

## Right to Education Bill, 2005: Some comments

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### **Introduction**

The recently proposed Right to Education Bill, 2005 is expected to give effect to the 86<sup>th</sup> amendment of the Indian Constitution, which makes three important provisions. First, the new Article 21A under Part III on Fundamental Rights, states that “*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine*”. Second, the amendment modified Article 45 under Part IV on Directive Principles of State Policy, which now states; “*The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years*”. Third, a new Article 51 A (k) was introduced under Part IV A on Fundamental Duties which states; “*who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years*”.

It must be recalled that after India’s independence, when the founding fathers first recognised education under Directive Principles of State Policy as the ‘State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years’ (erstwhile Article 45), this was the only article in the Constitution to have a concrete timeframe of ten years. Yet, evidence shows that neither was this timeframe respected, nor was it subject to any kind of review or debate in the Parliament in 1960, when the goal was supposed to have been achieved. In fact, as Jain’s (2000) analysis of budget speeches in the post-independence period shows “there is not to be found even a passing reference to education let alone to Article 45 in the Budget Speeches”.

(Jain, 2000). In the early fifties itself, education officials had concluded that financial resources for universalising education by 1960 were not available because of government's decision to undertake large developmental projects. In the First Five Year Plan, the government had allocated only a fraction of what was required to meet this goal (Weiner, 1991:107). As a result, one finds that the illiterate population in India increased from 294.2 million in 1951 to 325.5 million in 1961, the time frame given by the Constitution.

Although this goal was reiterated by the Indian Education Commission (known as the Kothari Commission) in 1964-66 as an '*educational objective of the highest priority for reasons of social justice, raising the competence of the average worker and for increasing national productivity*' (Government of India: 1971: 267) and again in the National Policy on Education in 1968, which stated that '*Strenuous efforts should be made for the early fulfilment of the Directive Principle under Article 45 of the Constitution seeking to provide free and compulsory education for all children up to the age of 14 years*', the efforts to expand enrolment were not fast enough to keep pace with the population growth and the number of illiterates in India grew from 333 million in 1961 to 437 million in 1981 (Weiner, 1991:10). Prof. J.P. Naik, India's foremost educationist admitted that 'the goal of universal primary education remains as elusive as ever before' (Naik, 1975).

It is also important to recall that although the report of the Committee for Review of the National Policy on Education (1986) (also known as the Acharya Ramamurti Committee) had recommended that '*right to education should be examined for inclusion amongst the Fundamental Rights guaranteed under the Constitution of India*', the National Policy on Education (1986) was revised in 1992 without recognising a right to education. The modified policy statement said, 'it shall be ensured that free and compulsory education of satisfactory quality is provided to all children up to 14 years before we enter the twenty-first century'.

Furthermore, the colonial legislations on free and compulsory education that were enacted at the provincial (state) level and which continue to exist in 14 States and 4 Union Territories, are enabling in nature and do not make it mandatory for the local self governments to enforce compulsory education. These laws recognise a legal duty of the parents to send children to schools and a legal right of the State to penalise those who violate this obligation. Under these statutes, the State does not have a duty to provide educational facilities and they do not entitle the child or her parents to any rights. Despite the presence of these enactments for over half a century, evidence reveals a shift in the policy from ‘compulsion to persuasion’ (Juneja, 2003) from around 1963-64 onwards. Juneja (2003) quotes excerpts from the 31<sup>st</sup> meeting of the Central Advisory Board on Education held in 1964 which held, *“In regard to legislation or compulsion at the primary stage, the Board was of the view that whereas statutory provisions may be necessary for such purposes as collection of cess, the really effective method of achieving universality in education in this age group would be extension of facilities in areas not yet covered and use of persuasion incentives.”* Thus, political will for enforcement of these statutes was completely lacking and in fact over 95 per cent of the educational administrators were not aware of the existence of compulsory education acts in their states (study conducted in 1996, quoted in Juneja, 2003).

In the light of this historical context, the real test of significance of the proposed Right to Education Bill, 2005 lies in the extent to which political will is mobilised to financially support, fulfil and protect every child’s right to participate in quality schooling. It is also important to recognise that the State has the legal responsibility to ensure provisions of appropriate conditions that will enable children to exercise this right.

Given the fact that the Bill makes several choices about the nature of school system and the modus operandi for realising the said right, it would be worthwhile examining the presence or absence of ‘grounds of evidence’ on which these choices are based. While most of these choices are contentious in nature and have potentially wide-ranging implications on the actual realisation of this right, it is suggested that these choices are placed for wider public debate and the emerging issues noted before the Bill

is finally discussed in the House. This note presents some of these issues for further review and debate.

