

ADMINISTRATIVE, INSTITUTIONAL & LEGAL REFORM

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by

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I. INTRODUCTION

1. Economic reforms started in a slow, fragmented and limited way in the eighties and gathered momentum and clear direction in the nineties. These reforms have by and large focussed on removing the economic distortions created by earlier policies such as physical controls on economic activity and excessively complicated taxes. As a result of these reforms India will likely have a trend growth rate of about 6% per annum over the last two decades of the 20th century. This ranks India as the eighth fastest growing economy (excluding small countries) in the world over the past two decades.¹
2. Despite this India remains one of the poorest countries in the World. As per the last comprehensive survey in 1993-94, about 36% of the people are still below the poverty line. The performance of other Asian countries that were in a similar situation three to four decades ago shows that we can solve these problems of poverty in a decade, if we can summon up the will and determination to do so. low (per capita) income poses both a challenge and an opportunity. We must accelerate economic growth in the first two decades of the 21st century so as to eliminate poverty and under-employment. We must ensure human development and empowerment of the poor, by ensuring 100% literacy and universal primary education. The experience of other countries in Asia shows that it is possible to raise growth to 7%, to maintain it for two decades and thus generate full employment, and provide 100% literacy. Basic minimum services must be provided to all.
3. The state must refocus attention on some of its most basic responsibilities such as the provision of public goods (roads, police, courts, regulatory systems), primary education, 'public health' (water, sewage, & sanitation) & population control and stop degradation of common resources (water, forests). These responsibilities have been virtually lost sight of, squeezed between rising fiscal deficits and expanding role of the state in every area of economic activity and the inevitable rent seeking that followed. The only way the government can provide these basic services in the next decade is by ruthlessly shedding a host of activities that the private, co-operative and decentralised sectors are capable of undertaking given the right policy environment. Modern regulation is necessary to ensure that information on quality of service is made available to the public and fraud & cheating is minimised.
4. The institutions of governance and market, too often taken for granted in the economic context, are basic to equitable & efficient growth and for sustaining such growth at high levels. The quality of institutions of governance needs to be improved dramatically. This requires a fresh and

¹ Small countries are defined as those with a population less than 10 million and GDP less than US \$ 40 billion. Among the small countries for which data was available two grew faster than India.

unbiased review of their roles and functions, a much greater focus on a few vital functions, abandonment of numerous objectives & tasks accumulated over the decades and a thorough modernisation of management systems, procedures and technology. In some cases old institutions (such as Panchayats and Co-operatives) have to be strengthened and given new roles. The States must decentralise powers and functions to the local level so as to improve targeting and productivity of expenditures. There is also a need for fostering & developing new social institutions such as Self-help Groups, user associations, citizen's groups and NGOs.

5. In a democratic system, laws and constitutional conventions also have an important role in creating the environment for governance and growth. This can include not only economic laws but also electoral and other laws. For instance legal changes that seriously address the issue of criminals in politics (and legislatures), can have a significant effect on investment and growth. This note therefore focuses on the reforms needed in the Administrative, Institutional & Legal Areas. Many of these are areas coming wholly or partially under the purview of the State governments. The central government in addition to its direct responsibility may have to play the role of persuader cum think tank for the states.

II. SECOND PHASE OF REFORM

A. EMPOWERMENT

10. The source of power in a democratic society is the people. This power is delegated to the government of the day, which must be accountable to the people. Accountability is not possible without information. Information is power. Enlightened self-interest of the people can only prevail if they have the information for holding their representatives and government accountable.

1 POWER OF INFORMATION

a) Freedom of Information Act

6. The Official Secrets Act virtually prohibits civil servants from giving any information to the public, by providing a stringent penalty for 'unauthorised' disclosure. Thus in principle any information can be hidden if desired by the head of the ministry. This is an anachronism in a modern democracy, whose people value the freedom of information, thought and action. The official secrets act should be replaced by a freedom of information act. The objective of such an act would be to open government to its people to the maximum extent possible, by carefully delimiting the areas (e.g. foreign affairs, defence plans, strategic R&D, personal files) to which secrecy needs to apply. It would be designed to give the public the right to information about decision & actions that affect their lives. This must include every item

of expenditure (small or large) made in the name of the poor, the weaker sections, scheduled castes and tribes. It must also include the various permits, licenses and permissions given to the public at the municipal and block or district level, so that they are available for public inspection. It should be compulsory under this law to disclose to researchers, data collected through surveys and other data collection exercises (after ensuring individual privacy & anonymity of data sources). Such an act if enacted and enforced can transform the relationship between the government and the people from colonial over-lordship to one of true servant of the people. For this reason it may be strongly resisted by those in government.

