consistent to let the respective provincial councils frame the necessary legislation.

The suggestion was made to make this internationally recognised right, legally enforceable against the state. Litigation it was argued, could have a chain effect in promoting an awareness with regard to the value of education. A decision or several decisions of the court, have the capacity, over a period of time, to create a greater public awareness with regard to the value of education.

Constitutional entronement, would also help simulate action in cases where due to state inaction or administrative negligence educational facilities are lacking. Through the use of the courts the public will be able to prod the relevant state agencies and officials to provide the required facilities.

It is essential however that if such a constitutional right is introduced, the right to institute an action be given to any citizen or group of citizens, acting bona fide. Very often legislation is ineffective because the person or group of persons who are given the right to invoke the protection of the legislation lack the capacity - social or economic - to use the court process. If the right is to have a wide impact, then those persons who have the capacity to use the court process, should be permitted to invoke the right on behalf of those affected.

In India vast strides have been made in this field. In what has come to be called public interest litigation or social action litigation, the courts of India have permitted individuals and groups - acting bona fide - to institute an action on behalf of the poor and the disadvantaged who lack the ability to use legal action. The rationale being that these disadvantaged groups - through some social or economic disability - are unable to effectively seek the protection of the court, on their own.

Under the present Sri Lankan constitutional fabric, actions for the infringement of fundamental rights can only be taken up by the Supreme Court, sitting in

55 See Appendix II to List 1 of the Ninth Schedule, 13th amendment to the Constitution : Certified on 14th November 1987 (Colombo : Department of Government Printing).

Colombo. However if this right to education is to have a larger ambit, then actions should be allowed in the lower courts like the District Courts and the Magistrates Courts. This would make the right far more accessible to the poor and the disadvantaged - the majority of whom live outside Colombo and therefore outside the immediate vicinity of the Supreme Court.

It was also suggested by one of the respondents that the introduction of this constitutional right be coupled with an intensive public awareness campaign - to communicate to the people the existence of this right and to create a greater appreciation of the value of education.

Conclusion

In its current state then the legal system of the country draws a distinction between the estate and non-estate sector, making education compulsory in the former but not in the latter. However the legal framework to install compulsory education in other parts of the country too exists, and all that is needed is for the relevant regulations to be issued by the Minister.

The rationale for this distinction appears to lie in the reluctance of the government at the time the relevant legislation was framed, to undertake to provide facilities throughout the entire country. Legislation stipulating compulsory education without the necessary facilities would be worthless. It would be of no value to enact a law making education compulsory if the schools to educate such children were not available. Hence it seems that the framers of the legislation chose merely to enact permissive legislation, so that compulsory education laws could be enacted where it was deemed that suitable and adequate facilities existed.

The foray into the colonial era showed us, that the nature of the legislation has remained broadly similar to that which existed under the British colonial regime. No attempt has been made to re-mould the legislation to harmonise with a new social environment.

Paradoxically it is in the plantation sector that educational legislation assumes a more definite character and is deemed compulsory. Paradoxically, because the plantation sector has remained socially and educationally one of the most underprivileged and underdeveloped areas in the country. This situation is perhaps illustrative of the ineffectiveness of legislation in transforming the conditions of groups of people in the absence of adequate infrastructural and backup services, and of course the political will to implement the legislation. It is also indicative of the lip service paid to pressure groups and others campaigning for reform. In the absence of a firm commitment from the political and administrative elites, legislative action is most often ineffective as an instrument of social reform.

In the non-estate sector, education ballooned in the fifties and sixties - in the absence of both a legal commitment to education, and compulsory education legislation. In the plantation sector on the other hand, despite the existence of 'legal obligations' to provide infrastructural facilities, and the existence of compulsory education legislation, the rate of educational expansion was much less.

The question of the effectiveness of legislation is crucial to this paper. One of the objectives of this study (apart from clarifying the legal position of compulsory education) was to attempt to ascertain the impact compulsory education legislation would have, on democratizing and enhancing access to education. The 1981 Census showed that about 84 per cent of the school going population enrolled in schools. Of that about 70 per cent went up to Grade Five and about 50 per cent up to Grade Eight.