## **Broad Points**

1. The bill must recognise the basic premise that there is a desire among parents to send their children to a government school, if the school is functional, has a teacher who is regular and provides education of a reasonably good quality and if the local community is involved in monitoring the schools. This groundswell for education and an eagerness among poor parents to send their children to school, even if it means making enormous sacrifices, has been demonstrated by work of NGOs such as the M. V. Foundation in Andhra Pradesh since mid-nineties and by large research studies such as the Public Report on Basic Education (PROBE) released in 1999. This evidence implies that the Bill must lay a strong thrust on improving the existing school infrastructure, creating an accountable and motivated school system (including the teachers, education bureaucracy and officials), creating suitable and sustainable mechanisms for participation of the parent body and designing institutions that can redress grievances at various levels. The proposed Bill provides for ensuring these to varying degrees, as we shall subsequently see in this note.
2. Although the decade of 1991-2001 saw a decline in the number of illiterates by almost 32 million (the first time since the Census of 1951), there is large-scale disparity in literacy rates across the country with some gaps remaining very large to bridge. For example, Census data (2001) shows that the literacy rates in rural areas is 59% and in urban areas is 80%. The male literacy rate is 76% while the female literacy rate is only 54%. The literacy rates for Scheduled Castes and Scheduled Tribes is only 37.4% and 29.6% respectively. In fact, less than one-fourth of Scheduled Caste females and less than one female in every five among the Scheduled Tribes are literate. This implies that educational opportunities are not uniformly available and accessible to marginalized groups. This has also been recognised by the official reviews such as the *Education for All: Year 2000*

*Assessment- India.* Evidence also suggests that children from poor families try out government schools and finally drop out when these schools fail to deliver. On the other hand, children from slightly better off and rich families prefer to send their children to private schools, whatever be the quality of such schooling. This dual mode of education provision contributes to disparities in literacy rates as well as education attainment rates. It is in this context of bringing about justice and equity that the National Policy on Education had strongly recommended creation of a *Common School System*, based on the plan of 'neighbourhood schools'. The proposed Bill makes only a feeble attempt to follow this policy directive on the Common School System.

3. Although the proposed Bill is meant to ensure all children regularly attend and participate in schooling, the Bill is not clear about its provisions in light of the existing Child Labour (Prohibition and Regulation) Act, 1986. The Child Labour (Prohibition and Regulation) Act, 1986 will have to be amended so as to declare all child labour (including non-wage earning activities carried out within family, school establishments as per proviso Section 3 of CLA, 86) as prohibited under law, if the work prevents the child from participating in school. Given the fact that most children may have to combine work and schooling, the Bill would have to recognise these newer forms of 'child labour', the dual burden on such children and address these issues by appropriate provisions for their protection and regulation. If not, the problem of child labour is likely to get pushed under the carpet and exploitation of children who continue to work may go unchecked by law. Research on children combining schooling with economic activities such as coir making and fishing in Kerala (Nieuwenhuys, 1990), beedi work in Tamil Nadu (Human Rights Watch, 1996), show that despite the 'double burden', such children are likely to fall through the legal cracks, since they are enrolled in a full-time formal school and are not recognised as working children. Moreover, of the 11 million child labourers (Census of India, 1991), even if half the number of children attempt to combine work and schooling, it could have large-scale deleterious consequences on children themselves and their educational attainment in general.

