

## **KEY QUESTIONS: RIGHT TO EDUCATION BILL, 2005**

**Context:** The Ministry of Human Resource Development, Government of India has proposed a draft Right to Education Bill 2005. This is a follow-up to the 86<sup>th</sup> Constitutional Amendment passed in 2002 making education for every child between the ages of 6-14 years, a fundamental right.

Your detailed responses to the questions below, will be critical in shaping the content of the Briefing Note that Parliamentary Research Service will prepare and send to all Members of Parliament, a number of civil society organizations, the corporate sector and the media. On receiving your responses, and those of a select group of experts who have been requested to provide inputs on this Bill, PRS will work towards producing a Briefing Note which presents a balanced view of the feedback from the experts.

We therefore urge you to

- (a) Cite evidence, to the extent possible, to support the arguments that you are making. Solid evidence will strengthen your arguments immensely.
- (b) List in detail all the sources that you have referred to, or quoted from (including author, title of paper/ publication, publisher, date, etc.).
- (c) Make use of data, tables, graphs that are easily understandable, to support or substantiate your arguments.

### **Key questions for your consideration**

#### **Equity and Quality**

1. The Bill seeks to provide elementary education of “*equitable quality*” to all. However, the terms ‘equitable’ and ‘quality’ have not been adequately defined. What implications does this have for the both equity and quality of elementary education? [Refer: Preamble; Chapter 1, Clause 2 (p); Chapter 3, Clause (5)(iv)]

We should not forget that existence of any parried system will be a threat to ensure equity in education. Be it too expensive or too difficult to be availed, there will be a class which will not only be able to afford it but make it a tool to capture power / powerful positions to rule this country. Moreover it will become a tool of exploitation and profit making.

Only one **National Public Education System** based on Common School System (CSS) through its instrumentality of Neighbourhood School System (NSS) can ensure the equity in education where no parallel system exists.

The Bill not only exempts the private schools from framework of the Bill, but appreciates their contribution stating that they are giving quality education. It does not challenge their very existence, financial exploitation and the poor quality at all.

The bill does not recognize private schools even as a threat to the concept of equity in education and a means of denial to the educational opportunities to children from marginalized sections.

2. The Bill makes it possible for out-of-school children to enter into the age appropriate grade, no later than three years of their joining school. The Bill proposes a policy of no detention irrespective of learning outcomes of children. Is there any evidence (Indian or international) on the effect of such 'automatic pass policy' on learning outcomes? [Refer: Chapter 2, Clause 3 (2), (3) and (5); Chapter 4, Clause 26]

The provisions suggested will again open doors for informal options. As mentioned earlier the efforts in name of stop gap arrangements are never ending. Whatever efforts are to be made it should be made under the framework of formal education.

We have seen many types of education / literacy programmes for more than three decades and still the problem of out of school children is a big challenge.

3. The Bill states that "*If a school other than a State or fully-aided school fails to comply...*" with the prescribed standards, then such school will forfeit its recognition. By design, State schools are allowed to get away with lower standards – where is the question of 'equity' in such a situation? [Refer: Chapter 4, Clause 18(4)]

As mentioned earlier all these efforts are for diluting your attention from basic issues. Government should come with a clear goal and owning responsibility. Every school should be brought under the framework of NPES.

4. The pre-primary stage is not covered under the right to education and the State is not obligated to ensure access to education at this level. However, partly aided and unaided schools with a pre-primary section are obligated to allocate 25 per cent seats to weaker sections (with funding support from the government). Does this create inequity between children fortunate to obtain admission in such schools and others who have no access to pre-school at all? [Refer Chapter 4, Clause 14 (1) and (2)]

This is very important to cover the children up to the age of 6 years. Since the age group up to 3 years is very important from child care point of view, which includes safe motherhood, immunization, nutrition, and all other basic requirements. The age group from 4-6 years is very important from pre schooling point of view particularly for the marginalized and the vulnerable sections of the society. Well off sections of the society are aware about the health and educational needs of the children, so exclusion of this age-group will mainly affect the poor strata of the society.