b) Internet Telephony

7. The Internet can open up a world of knowledge and information to the remotest rural areas and the most oppressed communities. The existing Telegraph network, whose reach into villages is much greater than of telephones, must be made available to those who want to provide Internet access through this medium. If TRAI can insure (telephone & telegraph) network interconnection & access at marginal cost to all Internet Service Providers, the Public Internet Booth (PIB) could become as if not more ubiquitous than the PCO.
8. According to some observers Internet telephony costs only a third of conventional basic telephony. Though the quality of Internet telephony is currently quite inferior to conventional analogue telephones this is expected to change rapidly over the next few years. If costs continue to fall, Internet telephony would be ideal for providing non-subsidised service to rural areas and for fulfilling universal service obligations. Government should therefore put the new network companies on par with the private sector and stop all subsidies, so as to induce faster introduction of Internet telephony. Private communication service providers should simultaneously be freed to provide Internet telephony. Once this is done there would be rapid expansion of the Internet backbone across the country.
9. Access to the internet could transform the flow of scientific information on crops, fertiliser dosage, appropriate pesticide use, water harvesting, irrigation, etc. and bring about a second green revolution. It could also provide a channel of communication from oppressed remote communities and individuals to human right groups in State capitals and other urban areas. The spread of Internet Telephony would provide real time information on urban price & demand conditions to farmers. If accompanied by removal of restrictions on movement of commodities, this would rapidly eliminate high trade margins and the power of traders to exploit shortages.

2 De-CENTRALISATION

a) Multi-state Co-operative Act

10. The great promise of co-operatives has not been fulfilled, either because of heavy politicisation or excessive bureaucratic interference. Co-operatives have often become a channel for rent seeking. They could still play a useful role if they go back to first principles and become genuine co-operative self help groups and eschew the temptation to milk the government for favours. The multi-state co-operative act must be reformed to ensure professional management and elimination of government interference. An independent regulatory authority for co-operatives could be set up to ensure that they follow these principles.

b) Decentralisation to Panchayats

11. As a result of our colonial heritage, administrative structures are very hierarchical and much less de-centralised than appropriate in a grass roots democracy.² Efforts must be made to de-centralise as many local government activities to the Panchayats as possible, without minimising administrative difficulties or ignoring caste conflicts. It appears feasible to decentralise local area development (e.g. watershed development, maintenance of public assets) to this level. A mechanism for joint control over functionaries responsible for field level activity in social and developmental sectors should be designed and tried. For instance part of the wages of these employees could be based on '*wage coupons*' allocated to panchayats. The coupons would have to be earned by employees from panchayats by providing satisfactory service. Devolution of funds must be conditioned on major decisions being taken in quarterly open Sabha. A system for training Panchayat heads should be set up.

B. RE-FOCUSING GOVERNMENT

12. In the early days of development it was assumed that private entrepreneurs & firms were unwilling or unable to undertake investment in and production of many goods and services. This assumption has long since become invalid. The role of government must therefore change from being an entrepreneur, investor and producer of goods & services, to an enabler and facilitator of development. It must continue to fund the provision of Public goods and provide for the correction of externalities and the basic social safety net. It must catalyse the building of institutions & markets where these do not exist. But it need not produce all these services itself.
13. Though the fiscal problem is an old one with a substantial unfinished agenda, it is also the one crying out most strongly for radical reforms. A re-examination of the entire role and methodology of government is needed, if

² As envisaged by Mahatma Gandhi.

a lasting and permanent dent is to be made in eliminating the fiscal problem and fulfilling the role that only government can and must fulfil.

1 RIGHT SIZING GOVERNMENT

14. One important reason for the increase in the revenue and fiscal deficit over the eighties was the increase in unproductive expenditures, subsidies and tax incentives. The difficulty in reducing such expenditures is that each ministry or department feels that their own programs or projects are more productive than that of others. To get wide agreement and consensus, without violating the autonomy of departments with respect to choice of programs, projects and expenditures an independent external group would be useful. A high powered committee should identify the projects, programs, divisions and departments which should be eliminated.
15. The high powered committee could also identify redundant staff in all ministries and departments. Redundant staff would be assigned to a computerised pool, members of which would get preference in filling vacancies over outside candidates. They could be physically located in one or more separate buildings with all facilities and given other benefits like flexible timings, re-training courses and time off to explore other economic opportunities. They would also be encouraged to take long leave (3 years say) and join a private organisation for a trial period. At the end of the period they could either resign or re-enter the government. An early retirement scheme could be introduced for those who are over 50 and have served a minimum of 15 years in government.