## **Specific Issues**

1. Early Childhood Care and Education: The Bill declares that the State would 'endeavour to provide pre-school education facilities' for children between the ages of 3 and 6 years. This is not completely in line with Article 45 of the Constitution because Article 45 also includes State's responsibility to provide early childhood care for children below 3 years. This is a glaring loophole and would act as an obstacle in realising right to education in several ways. Firstly, the importance of early stimulation and enrichment for very young children has been proved in literature (see UNICEF, 2001). Research has shown that 75% of brain development occurs by the age of 6 years. During this period, if children fail to have adequate healthcare, nutrition and stimulation, they are likely to have cognitive disadvantages that are not easily compensated for in adulthood. Thus, early childhood care and education forms the solid foundation that supports and enhances subsequent educational participation and achievement. Secondly, provision of early childhood care and education in the school's vicinity is critical if children, in general, and girls, in particular, have to complete their schooling. The Lok Sampark Abhiyan study (2003-04) in Madhya Pradesh, the Maharashtra Household Survey (December 2004) (both quoted in the Sarva Shiksha Abhiyan's First Joint Review Mission Report), the Education for All Global Monitoring Report (2003-4), the PROBE study, show that sibling care is one of the main reasons for girls dropping out of school. Evidence also shows a total inadequacy of crèches and early childhood services throughout the country. As per Census 2001, there are 15,78,63,145 children between 0-6 years in India, comprising 15% of the total population. Data compiled by the Institute of Applied Manpower Research shows that in 1998, there were only 41,788 pre-schools covering 28,34,000 children in India, which is less than 2 percent of all the young children. In terms of child care facilities too, about 2.5 lakh children are found in 10,000 crèches in the voluntary sector and only about 50,000 children are in crèches in the statutory sector (Swaminathan, 1998). At present, the only government programme for pre-school education is the Integrated Child Development Scheme

(ICDS) which runs 4,27,862 anganwadi centres throughout the country as of March 2002 (MHRD, 2002). The National Policy on Education and the Plan of Action stated in 1992 that a fixed number of Anganwadis (25%) would be turned into Anganwadi-cum- crèche by year 2000. Till the end of 1996, only 659 Anganwadi-cum-crèches were approved for the entire country although 25% would have implied over 100,000 centres. It is also important to note that the goals for elementary education in the Tenth Plan (2002-07) includes '*all children in the 3-6 age group must have access to early childhood care and education centres*'. Given the critical importance of early childhood care and education in the overall growth and development of the young child and also the inadequacy of child care and pre-school education facilities, the Bill must provide for these within the ambit of children's right to education.

2. Free education: The Bill provides that the Appropriate Government would prescribe such expenses that the child would be free from incurring, which may prevent the child from participating and completing elementary education. Leaving this to the state government would provide large room for variation to creep in, depending on their respective expenditure on elementary education, which is seen to vary between 4.77% in Bihar to 68.46% in Madhya Pradesh of the total expenditure on education for the year 2000-01 (Govinda and Biswal, 2004). Evidence already indicates the inability of certain states to mobilise their share of 25% finances under the Sarva Shiksha Abhiyan, where the Central Government contributes 75% of the finances, raising questions about the ability of the state governments to provide 'free education' in their states under the proposed bill. The National Sample Survey Organisation's survey for the year 1995-96 (quoted in UNDP, 2001, pg 56-57) indicates that the drop out rates are inversely proportionate to the income levels of families. Among those who dropped out, 47% of the boys and 66% of the girls were withdrawn by their parents citing expensive schooling as the main factor. This can be explained by several studies that have estimated low returns on primary education in India that seem to go up with increasing levels of education, in contrast to the conventional

worldwide pattern (quoted in Pradhan and Singh). Evidence from the National Accounts Statistics for India, also shows that the share of private expenditure on educational services to the total private consumption expenditure increased from around 2.5 per cent, in the early eighties to over 3.5 per cent in the late nineties (quoted in UNDP, 2001). Tilak (2002) has shown that even poor parents from rural areas spend considerable amount on books, uniforms and fees (including examination and other fees) challenging the myth that government school education is 'free'. The existing incentive schemes meant to motivate parents to send their children to schools are found to be largely tokenist in their design and implementation. For instance, the PROBE survey done in villages of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and Himachal Pradesh showed that the free uniforms scheme was operational in only 10% of the schools, free books scheme was operational only in 47% of schools, scholarships in 63% and dry rations in 63% of the total schools surveyed. Among the children surveyed, only 1.3% received free uniforms, 37.8% received free books, 8.7% received scholarships and 54.5% received dry rations. In this context, it is important to recall that in 1997, the Department related Parliamentary Standing Committee on Human Resource Development had noted, 'free education should include provision of text-books, stationery, uniform, one meal and transport...' Thus, it is very likely that the proposed Bill and prescribed rules from the states actually dilute this notion of 'free education' before even bringing it into reality.