It is unnecessary and unwanted to focus the debate on the inequity between the marginalised sections. It hardly matters whether few children are provided with this

opportunity. The bill unambiguously should cover all children up to age of 18 years. If 86<sup>th</sup> amendment is needed to be amended it should be done

5. The Bill states that “*No court shall take cognisance of an offence under this Act, except on a complaint made by a person authorised by the Appropriate Government in this behalf.*” Does this mean a parent cannot seek legal recourse for her child, or a concerned citizen/ group cannot approach the courts directly? [Refer: Chapter 7, Clause 51(k)]

Though right of any person to get justice must not be denied but here we need not worry. No private school would charge any fee other than declared fee. It can include all possible expenses as there is no limit defined. Basic question is whether any school should be allowed to charge fee.

School management has been given many tools to deny the child to admission to school in name of severe / profound disability, fixing quota etc.

Clause 48 is very cleverly defined. Employer of a child will not be punished but a person who prevents a child to get education will be punished. Any employer can easily refuse from doing so or it will not be easy to prove. Employing any child should be clearly mentioned as a crime.

### **School Management**

6. The School Management Committee (SMC) is expected to gain substantial leverage on the functioning of the school. Several variants of this have been tried out in India (such as the Village Education Committees in several states, School Development and Management Committees in Karnataka) and in other countries. What is the evidence on the capability of such committees to perform the duties assigned to them? Are there tasks that they are able to perform relatively easily, but face difficulty in discharging other tasks? [For example, the SMC is required to “*disburse salary to teachers*” and “*deduct payment for any unauthorised absence*”. By any yardstick, this can be a highly technical task, given the relatively complex nature of government leave and salary structures.] [Refer: Chapter 4, Clause 22 (4)(iv)]

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7. The constitution of SMC does not at this time mention the presence of women members or the compulsory retirement of every member after a fixed term in office. Are these elements significant for the performance of the SMC? Is there any evidence in this regard? [Refer: Chapter 4, Clause 22 (2)]

It is really important that weaker sections and women have adequate representation in SMC. Not only their representation in SMC, but active and equal participation is also to be ensured

8. The Bill states that if a parent/guardian persistently does not enroll his child in school, “*the SMC may direct such parent/guardian to perform compulsory community service by way of child care in the school, in such manner as may be prescribed.*” Since the SMC is formed for a particular school, it is not directly responsible for children not enrolled in the school. According to the Bill, it is the responsibility of the local authorities to ensure that every child residing in its jurisdiction participates in elementary education [Clause 12 (ii)]. Who should deal with parents who do not send their children to school – the SMC or the local authority? What are the implications of such a measure? [Refer: Chapter 7, Clause 50(2)]

This should be clearly seen as a way to shift the responsibility from state to parents. This responsibility should lie with local administration not with the parent/guardian. This will be ironic if an uneducated parent/guardian is punished for not implementing a written law which he/she even may not know.

The debate whether parents/guardians should be punished by SMC or by local authority is unwanted and unnecessary. The clause 51 (k) should also be seen as an effort to shift the responsibility from state to parents.

### **Minority Schools and Children with Special Needs**

9. Children with “*severe or profound disability,[who] cannot be provided elementary education in a neighbourhood school, shall have the right to be provided education in an appropriate alternative environment as may be prescribed.*” What are the implications of this commitment? What are the logistics that will need to be taken into account for such cases? [Refer: Chapter 2, Clause 3(1); Chapter 3, Clause (5)(v)]

The clause has given an opportunity to school management to deny admission to a child on this basis. It may be a never ending burden for the child and family to fight with various technical formalities to prove whether it is severe / profound disability or not and where the child should get education in the school or it should be taught at home.

All necessary arrangements to ensure inclusive education should be ensured under formal education system. This clause may open doors for one more parallel education programmes.