2 QUALITY OF GOVERNANCE

16. Government including related and subsidiary institutions, is the largest producer of intangible services such as policy, licenses and permits, legal judgements and information. Computers and computerised information systems are perhaps the most important productivity enhancing tools for provision of such intangible services. A comprehensive program should be drawn up with the help of professional consultants for computerising the operations of government and all related institutions. Large amount of time is currently wasted in duplicate collection, entry/re-entry of the same information and in retrieval of information (files, papers). Data base management systems & access to data and the interface with the public can also benefit from better communication links, including those between computers in different locations. Management Information Systems would be set up as part of this process. These systems should make it possible for the government to provide quick and efficient service to the public and to focus its energies on better analysis and management of the economy.
17. Many of our administrative practices and methods have not changed since colonial times. We need to urgently introduce modern management

practices in departments that provide a well-defined service such as Posts or have a well-defined objective like tax collection. Management consultants should be hired by large departments to assist them in a thorough re-examination of objectives, methods, and procedures, using BPR, ERP or other recognised methods. Developed countries commonly applied techniques like PERT and CPM to project management three decades ago, and these became widespread with the proliferation of computers. These techniques reached India only recently and are still not in common or widespread use. Departments can also benefit from the application of modern cost accounting techniques like ABC. All ministries, departments and subsidiary organisations should make a budgetary provision for introducing modern management systems and hiring management consultants where needed. There is also need for decentralisation of financial powers to subsidiary institutions along with systems and procedures for greater accountability need to be introduced.

18. A sustained decrease in unproductive expenditure and enhanced effectiveness of desirable expenditures requires greater transparency in purchase & procurement. The rules and procedures for public procurement should be brought up to international standards. We should consider signing the international convention on public procurement. Greater transparency in sale of public resources & property and market pricing would also generate more resources for meeting the basic needs of the poor. Under pricing of public resources in the name of the poor is usually a good indicator of the decision-maker's resolve to siphon off money in violation of the public trust.

3 CONSTRUCTION TECHNOLOGY & QUALITY

19. The government is the largest user of construction services in the country. Its procurement & construction rules therefore have an overwhelming effect on the development of the construction industry. The government's procurement rules and standards have barely changed since independence. It is no wonder therefore that our construction industry is one of the most primitive among the emerging markets. This leads to shoddy construction and interminable delays, which impose large negative costs on the rest of the economy. We must urgently modernise CPWD, PWD, DGC&S and other construction & procurement rules to promote use of new efficient, effective, non-polluting technologies.

4 DEPARTMENTAL ENTERPRISES

20. The production and service provision functions carried out by government departments such as Telecom, Ports, Airports, Railways, P&T, Broadcasting and Defence production (civil goods, dual use items) need to be removed from government. Governmental rules and procedures (including CAG audit) are not conducive to quick decision making and commercial risk

taking. Departmental enterprises should therefore be converted into public companies with professional boards. Technological developments over the last two decades have made it possible to un-bundle the 'natural monopoly' segments of infrastructure from the rest. In general there are three parts to an infrastructure department enterprise, namely production of goods used in the sector, the 'natural monopoly' segment (e.g. rail track, telephone/telegraph line) and provision of services. Each of these segments should be dealt with separately.

a) Defence Production

21. Defence production currently consists of the three separable areas, namely civil goods, dual use items and weapons. a) Civil goods & services like food, uniforms, shoes, shelter, construction material, and general electrical, mechanical & transport equipment. These should be completely privatised. b) Dual use items, which are needed both by the defence forces and the civilian economy. This would also include parts and components of weapons. Units producing such items should be converted into corporations and a majority of shares (up to 74.9%) sold to the public. Management control could be gradually handed over to independent private management. c) Lethal defence platforms such as fighter aircraft, tanks and warships. Defence units assembling such defence items would also be converted into corporations but government would retain a majority (50.1%) of shares along with management control.
22. The introduction of competition in the production and supply of goods and services used by the defence services would have to go hand in hand with the development of a modern system of procurement, inventory control and logistics by these services. This in turn would require comprehensive computerisation of these activities.