3. Common schools or Quotas? : The Bill proposes to ensure access to free and compulsory schooling for all children in state schools, and aided schools. Moreover, the privately managed unaided schools and the specified schools are required to provide admission to children from disadvantaged families to at least 25% of their total student population. Although meant to be an answer to the dual mode of education, it comes across as a feeble attempt to ensure equity and justice. There are several problems with this proposition. First of all, there is no evidence to back the figure of 25% quota and this seems to have drawn from the recent Supreme Court judgment in the PIL filed against private schools in New

Delhi in 2004. This figure could be even higher so as to prevent the disadvantaged children from being marginalized within the school. Secondly, it is unclear why the 'specified category' schools, being fully aided by the state, should be exempted from the general obligation to provide free and compulsory education to all children and instead be required to provide only 25% of their seats, similar to the unaided schools. The argument of distinctiveness does not hold good, if the purpose of this provision is to create 'equitable quality education'. Moreover, by giving space to the Appropriate Government to prescribe such schools in their respective states, the claim of creating an 'equitable society' as proclaimed in the Preamble is substantially weakened. Thirdly, the parliamentarians like Shri Eduardo Faleiro from Congress (I) have supported the idea of common school system, 'The ideal is the Common School System - Government schools known as "neighbourhood schools" in every locality which provide quality education and where all children, irrespective of social class or religious affiliation will go. This is the system prevailing in educationally advanced countries and has been recommended by the Kothari Commission of 1968 and other Education Commissions appointed by the Government of India from time to time. In view of the challenges posed by the policies of modernization and globalization, the Union Government and State Governments need to formulate with a sense of urgency a comprehensive policy to improve the quality of Education and to achieve an equal or similar level of educational facilities and standards in all the different States and different regions, both urban and rural' (Extracted from Congress Sandesh, July 2002).

4. Equitable Quality or Equity and Quality? The Bill aims to provide education of 'equitable quality' to all children by means of providing opportunities to access, participate and complete elementary education. However, this terminology is ambiguous and also contentious for several reasons. Firstly, the definition does not explain the meaning of the terms 'equitable' or 'quality' and the manner in which it can be translated into practice, apart from creation of opportunities for all children. Secondly, 'providing opportunities' can be construed as a passive role of

the State, wherein, the government would be considered to have fulfilled its obligation if it has provided education of basic quality in its own schools and does nothing to bridge the gap between its own schools and the so-called 'elite schools'. Thirdly, when referring to education of 'equitable quality', it is important to stress the need for raising the quality standards in most of the existing government schools. One also needs to be cautious about equating quality with the existing standards of private 'elite schools', which are questionable on several counts. In this context, it would be useful if the Bill breaks the phrase into 'equity' and 'quality' as two separate, yet essential values to be pursued. Besides creation of equal opportunities, equity would then have to encompass non-discrimination, and creation of conducive and appropriate environment that would de-link these opportunities from the child's social, economic, cultural and linguistic background, their status or their abilities. Although most efforts at defining 'quality' have consolidated only the lowest common denominator and come up with diluted 'minimum' levels (as also seen in the programme on Minimum Levels of Learning), quality in the context of a binding legal right must contain certain concretely identifiable variables such as physical infrastructure, types of pedagogical practices, teacher qualifications and rights of children within the school. Yet, the norms and standards prescribed in the Schedule for Section 18 appear to be minimalist, leaving essential standards such as library, sports and play material under the jurisdiction of the Appropriate Authorities; boundary wall and playground as discretionary; and, pre-school facilities, electrification, telephone and computers as desirable. Given this, it is unlikely that the proposed Bill will actually measure up to its own proclamation in the Preamble which states, *'the objective of democracy, social justice and equality can be achieved only through the provision of elementary education of equitable quality to all'*. In other words, the provisions of the Bill are unlikely to help meet the objective of 'equitable quality' laid in the Preamble.

5. Financial Allocations: The financial estimates on the allocations required to give effect to right to elementary education have varied considerably, depending on the