10. Do minority community schools come under the purview of this Bill? Is there any conflict with Articles 29 and 30 of the Constitution? What are the implications for the curriculum, other standards on teacher pupil ratio, etc. and governance structures in these institutions under the new law? How does the clause dealing with 25 percent seats for weaker sections in unaided schools apply to these schools? [Refer: Chapter 1, Clause 1(3); Chapter 3, Clause 10(2)(v); Chapter 4, Clause 22 and 14 (iii)].

Right of minority community must be protected. They should be allowed to run institutions to protect their religious, cultural and moral values. As far as mainstream education is concerned it should come under National Public Education System. Ramamurthy committee has very clearly defined it.

### **Private Unaided Schools**

11. The State has directed unaided schools to admit at least 25 per cent of their students from weaker sections of society. What are the implications of such a move for equity, private schools, etc.? [Refer: Chapter 4, Clause 14 (1)(iii)]

As mentioned earlier, issue of private schools is one of very important issues. We should remember that private schools have never fulfilled the commitments made to get Aid / facilities from state.

Reservation for children from poor families can only be seen as a wish to go for social integration not as only means to get it. There are many other socio-economic issues needed to be addressed.

12. What is the basis for the 25 percent reservation? What is the evidence on assimilation of children from weaker sections of society in unaided schools? How will such a move impact the finances of parents from weaker sections and of unaided schools? Can you cite any technical papers or case studies on this aspect? [Refer: Chapter 4, Clause 14 (1)(iii)]

No basis for the quota (25%) in the private schools is given in the Bill. The report has ignored the law commission's recommendations to have 50% reservation for poor children in the private schools. The report divides the private schools in aided, fully-aided, and un-aided schools. This is again an effort to exempt private schools

It seems that the draft report is very much influenced by the private school lobby. If that influence was not there the report could have maintained the previous government's position to bring the private schools under the framework of the education system.

As far as the issue of assimilation of children from weaker section is concerned, it is raised with the intention to stop them going to private school rather than with the real

worry about it. We may be wrong when we think that children are also so discriminative in their behaviour as the adults. In 50s and 60s in most of places only governments schools were functioning. Children from all the sections were studying there. Though parents were particular about this discrimination, but children were sharing their food and other material with each other. It had helped to promote social integration to some extent but cast based and communal politics broke this process. Market forces through private schools helped to divide rich and poor.

The argument is mainly due to this fear that innocent / kind hearted children may come closer to each other and the process of social integration may get pace again. Elites do not want their children to be in touch with children from weaker sections unless they are fully prepared to rule the country and are grown as a person who is insensitive towards poor strata of the society.

13. The state proposes to reimburse to the unaided “...school at a rate equal to the per child expenditure in state school/ fully aided schools and state funded pre-schools...”. What is the basis for computing the cost of education in state schools? For example, in urban areas, per child expenditure in municipal schools is very high compared to the national average. [Refer: Chapter 4, Clause 14(2)]

As far as the issue of reimbursement is concerned it is again favoring private school lobby. Ensuring equal quality may not need equal financial allocations. Expenditure may differ in different places due to various reasons. You can be equal in some norms defining teacher, school, etc. but not in all the norms.

One has to be very clear about commonality and uniformity. We need a common school system based on certain values like democracy, social justice and secularism. Contents, curricula, teaching aids, etc. may be different as per geo-specific needs. We have some very good reports including Kothari commission in this regard.

14. The Bill seeks to allow the opening up of private schools only after “*certification from a Competent Authority*”. This form of ‘licensing’ has hitherto resulted in rent-seeking opportunities for those who provide the license. Can there be other governance structures that can be developed that not only ensure standards in educational institutions, but also minimise rent-seeking opportunities? [Refer: Chapter 4, Clause 17(2)]

Opening of a private school again should be taken care under national public education system.