In the sixties, UNESCO identified Sri Lanka as one of the countries that would achieve universal elementary education of at least seven years by 1980.⁵⁶ However it is unlikely that this goal will be achieved even by the year 2000. Swarna Jayaweera identifies the change in priorities that occurred in the mid sixties among policy makers and administrators, as one cause.⁵⁷ After about two and a half decades of rapid educational expansion, the momentum slowed beginning around the mid sixties.

An attempt was made as part of this study, to seek whether legislation would help getting those who do not enrol to do so, and help in retaining those who drop out. The method this study adopted was to talk to academics, educationists, social workers and others, and seek their views on the suitability and appropriateness of legislation. As we saw in the previous section, the majority of those interviewed saw legislation as having only a marginal impact. It was argued that what was needed was to reform the content and style of education and to buttress this with other incentives like free or subsidized stationery and clothing to underprivileged sections of the population. However there was another view - which although a minority view was argued very cogently and rationally - that saw legislation as having a positive role to play. This view argued that legislation would help drag into the educational net, those who fail to attend schools through apathy and indifference.

This paper takes the view that the introduction of legislation per se would be of marginal importance in getting more children to school. A law it is submitted would have only a very small impact for the following reasons.

56 Swarna Jayaweera, 'Extension of Educational Opportunity - The Unfinished Task' [C.W.W. Kannangara Memorial Lecture - 13 October 1989] (Maharagama, Sri Lanka : National Institute of Education, 1989) Page 5.

57 *Ibid.*

First, it appears that the major causes for non-attendance are socio-economic. Poverty of the parents, the lack of aspirations, the perception by a large segment of the population that education does not act as an instrument of social mobility, form a complex web of factors which attract children away from the educational system.⁵⁸ If this is true - that the major causes for non-attendance are socio-economic, then legislation can have only a marginal impact.

Reform it would seem, needs to be channelled in the direction of enhancing the quality of education. The 'public image' of the educational system desperately needs a face lift. There is a need to project an image of education as being a potent catalyst for social change. The poor and the underprivileged have to see education as holding out more than just a glimmer of hope in their tunnel of poverty and misery. This is something beyond the reach of a piece of legislation. Compulsory attendance legislation, it would appear, would only serve in cajoling those who fail to attend school through apathy and indifference, into the educational system. And it appears that this segment of the non-school population (those who fail to attend through apathy and indifference) is a smaller fraction than those who fail to attend for other socio-economic reasons.

Secondly, the unenforceability of the legislation. This sort of legislation would be very hard to enforce. It would be futile to initiate such a legislative exercise if the legislation is not going to be enforced.

The tenor of the legislation is such that enforcement requires a great effort. If there was a moral stigma attached to non-attendance, then enforcement would be easier. However this is not the case. In enacting compulsory education legislation one is attempting to move the grain of human conduct in a particular direction. And it is a direction which does not 'naturally attract' (at least to the non-school going population).

It is suggested that herein lies the key. The need to 'naturally attract' - those outside the educational net. To show to those outside, that education, can help improve their condition of life. And to buttress this with support of an economic nature. Compulsory education is comparable to using the 'big stick'. While the more appropriate approach should be to 'dangle the carrot'. To hold out education as something to chase after.

58 Two studies conducted in 1959 and 1973 identified poverty as one of the major causes of non-attendance. Parents were in most cases unable to provide books, stationary and clothes for their children. See the *Report of the Committee on Non-School Going Children* (Sessional Paper III of 1960, Colombo ; Government Press) and S. Haputantri, *A Report on a Survey of Non-School Going Children and Students who drop out of school at an early age in Sri Lanka*. (Colombo ; UNICEF, 1979).

A further problem with legislation is that it implies the use of a sanction or penalty. Non-compliance attracts a penalty or sanction. The type of legislation envisaged here is not a law to prohibit a certain act or form of conduct. It is to a degree, in that it attempts to prohibit non-attendance. However it is more a law to induce a certain type of conduct. In this respect the better approach would be to paint the desired form of conduct as something attractive and something beneficial.