norms and estimated unit costs applied for computation. The first detailed working of an estimate was made by the Expert Group on Financial Requirements for Making Elementary Education a Fundamental Right (also known as the Tapas Mazumdar Committee) set up by the Ministry of Human Resource Development in 1997. This group calculated the cost of real formal schooling and did not accept the position, often urged implicitly or even explicitly, that the cost estimate should be reduced by assuming that only the cheaper variants of non-formal or part-time education were needed to be provided for millions of children who were out of school. It also did not accept the oft-repeated suggestion that the profit seeking private enterprise could be attracted in the foreseeable future in a substantial way to the schooling of the vast number of underprivileged children who had never been to school. The Committee stated that at the first sight, the total financial commitment might seem enormous, but when spread over 10-15 years and supported by a switch from 3.8% to 6% of the GDP as the share of all government expenditure on education, the end would be achievable without any great difficulty. It had estimated an additional expenditure for achieving universalisation of elementary education as Rs. 136822 crores over the next 10 years. The Committee demonstrated that with a reasonable growth rate of 5%, a modest increase in the tax revenue to GDP ratio (from 16% to 18% by 2007-8), and by raising the allocation to education in the total of the Central and State budgetary expenditures from about 3.8% of the GDP to the long promised 6%, this goal would get accomplished without affecting the higher education sector at all. Furthermore, they recommended a 'moderate but perceptible downsizing of government expenditure elsewhere' to make this possible. It also recognized that the State's constitutional liability has to be seen against its ability to pay largely out of its own revenue resources. The Committee was also conscious that in no way should the facilities extended to the poor be less than what is provided to others. The recent CABE Committee's tentative financial estimates are based on four alternative scenarios from 2006-07 to 2011-12 with respect to average teacher salary (following a Kendriya Vidyalaya pay scale and average state pay scales) and average Pupil:Teacher ratio (as 35:1 and 40:1). The estimates range

for a six year period range from Rs. 53,467 crore per annum (additional 1.1% of GDP) to Rs. 72,678 crore per annum (additional 1.5% of GDP). The report also notes that even if the educational spending is increased to 6% of the GDP by 2006-07, and half of it continues to be earmarked for elementary education alone (instead of elementary and secondary sectors together), this would imply a possible additional outlay of about 1% of GDP for elementary education. Thus, it is clear that if the Bill is passed, the government should immediately allocate at least 6% of GDP for education and anything less than that will make it impossible to attain the standards laid under the proposed Bill. This does not seem politically difficult to attain, given the fact that the parliamentarians from the ruling party have endorsed the need for this enhancement on several occasions. For instance, speaking at the meeting of Chief Ministers on 15<sup>th</sup> February 1994, the then Deputy Chairman of the Planning Commission, Shri. Pranab Mukherjee had said that he did not 'visualise any serious problem in allocating six per cent of GDP to education from the 9th Five Year Plan onwards which would mean an allocation of Rs. 53,000 crore as against the present level of Rs. 20,750 crore'. The Committee of State Education Ministers (known as the Saikia Committee), 1996-97 had also observed that, 'Government's commitment to provide 6% of GNP for education in the Ninth Plan and to earmark 50% of this for primary education should provide the requisite financial back up and support to the Constitutional enactment'. In 1998, speaking at a seminar on 'Availability of Finances for Achieving Universal Elementary Education, Dr. Manmohan Singh had said, 'I sincerely believe that money can be found if representatives of the public, that is Members of Parliament and Members of State Legislature give sufficient importance to this quest for universalising access to our education' (quoted in PROBE report, page 135). Furthermore, the recent levying of an education cess of 2% on income tax, corporation tax, excise and custom duties and service tax, to create a *Prathamik Shiksha Kosh* is expected to yield about Rs. 40,000-50,000 million per year to be allocated to financing elementary education and the mid-day meal scheme (Govinda and Biswal, 2004). But as Pradhan and Singh have shown, public spending on education will have an impact on enrolment and

quality of education (as measured in terms of Pupil-Teacher Ratio) only if efficiency and demand-side factors are taken care of. In this context, structures such as the National Commission on Elementary Education should also be empowered to monitor the efficiency of financial allocations and the School Management Committee should be entrusted to address the demand-side factors such as parental motivation, which in turn is influenced by educational incentives, and quality of schooling. If not, increase in allocations may not necessarily result in improvement of educational outcomes.

6. Teachers: Evidence shows that school quality affects school participation (Sipahimalani, 1999) and an important determinant of school quality is the pupil-teacher ratio, which is found to affect enrolment, particularly of girls (Dreze and Kingdon, 1999). Since the proposed Bill aims to bring all out-of-school children into schools within a period of maximum three years, the government would have to pay considerable attention to the quality of teachers recruited to bear this responsibility. It must also be noted that presently several states have recruited the services of 'para-teachers' under different names, to perform these functions and in the year 2003, 1.98 million para-teachers were appointed across the country. It is estimated that in 2002-03, the percentage of para-teachers in primary schools ranges from 14.31% in urban Gujarat and 12.30% in rural Uttar Pradesh to none in States such as Punjab, Manipur and Chattisgarh. During the same period, at upper primary level, the percentage of para-teachers was as high as 31.79% in rural Gujarat and 19.13% in rural Andhra Pradesh to none in Madhya Pradesh, Punjab, Manipur and Chattisgarh (Govinda and Josephine, undated). A study conducted under District Primary Education Programme in 1998, covering 21 para teacher schools in five different states showed that the para teachers are unable to cope with the situation of multi-grade teaching and are unable to create a classroom culture of interactive learning involving students. However, the study also noted that teaching by regular teachers was not significantly better (quoted in Govinda and Josephine, undated). But despite the recruitment of para-teachers, the pupil-teacher ratio is worse than the norm of 40:1, particularly in states such