15. The Bill stipulates as a principle that schools shall “*use the child’s mother tongue as the medium of instruction as far as possible, at least during the first*

*five years of the elementary stage*". What are the implications of such a move for unaided schools? [Refer: Chapter 5, Clause 29(ii)(c)]

Kothari has very strongly suggested ensuring mother tongue as instruction of medium at the primary level particularly for linguistic minorities; active encouragement of teaching in the regional languages at the secondary level and discontinuance of state aid to schools imparting education otherwise than in the medium of mother tongue / regional language.

There may be some exceptional cases that need special care to deal with but such cases may not be seen as any criteria not to implement common school system.

## **Finances**

16. How will the Centre and the States coordinate and be held accountable, with respect to both educational outcomes and finances? If either the central or the state governments fail in fulfilling their obligations, what recourse is available according to the Bill?

This is the moot question to be addressed. Bill is very ambiguous on this issue. Bill must clearly spell out accountability of the state defining accountability of centre and states. Financial allocations should also be mentioned clearly.

17. What are the implications of the Bill on the finances of the central and state governments? How will adequate provisions be made for the expected increase in expenditure?

Government has to change its priority in allocations of the fund as well as the direction of the development policies. The process of globalization has not helped us to deal with the real challenges we are facing. The new slogan "**Globalization With Human Face**" will also not work.

They have to show the will, which they have not shown yet. The issue of defining financial responsibility must remain a technical question and not become a political battle not to achieve the goal as they have been doing with women reservation bill for years.

18. Government estimates with regard to the **additional** cost of realising the fundamental right to education have varied over the years: the draft 83<sup>rd</sup> Amendment bill of 1997 indicates average annual expenditure of Rs 8,000 crore per year over five years. The Tapas Majumdar Committee 1999 pegs this figure at Rs 13,700 crore per year over 10 years, while the 93<sup>rd</sup> Amendment Bill of 2001 lowers this to Rs 9,800 per year over 10 years. The estimates of the CABE Committee on this proposed Bill range between Rs. 53,500 crore and Rs. 73,000 crore per year over a six year period starting 2006-07. What is the basis for the differences between the various estimates?

This is the moot question to be addressed. Bill is very ambiguous on this issue. Bill must clearly spell out accountability of the state defining accountability of centre and states. Financial allocations should also be mentioned clearly.

19. There are various views among educationists on making 'a common school system' compulsory for all children to ensure better equity in education. This Bill makes no mention of this.

It is very interesting to see that on one hand another CABE has constituted a sub-committee on common school system and the bill is not talking about it. Government should tell what they are going to do with the report of the committee on CSS. It is most interesting to see that one committee is formed on universalisation of secondary education. Should the bill not pave the way to implement CSS or universalisation of secondary education?

Kothari Commission introduced idea of Common school System or Neighborhood Schools in its 1966. Report Recognizing the responsibility of the education system to bring different social classes and groups together and promote an egalitarian and integrated society. The commission described the existing educational scenario as follows: *“education itself is tending to increase social segregation and to perpetuate and widen class distinctions. At the primary stage, the free schools to which the masses send their children are maintained by government and local authorities and are generally of poor quality. Some of the private schools are, on the whole, definitely better; but since many of them charge high fees, they are availed of only by the middle and the higher classes. At the secondary stage, a large proportion of the good schools are private but many of them also charge high fees which are normally beyond the means of any but the top ten percent of the people, though some of the middle class parents make great sacrifices to send their children to those schools. There is thus segregation in education itself- the minority of private, fee-charging, better schools meeting the needs of the upper classes and the vast bulk of free, publicly maintained, but poor schools being utilized by the rest. What is worse, this segregation is increasing and tending to widen the gulf between the classes and the masses.”*

\* **This opinion about private schools was given in 1966.** One can understand government's negligence regarding the recommendations given by the commission and promotion of private schools. The harm done by this is in front of us. The Kothari Commission visualized education as a powerful instrument to eliminate class segregation and foster national development and national integration.

The commission suggested some essential reforms in the order to implement a common school system effectively. The report calls for a significantly increased outlay for elementary education (particularly primary) education. This would help in the



building up of required levels of infrastructure and quality of education, thereby transforming government, local-body and aided schools into genuine neighborhood schools.