5 EXPENDITURE PRIORITY

23. Since 1949 the government has diversified into so many areas of production and service provision that the original functions of government have been lost sight of. The limited resources available to the government have been spread so thin that there is no money available to undertake these functions satisfactorily. The basic or fundamental functions of government can be divided in three categories: a) providing public goods like defence, police, roads and epidemic control b) correcting externalities such as those involved in primary education, pollution and in generation & dissemination of knowledge, and c) promoting social welfare.

a) Rule of Law

24. One of the fundamental characteristics of a democracy is the 'rule of law' as against the rule of men that characterised monarchy, dictatorship and feudal societies. Effective functioning of the market economy requires that

economic laws such as the law of contract be appropriate to the current & projected environment. The foundation of the 'rule of law,' are the Laws themselves, and a sound superstructure cannot be built on shaky foundations. Many of these laws are archaic, being framed half a century ago, others have been added over the years so that they are now replete with contradictory stipulations, definitions and standards. There are now about 800 Central acts and possibly about 1000 acts, regulations and ordinances in each state. As per the recommendation of various commissions, 166 Central acts need to be scrapped along with 11 British statutes and 17 wartime ordinances. States should repeal 114 Central acts relating to state subjects. All other laws should be thoroughly re-evaluated with a view to modernising and integrating them in the light of the transformation of the Indian and world economy.

25. The delays in the legal system are by now legendary. Decades pass with repeated, innumerable and wasted court appearances. Delays help defendants to win acquittals. Witnesses forget the exact details of various events, or become untraceable, which helps in generating "reasonable doubt". Court personnel are illegally persuaded to delay listings. The delays and the attendant cost of transacting business have had a dangerous effect on society. For instance, in property disputes, the plaintiff knows that a settlement can take anything between 15 to 20 years, during which time the property will be in the possession of the defendant. This encourages people to settle property disputes by resorting to criminal means, rather than follow the rules of law. Justice can only be built on sound laws and an effective legal system. Government must take steps to stop and then reverse the deterioration. False economy in the creation of judge's posts and in provision of modern facilities for their effective performance and courts' functioning has enormous costs for the entire economy.

b) Public order

26. The right to life is the most fundamental right of any citizen. Physical safety and security of all, provided as a right under the 'rule of law,' is one of the important characteristics distinguishing a market economy from a semi-feudal one. If feudal landlords can force their will on the poor, the scheduled caste or land-less labourers it is the very anti-thesis of a market economy. The market economy can only be based on and function under an administrative system which ensures the safety, security and freedom from physical coercion of all market participants. Investment in production and employment generation cannot but be severely affected if personal security and the safety of investment are under threat. The slow & steady deterioration in the 'law and order' situation over the past several decades has not left any of us untouched from the affluent suburbs of Delhi to the semi-feudal regions of East India. We cannot afford to ignore this

deterioration much longer if the negative consequences on economic growth and development are to be avoided. Sporadic and short-term campaigns to tone up the police are not enough. Fundamental changes are needed in the entire system and structure of policing.

27. The objectives, work ethic and effectiveness of the police has been undermined by constant political interference, transfers, and use of the police for personal and other purpose. Their poor emoluments and basic living conditions and inadequate education and training also contribute to inefficiency and low morale. The sole objective of the police must be to uphold the 'rule of law' and ensure 'law and order.' Previous police commissions have identified the need for creating a structure in which police autonomy and independence is ensured. One possible method is an independent police commission, with subsidiary commissions in each state, which would make senior appointments, monitor their performance and ensure integrity. Given the resistance to such change, an alternative could be to leave normal policing duties with the existing set-up, but create a separate autonomous organisation for investigating and prosecuting a defined set of serious crimes. The concept of a specialised public prosecutor could also be included in this structure.
28. Given the frequent complaints about police harassment and worse, there also has to be an independent set-up to police the policemen and to protect the citizens against arbitrary actions by the police. As in the case of judges all professional equipment and facilities (e.g. modern forensic labs) needed by the police for effective functioning must be provided to them.