as Bihar, Jharkhand, Uttar Pradesh and West Bengal. Assuming that all the 40 million out-of-school children (Economic Survey, 2002-03; Govinda and Biswal, 2004), particularly from those with a very high proportion of out-of-school children such as Andhra Pradesh, Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and West Bengal, were to join schools, over one million teachers would be required (besides the existing vacancies). In this context, it must be ensured that the Appropriate Governments do not appoint poorly qualified para-teachers to fill the gap. The directions given by the Supreme Court in the case of appointment of 17,281 untrained persons as Assistant Teachers in 1991 are pertinent. The apex Court found the lackadaisical approach in the matter of imparting training to persons who are required to teach students indefensible. The Court directed the Bihar government to take immediate steps to finalise the syllabus and ensure that all untrained teachers who are appointed on the basis of selections made in 1991 are duly trained within two years time (Orders of the Hon'ble Supreme Court of India dated 5.9.97 in SLP (Civil) No. 23187 of 1996 Ram Vijay Kumar and Others VS. State of Bihar and Others). It would also be useful to read the views of Shri. Eduardo Faleiro, parliamentarian from ruling Congress party, on appointment of para-teachers in schools, *'Who is a para-teacher? A para-teacher is somebody who is recruited on a contract for some period of time; maybe, one year at the most. Usually, it is either a local grocer or a baker or maybe even a student who is recruited. He has no future in this profession because he is on a contract. He doesn't apply his mind. He is not even there. Very often, the reports are -- from Government -- that they are collecting the money without even going there. And this is a disgraceful thing to do, to give to the people of this country, in the name of education, a total absence of education; a caricature of education, a tragic caricature of education, that goes by the name of informal or alternative education'* (Extracted from Parliamentary debates on 86<sup>th</sup> Constitutional Amendment).

7. Compulsion on Parents? The proposed Bill under section 50 suggests that parents who default in discharging their responsibility of *enrolling* children in the schools

would have to perform *compulsory community service* by way of *child care*. This provision needs to be seriously reviewed and modified. First of all, several illiterate parents are unaware of the exact modalities of enrolling children. When the Bill itself under section 12 (1)(ii) considers enrolment as the responsibility of local authorities, and does not mention it as the responsibility of the parents, it is wrong to punish the parents for not enrolling their children into schools. Secondly, childcare requires special attention and training and it cannot be left to the availability of defaulting parents, whose punishment is paradoxically on account of dereliction of their parental responsibility. Thirdly, since most of such parents are likely to be daily wage earners, such kind of penalty will affect their freedom to work and earn wages that can support child's schooling in the first place. In this context, it must be noted that the Department related Parliamentary Standing Committee on Human Resource Development (1997) had suggested, *'penal provisions on the parents should be avoided in the follow-up legislation to be made. The Centre may make necessary provision to this effect either in the follow up legislation or in the guidelines that may be issued to the States. The Committee feels that compulsion should be on State Governments to provide for essential facilities for UEE rather than on the parents, majority of whom are struggling for their survival'* (Para 15.7). It may also be pertinent to read the views of Smt. Sonia Gandhi, the then Leader of Opposition while responding to the 86<sup>th</sup> Constitutional Amendment in 2000, *'the main responsibility for providing education should be on the State rather than on parents since most of them in any case have to struggle for their living. For instance, why should an illiterate landless labourer be deemed to have committed an offence under this law if he is prevented by some practical difficulty from sending his child to school? This I believe is a major lacuna which must be addressed'*.

8. Learning Outcomes: Research studies have shown the poor learning outcomes among children who have participated in schooling. A survey done by Pratham Resource Centre in 2004 in 18 states showed that 45% of the surveyed children in government schools between the ages of 7 and 10 years could not read simple text

and 13% of the children between 11-14 years in government schools could not read simple text. Sixty percent of the children between 7-10 years and 25% of children between 11-14 years in government schools could not write a simple dictated sentence. Seventy five percent of the children between 7-10 years and 37% of children between 11-14 years in government schools could not do simple arithmetic. Unless the proposed Bill emphasises the accountability of the teachers to achieving these basic learning outcomes, bringing children into schools would be a futile and a wasteful exercise.