This paper has attempted to draw more sharply the contours of compulsory education in Sri Lanka. It was initiated on the premise that the status of compulsory education in this country was an ambiguous one and needed clarification. It is hoped that this clarification has been achieved. This paper also attempted to consider the effect of legislative action. It reached the conclusion that legislative action would have only a marginal impact and that the more effective strategies for reform lie outside the legal umbra.

Education has for long been perceived as a basic human right and vital in the task of national development. In a global environment in which forecasters are predicting that the 'gap' in the next few decades is not going to be between the industrialised north and the non-industrialised south; nor between the rich and the poor; but rather between those with knowledge and those without; educational development becomes crucial. If these predictions hold good, and education and the diffusion of knowledge map the direction of a country's progress, educational reform is a matter of some urgency. Comprehensive reform in the sphere of education then becomes not merely important, but imperative, if Sri Lanka is to bridge that 'knowledge gap'.

Appendix

List of persons interviewed.

Bastian, Sunil - International Centre for Ethnic Studies

De Silva, Lilan - Operations Manager, World Vision Lanka.

De Soysa, (Mrs) Sharya - Dean, Faculty of Law, University of Colombo.

Gunawardene, (Mrs) Chandra - Senior Lecturer, Faculty of Education, University of Colombo.

Gunawardene, Dr. G.B. - National Institute of Education, Maharagama, Sri Lanka.

Hettihewa, P. - Siyath Foundation - A group of educational consultants.

Jayasinghe, (Ms) Hema - Ministry of Education.

Jayasuriya, Dr. J.E. - Former Dean and Professor of the Faculty of Education, University of Colombo.

Jayaweera, Dr. (Mrs) Swarna - Formerly of the Faculty of Education, University of Colombo and currently Co-ordinator, Centre for Women's Research (CEN-WOR), Colombo.

Kurian, Dr. (Ms) Rachel - Institute of Social Studies, The Hague.

Perera, S.M.D. - Ministry of Education.

Pieris, (Ms) Kamala - Siyath Foundation - a group of educational consultants.

Senanayake, Asoka - National Institute of Business Management.

Sirisena, U.D.I. - Formerly of the Ministry of Education.

References

Haputantri, S. *A report on a survey of Non-school Going Children and Students who drop out of school at an early age in Sri Lanka.* Colombo: UNICEF, 1979.

Jayasuriya, J.E. *Educational Policies and Progress During British Rule in Ceylon (Sri Lanka).* Colombo : Associated Educational Publishers, 1977.

Jayaweera, Swarna. *Extension of Educational Opportunity - The Unfinished Task.* (C.W.W. Kannangara Memorial Lecture 13 October 1989) Maharagama, Sri Lanka, National Institute of Education, 1988.

Jayaweera, Swarna *Local Government Institutions and Education in Ceylon 1870 - 1930.* (1966) 24 University of Ceylon Review 29.

Proposals for Reforms on General and Technical Education Report of the Committee chaired by Professor J.E. Jayasuriya. Colombo: Government Press, 1966.

Report of the Committee on Non-School Going Children. Sessional Paper III of 1960, Government Press, Colombo.

Towards Relevance in Education - Report of the Education Reforms Committee of 1979 chaired by Bogoda Premaratne, Colombo: Department of Government Printing, 1982.

Wace Commission Report - sessional Paper No. 28 of 1905.

TABLE OF STATUTES

Education Ordinance - 'An Ordinance to make better provision for Education and to revise and consolidate the Law relating thereto'. Ordinance No. 31 of 1939, Legislative Enactments of Sri Lanka: (1980) Vol. xiv, cap. 381.

Education Ordinance - 'An Ordinance to make better provision for education and to Revise and Consolidate the Law relating thereto'. Ordinance No. 1 of 1920. Legislative Enactments of Ceylon (1938) Vol. III, cap. 142.

Rural Schools Ordinance - No. 8 of 1907.

Town Schools Ordinance - No. 5 of 1906.

Village Committees Ordinance - No. 26 of 1871.