C. INSTITUTIONAL

1 ADMINISTRATION

a) Performance Measurement

29. Computerised management information systems should be set up for all government departments and agencies that provide an administrative service (e.g. courts, police, taxation, and municipal regulation). These would be the basis for monitoring individual cases and employees, doing statistical analysis by user and employee and providing management information. This would help in identifying and rectifying delays and bottlenecks in the administrative system.

b) Incentive structures

30. The secrecy of the Annual Confidential Report (ACR) makes it irrelevant as a motivating device. A move from ACR to Annual Performance Review may be useful in motivating and rewarding employees. Retirement rules should also be changed to make it easier for those who get stuck at any

particular level in the hierarchy to leave without losing any pension benefits.

c) Internal labour market

31. The departmental structures within the government are very rigid. Mobility could be improved by creating an internal labour market within the government. This would create a more open procedure for comparing the supply and demand for different posts, and for fitting the two better. There are currently about 41 different administrative & technical services (cadres) at the centre and 13 at the State level. It is therefore, necessary to breakdown the barriers created by multiplicity of separate cadres & services.

d) Planning & monitoring

32. The ideology of planning has contrasted with the pathetic lack of planning and co-ordination at the ground level. Roads are dug up within weeks of fresh asphalt being laid. Drinking water is drawn from the river downstream from where untreated sewage is dumped. The emphasis at the ground level must be changed from service provision and control to planning, co-ordination, monitoring and rewarding/ penalising. Instead of national plans that are ignored by many states after the funds have been sanctioned, we desperately need good planning at the local (below the state) level.

e) Specialisation and Expertise

33. Management of the open market economy requires much greater expertise and skills than a controlled one. A greater degree of specialisation will be required in administering such an economy.

f) Education and Training

34. Older generalist officers would also have to acquire new skills. A system of training and re-training would need to be set up with greater emphasis on modern Human Resource Development (HRD).

2 REGULATORY AUTHORITIES

35. Set up strong, independent regulatory authorities dealing with prices, quality & conditions of supply, and access or interconnection by competitors to the natural monopoly networks. Prudential/ technical registration and licensing should be completely under the purview of such authorities. They should be made financially independent by allowing them to charge regulatory fees for running the regulatory system.
36. Existing regulatory authorities should be brought to this level of autonomy by changing the law. Training should also be provided to staff to bring them up to global standards. Technical assistance and co-operation should be facilitated.

3 ECONOMIC LAWS

37. A committee consisting of government and outside experts has identified 50% of economic laws as redundant. A start should be made, by abolishing these redundant laws. A major effort must be made to modernise, integrate and simplify the rest of the laws. To force a review, a sunset law should be passed stating that all laws enacted before independence would expire in 3 years, those enacted between 1947 & 1960 in 5 years and those between 1960 & 1980 in 8 years. A sunset clause should be included in all future laws so that they would expire after a given time period unless they are reviewed and renewed.

4 LEGAL SYSTEM

38. The legal and judicial system has been unable to keep pace with the needs of a growing population and the increasing complexities of the commercial sector. The net result has been a surfeit of litigation and a build up of a huge number of pending cases. As per latest available estimates, pending cases number 28 million, and are growing at the rate of 8 per cent a year, implying an additional annual increase of more than 2 million pending cases a year. Among the reasons for the increase in arrears are inadequacy in the number of judges, delay in filling up vacancies and faulty appointment procedures and appointment of incompetent judges. India has one of the lowest numbers of judges per person. Vacancies are not only high but the shortfall in appointment has been rising. These vacancies must be filled urgently. Court timings must also be increased and enforced strictly. A long-term solution to this problem requires a fundamental change in the method for appointing judges. An approach worth considering is an independent judicial commission, which will appoint judges, monitor their performance and ensure their integrity.
39. The government itself is responsible for a substantial part of the pending cases, as these suffer the maximum amount of delay. A National Law School (1993) study estimated that the government was plaintiff, defendant, appellant or respondent to appeals in 60 per cent of all the suits filed. Most government cases were in the five areas of taxation, credit, rent control, urban land ceiling and labour relations. In these cases, either the government counsel does not appear or the summoned official is absent. Government advocates are known for asking for long adjournments on grounds of “seeking instructions” from the minister or the department. Very often, court orders are blatantly flouted and nothing happens till the court finds the time to pull up the concerned official. The government also makes unnecessary appeals against decisions not in its favour. Repeal of the urban land ceiling act and the rent control act, reform of labour legislation, rationalisation & simplification of tax laws and computerisation of land records could considerably improve the situation.