If we are committed to develop an egalitarian society, we have no option except CSS.

There may be other important elements that need to be clarified or included in the Bill to achieve the objective of elementary education of “equitable quality” for every child. You are free to raise these or any other key issues about this Bill that have not been listed in the above questions.

When we look at the bill, we should keep two things in mind one that how the bill is benefiting market and record how the bill is diluting the responsibility of the state. These two aspects are guiding principle of the bill.

We should also think that what a bill of 21<sup>st</sup> century should be. It is claimed that if it is more progressive bill, we should judge it with some parameters –

- \* Bill talks about elementary education. A child completing 14 years will be thrown out of the school though he/she has studied up to 2<sup>nd</sup> standard. Should it be?
- \* Bill talks about 14 years. Do we think in present era elementary education is enough for a child? Should a bill of 21<sup>st</sup> century not talk about school education (up to 12<sup>th</sup> standard)? If so then goal should be **Universalisation of School Education**.
- \* Should a pro-people and progressive bill exempt private schools or promote privatization of education?
- \* The bill does not serve the purpose of ensuring equal educational opportunity to every child in the country.

**A background note is also attached**

**October 2005**

## **Before giving a comment on the bill**

### **Political intention and education**

Before going for a critic on the right to education bill 2005, one has to understand the intention of our political leaders regarding education. It was very clear that education is not a priority for our political leaders even in 1950 when article 45 was shifted to part IV of the constitution and it became a mere directive principle. It was on the mercy of the state whether it is implemented or not.

Article 45 had clearly talked about a time limit of 10 years to achieve the goal of universalisation of elementary education. Therefore this task would have been completed by 1960.

But the intention of the political leaders was very clear when they constituted a commission in 1964 (after fourteen years of commencement of the constitution) to know what should be education system in the country. Commission gave its report in 1966 and first education policy came in existence in 1968.

Commission along with various other recommendations very strongly suggested implementing Common School System to ensure equal educational opportunity to every child and promote social integration.

**We should not forget that a child born in 1950 is 55 years old now and  
a child born in 1993 has also turned 12 and is eligible for only  
2 years to be benefited under the bill.**

### **Common School System; a promise**

The government in NPE 1968 promised to implement CSS. But again the intention was very clear in early 70s when we witnessed various schemes in name of stop gap arrangements and bridge courses. Neither the gaps could be narrowed nor could the bridges of bridge courses bring two worlds (classes and masses) together.

Again in 1986 we witnessed a modified NPE with new promises and commitments including implementing common school system. At the same time Stop Gap Arrangements and Bridge Courses were going on though the gap was widening and two worlds (masses and classes) were going far from each other.

One other interesting and noteworthy incidence took place here. Ramamurthy Committee reviewed the policy and gave its report giving emphasis on implementing Common School System. CABE represented by all political parties rejected the report and NPE 1992 came in existence. Promise to implement CSS (in a diluted form) still was there.

Next year was the important year when Honorable Supreme Court in its judgement in J.P. Unnikrishnan case defined right to education a fundamental right. Now again our

politician clearly showed their intention and took four years to bring an amendment to make education a fundamental right.

It was presented in Rajya Sabha in 1997 where it remained pending again for four years. Then a new amendment was brought in 2001 and passed on 28<sup>th</sup> November 2001. This was the day when NAFRE mobilized more than 50,000 people from various parts of the country to Delhi demanding inclusion of pro people change in the bill. But intention of the state was very clear.

Real breach of Trust took place here. 21<sup>st</sup> century's amendment was failed to keep the promises made in 1950 when-

- \* It violated the definition of child and covered only the children between 6-14 years. It excluded children up to age of 6 years violating article 45. it could have been more progressive covering all children up to age of 18 years
- \* It did not lead towards CSS to ensure equity in education.
- \* It exempted private school.