### **References**

- 1) Dreze, J and Kingdon, Geeta (1999) School Participation in Rural India. Development Economics Series Paper No. 18 STICERD. London: London School of Economics.
- 2) Government of India (1971) Education and National Development: Report of the Education Commission 1964-66). New Delhi: NCERT.
- 3) Government of India (1991) The Report of the Committee for Review of the National Policy on Education, 1986: Recommendations. Delhi: Government of India Press.
- 4) Government of India (1997) Report of the Committee of State Education Ministers on Implications of the Proposal to make Elementary Education a Fundamental Right. New Delhi: Department of Education, Ministry of Human Resource development, Government of India.
- 5) Government of India (1999) The Report of the Expert Group on Financial Requirements for Making Elementary Education a Fundamental Right. New Delhi: Department of Education, Ministry of Human Resources Development, Government of India.
- 6) Government of India (2001) Report of the Department Related Parliamentary Standing Committee on Human Resource Development. New Delhi: Rajya Sabha Secretariat.
- 7) Government of India (2001) Education for All: Year 2000 Assessment- India. New Delhi: MHRD

- 8) Government of India (2002-03) Economic Survey. New Delhi: Department of Economic Affairs, Ministry of Finance.
- 9) Govinda, R and Josephine Y (undated) Para Teachers in India. New Delhi: NIEPA
- 10) Govinda, R and Biswal, K. (2004) Elementary Education in the Tenth Plan: Promise, Performance and Prospects a background paper for mid term assessment. New Delhi: NIEPA
- 11) Human Rights Watch (1996) Small Hands of Slavery: Bonded Child Labour in India. New York: Human Rights Watch.
- 12) Jain, L.C. (2000) Are Our Budget Makers Faithful to the Constitution – A Tour of the Budgets 1947-2000. Pune: National Centre for Advocacy Studies
- 13) Juneja, Nalini (2003) Constitutional Amendment to Make Education a Fundamental Right: Issues for a Follow-up Legislation. New Delhi: NIEPA
- 14) Ministry of Human Resource Development, Government of India (2002). The Indian Child: A Profile. New Delhi: MHRD
- 15) Naik, J. P. (1975) Elementary Education in India: A Promise to Keep. New Delhi: Allied Publishers.
- 16) Nieuwenhuys, Olga (1990) Angels with Callous hands: Children Work in rural Kerala (India). Amsterdam: Macula, Boskoop.
- 17) Pradhan, Basanta, K. and Singh, Shalabh Kumar. Policy Reforms and Financing of Elementary Education in India: a Study of the Quality of Service and Outcome accessed on November 1, 2005 at <http://www.ncaer.org/WP93.pdf>.
- 18) Pratham (1997) Towards the Fundamental Right to Education – A Report of the Department-Related Parliamentary Standing Committee on Human Resource Development. Mumbai: Pratham.
- 19) Pratham Resource Centre (2004) Rapid Assessment of Learning Outcomes. All India- June-August 2004 accessed on November 1, 2004 at [www.pratham.org](http://www.pratham.org)
- 20) Probe Team (1999) Public Report on Basic Education in India. New Delhi: Oxford University Press.
- 21) Sarva Shiksha Abhiyan's First Joint Review Mission Report (2005). Accessed at Department of Elementary Education's website through [www.nic.in](http://www.nic.in)

- 22) Sipahimalani, V. (1999) Education in the Rural Indian Household: a gender based perspective. NCAER Working Paper 68. New Delhi: NCAER
- 23) Swaminathan, Mina (ed), (1998) The First Five Years: A Critical Perspective on Early Childhood Care and Education in India. New Delhi: Sage Publications.
- 24) Tilak, J.B.G. (2002) Determinants of Household Expenditure on Education in India, Working Paper Series 88. New Delhi: National Council for Applied Economic Research.
- 25) UNDP (2001) National Human Development Report India. New Delhi: UNDP
- 26) UNESCO (2003) Education for all: Global Monitoring Report 2003/4 on Gender and Education for All: The Leap to Equality. Paris: UNESCO
- 27) UNICEF (2001) State of World's Children 2001. New York: UNICEF
- 28) Weiner, Myron (1991). The Child and the State in India: Child Labour and Education Policy in Comparative Perspective, Princeton: Princeton University Press.