40. The Indian Civil Procedure Code first enacted in 1859 and after many amendments, finalised in 1908, provides innumerable opportunities to lawyers to delay proceedings. Lawyers can file applications for interrogatories, appointment of a Commissioner for local inspection, a temporary injunction and arrest or attachment of movable assets before judgement. Each application needs to be heard and disposed of (may take up to a year), before things can proceed any further. The first appeal can take as much as 3 years and the second up to 7 or 8 years if admitted to the High Court. As applications for interim relief, take unnecessary time lawyers have started asking for it as a delaying tactic. Lawyers getting paid per appearance have an incentive to prolong the case through long-winded arguments. When the Supreme Court initiated steps to curb the time taken for oral arguments, lawyers immediately went on strike.
41. The practice of getting innumerable adjournments is a major problem. Frequent & lengthy adjournments imply that judges deal with cases in a piecemeal fashion, and often over several years. Judgements cannot be delivered expeditiously since time is needed to put the entire case together. As a result Judges also become more willing to grant further adjournments, to avoid having to go back to the history of the case, hoping that the next hearing will come up in front of some other bench. Order 17 Rules 1 and 2 of the Code of Civil Procedure (1908) provides for unnecessary adjournments by requiring that the hearing of a suit once begun shall continue daily till all the witnesses have been heard, *unless the court finds the adjournment beyond the next working day necessary*. Something that was meant to be an exception, has become the rule!
42. Procedural bottlenecks like serving summons, adjournments and verbal arguments should be streamlined. The draft of a new Civil Procedure Code (1996) attempted to do this. Clauses on perjury should also be invoked, they have never been invoked since 1947. Courts must be computerised so that cases can be classified under different heads, such as labour, service, rent control, land, and assigned to judges dealing in similar, or related, areas. This system of grouping will expedite the disposal of cases as judges hearing disputes in similar areas will enhance their expertise in these areas. This has been successfully implemented in the Supreme Court and must be urgently extended to the High courts and the lower courts and tribunals.
43. Along with computerisation, other technical aids like photocopying machines should be introduced, allowing parties to get copies of judgements on the same day that they are passed. Microfilming should be used to preserve records to save storage space.
44. The functioning of sectional tribunals and quasi-judicial authorities needs thorough review. There is a need for rationalisation or elimination of those tribunals, which have become even more dilatory than the normal courts

(e.g. rent control tribunals). Strengthen alternative dispute resolution mechanisms through modification of acts like CPC, Limitation act and Indian Evidence act. Consider 'London approach' to financial & credit dispute settlement. Unify subordinate legislation on sectoral basis.

D. STATE AND LOCAL

45. Most of the issues connected with state governments have been touched on earlier. They are, however, brought together here in a summary form.

1 STATE REGULATORY AUTHORITIES

46. The need for autonomous, independent and powerful regulatory authorities (SRAs) in the infrastructure sectors and the principles on which the regulatory system must be built were spelt out in section 4.4.4. At the State level SRAs are needed for the following sectors:

a) Electricity

47. The breaking up the State electricity boards into independent production, transmission and distribution companies must be accompanied by the setting up of a regulatory authority.

b) Canals

48. State Irrigation & canal regulatory authorities must be set up to regulate the canal networks including its distribution channels as well as underground water resources. Once the framework is in place co-operative water user associations can manage and maintain these distribution channels and canals.

c) Municipal services

49. A municipal services regulatory authority should be set up with authority over all municipal services on which user charges can be imposed. Examples are water supply, sewage, drainage, public toilets, waste collection & disposal and pollutants & hazardous wastes.

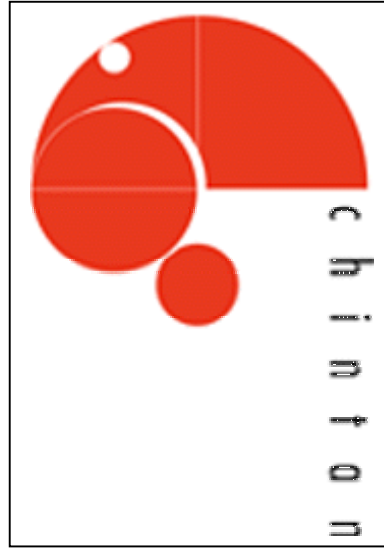
d) Education

50. Education should be de-licensed and de-controlled subject to a modern system of rating, certification, testing, regulation, scholarships and loans.

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