### **Making law in accordance with the amendment**

Now the second phase started when NDA brought a free and compulsory education bill in November 2003. Market forces have a good influence on our political leaders. It was widely criticised by progressive people and organisations. Then a revised draft was presented.

After UPA came to the power, it reconstituted the CAGE including many progressive people. CAGE in its meeting in August 2004 formed seven sub committees on various issues related to education. These committees have given their reports to CAGE.

### **Do not get confused**

One can be proud that we forced government to withdraw the bill and make a pro-people bill. We can also appreciate that UPA has reconstituted CAGE and formed many sub-committees on education. We can also thank UPA for nominating various progressive people in CAGE and also in sub committees. But here is basic conspiracy with the people of this country. We can see that

Every revised draft is more in favour of private schools, promoting privatisation of the education and diluting the responsibility of the state. It seems that bill is being revised as per the direction of market forces not due to pressure of the people campaigns. Whenever market forces will be satisfied, the bill will may be passed as it was done in 2001.

### **Education; not an isolated issue**

One other thing I would like to mention here. We are mistaken if we think that only a pro people education bill is lacking to ensure equal right to education for every child in this country.

Can we see education or education bill in isolation? Can a good school in a habitation will ensure that children from every family will get education. Do we see any relation between education and other socio-economic issues? Do we think that state is shifting from its responsibility in the field of education only or market forces are only looking at education as a big market?

Friends! Problem is bigger than this? Country is witnessing an irony where our political leaders are working as the agent of capital forces. They are least concerned about basic issues of the people of this country rather they have aliened themselves with market forces.

In the name of keeping communal forces out of the power, market forces are ruling (looting) the country. Definitely we do not want communal forces to rule the country or even exist but we must not allow market forces to loot the nation.

### **Private schools or business centres**

We can not compare private schools of today with the initiatives in the past done by Madan Mohan Malviya or Maulana Azad. Today money lenders are running education institutions (Shops will be right name). They have hardly any understanding regarding education or they want to develop it.

As far as politicians are concerned, the situation is worst. Our parliamentarians are hiding from police and expelled from some constituencies considered as a threat to peace, harmony, law & order and smooth functioning of democratic institutions. Seriousness of the challenge can be realized.

Many of the politicians sitting in our assemblies / parliaments and bureaucrats own private education institutions, factories and business enterprises. Can we hope they will take care of interests of common man of this country?

### **Unwanted exercises**

Making so many committees on is also a task to confuse the people and dilute the issue. These committee reports may have difference of opinion and contradictions in their reports. We might have formed only one committee to define National Public Education System to deal with current and future challenges. It is again time consuming and face saving exercise. We had very good reports already with us but those are never implemented.

### **People representation**

Nomination of progressive people to various committees can also be seen in a different dimension. It gave a hope to the people that now policies and programmes would be planned keeping interests of common man. But the marker forced had a different goal in their mind. They have tried to use this opportunities to serve their interests. Now we see that many of our friends are working to mobilize public opinion in favour of the anti people and pro market forces policies / programmes.

Wherever these forces have failed to achieve their goal they have gone for alternative options as in case of interlinking of rivers where failing to get any nod from committee they have found a way and have gone for bilateral agreements between UP and MP governments.

### **Other challenges**

One other dangerous thing should be taken into account. There are some suggestions coming from various corners that we should be practical in our demands or our demands would not be accepted by the government. This is again an effort to dilute the campaign in favour of pro people bill and tone down the voice of opposition. We should be very clear in our goal. We should demand what we want to achieve. We must not bother whether it would be accepted by the government or not. Government is bound to fulfill its constitutional obligations and no excuse can be given for it.

So when we look at right to education bill 2005, we must keep this background in mind. We must not forget that basic problem lies with the 86<sup>th</sup> amendment not with the bill. Many questions regarding bill can be easily answered that the bill is in the preview of 86<sup>th</sup> amendment and can not go beyond that. When we fight with the bill we basically fight with the portrait of the problem not with the real problem.

**Interests of common man can be only guiding principle for us.**