## Right to Education: Supplementary Comments

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1. **Child Labour:** There are two issues that need to be highlighted here. First of all, the proposed Bill seeks to prohibit those activities that are likely to prevent children from participating in elementary education. Thus, child labour, in the context of this bill, is defined as work that interferes with schooling, and is prohibited in that sense only. The Bill does not seek to prohibit child labour since it does not deal with children who may attend/participate in school, yet continue to be engaged in employment/labour. This is likely to create serious problems of 'double burden' on children. Secondly, since this proposed Bill defines child labour in a narrow, one-dimensional way, it does nothing to overcome the legal lacunae that persist in the Child Labour Act, 1986 as well as in its implementation. For example, a child as young as 6 years could be engaged in hazardous processes within her household (for example, beedi work) after attending school and this situation would not be considered a case of violation, neither under the CLA,<sup>86</sup> nor under the proposed Bill. The same is true with regards to engagement of children in economically productive processes at school such as teaching craft work like zari work, which is stipulated as a hazardous process under the CLA,<sup>86</sup>. If the government is serious about prohibiting child labour, it must do so by amending the CLA, 86 since the proposed Bill is inadequate in that regard. Moreover, it might be useful to recall that the UN Convention on the Rights of the Child, to which India is a party, views children's right to be protected from economic exploitation in the broadest sense, and not only from the perspective of lack of participation in schooling.
2. **Common School System:** The point that needs to be made is that the Bill speaks about 'equitable quality', 'social justice' and uses the quota mechanism as a means to impose responsibility on the private schools. It does not try to create a CSS since that would involve considerable reforms, which the government has not been prepared to initiate over several decades. In my personal opinion, the

CSS/Neighbourhood School is simply a rhetoric inserted in the statute in order to pacify various lobbies that have been demanding it from time to time. Given the diversity among private schools, the provisions would have different implications depending on their financial and social status. Poorer private schools would view positively since induction of children from disadvantaged situations would not seriously upset their student composition and it can serve as means to get governmental funding which most poor private schools do not get. On the other hand, rich schools would resist it since it would affect their fund flows (by way of fees) as well their elite status. Given these diversities as well as the specific realities of the Indian context, models from developed countries such as the United States (which also has private schools) or even socialist countries like Cuba offer limited lessons.

3. Minority schools: the CAGE committee did not go into the issue of minority schools (of all types across the spectrum) and their responsibility under the proposed Bill. But since the Constitution grants these institutions special status in terms of administering and maintaining their schools, it is unlikely that the proposed Bill would impact/curtail these rights in any way. Statutory obligations under the proposed Bill would be sub-ordinate to the Constitutional rights enjoyed by minority institutions.
4. Complaints: The proposed Bill allows several mechanisms for addressing the grievances of individual parents via Local Authority, School Management Committee, State Level Regulatory Authority and also the National Commission which have been vested with the powers of the civil court. Moreover, citizens can always take recourse of PILs to bring matters to the attention of the court, which is being done even today, without the central statute in place, by organizations such as the Social Jurist.
5. School Management Committees: The proposed Bill considers these as critical for monitoring as well as implementation of the programmes. Right now, the available evidence is mixed in terms of areas where such Committees have impact and where they fail. As in the case of Karnataka, such mechanisms can also be used for political ends, given the powers they are vested with, especially civil

work contracts and so on. Given the fact that most of these are likely to be composed of parents who are themselves illiterate, and that the Committees could have members other than the parents (who may not have any stake in the school's functioning), it would be important to build capacities of these Committees to shoulder the responsibilities that they have been vested with under the proposed Bill. The Bill would not provide for these since these are more programmatic interventions.

6. Children with Severe Impairments: At present, about 1% of the children with disabilities are within the school system. The present approach of the government is to integrate mildly and moderately impaired children and provide them education in an inclusive setting. But for the severely and profoundly disabled children, the only option that is currently available is Special Education, or more recently even the Home based education. The proposed Bill does not specify these nor commit the government to provide these. This is a major lacuna. Education of children with impairments has been under the jurisdiction of Ministry of Social Justice and Empowerment, but it is time that it gets the attention from the Education Department. The Bill does not specify any obligation of the government to create such special facilities for children who are severely or profoundly affected. Given the fact that children with mild and moderate impairments are also denied admissions in private schools, the Bill must propose to include their rights to admission even in private institutions and reiterate the reservation of 3% that is made available for them under the Persons with Disabilities Act.