

**POLITICS OF MAKING  
RIGHT TO ELEMENTARY EDUCATION**

*Dissertation submitted to Jawaharlal Nehru University  
in partial fulfillment of the requirements  
for the award of the degree of*

**MASTER OF PHILOSOPHY**

**MAMTA**



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2010



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January 4, 2011

**DECLARATION**

I, **Mamta** declare that this dissertation entitled “**Politics of Making Right to Elementary Education**” submitted by me in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University, is my bonafide work. I further declare that the dissertation has not been submitted for any other degree of this university or any other university.

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**CERTIFICATE**

We recommend that this dissertation be placed before the examiners for evaluation.

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## ACKNOWLEDGEMENTS

*My academic journey for the dissertation was full of with many ups and downs. God and many people helped me in my journey. First of all I would like to give my thanks to God who always checks my patience by putting me in difficult situations, so that I can learn to fight with the difficulties. I was able to complete this dissertation because I had people who loved me, cared for me and lead me onto the right path. I must acknowledge them all.*

*To begin with, my supervisor Dr. S. Srinivasa Rao played a key role in conceptualizing this work. It is because of his constant support, encouragement, motivation and tolerance I was able to complete my dissertation. He is the person who supports me in my critical time. I have no words to express my gratitude towards him.*

*My deepest regards and respects to all faculty members as well as non-teaching staff of the Zakir Husain Centre for Educational Studies.*

*My special thanks to my friend, Neelam, Vijayeta, Pooja, Gaurav and Reshmi whose company and friendship came as a gift at this juncture in my life. Especially Neelam helped me in my weakest moments and always there to support me. I am grateful to my friends especially Lipsa, Vandana, Manjari, who helped me a lot during my research work. My friends Amita, Shubhi, Surmila, Poonam, Reena, Vikas, Karunabh and all my friends who always keeps me motivated and help me to come out from my inner tensions . I would also thank my classmates and seniors at ZHCES.*

*How can I forget to thanks my parents especially my mother. I always missed her she is the foundation of my life and always supported my education and had full confidence in me. She scarified everything for our study. Her care, love and support make me able to reach at this stage. Everything would be inadequate but I would like to express my love by dedicating this work to my mother. My Sisters Anu, Indu and Kanchan always encouraged my efforts and help me a lot in while working on this research study. They always cared for my study and kept me free from all responsibilities. I want to also thank my nephew, Jatin who always give me the reasons for smile. At last I would also thank all the people who directly or indirectly help me throughout my life.*

**(Mamta)**

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TO  
DEAR MA  
FOR YOUR UNFAILING SUPPORT TO  
MY EDUCATION

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## **ABBREVIATIONS**

BPL	:	Below poverty line
CABE	:	Central Advisory Board for Education
CESCR	:	Covenant on Economic, Social and Cultural Rights
CII	:	Confederation of Indian Industry
CRY	:	Child Right and You
CSS	:	Common School System
DPEP	:	District Primary Education Programme
ECCE	:	Early Childhood Care and Educations
EFA	:	Education for All
FCE	:	Free and Compulsory Education
GDP	:	Gross Domestic Product
GER	:	Gross Enrolment Ratio
GOI	:	Government of India
HLG	:	High Level Group
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
ICDS	:	Integrated Child Development Scheme
ILO	:	International Labor Organization
IMF	:	International Monterey fund

MDG	:	Millennium Development Goals
MHRD	:	Ministry of Human resource and development
MLL	:	Minimum Level of Learning
NAC	:	National Advisory Council
NAFRE	:	National Alliance for Right to Education
NCE	:	National Coalition for Education
NCERT	:	National Council of Educational Research and Training
NCPCR	:	National Commission for Protection of Child Rights
NER	:	Net Enrolment Ratio
NFE	:	Non Formal Education
NGO	:	Non Government Organization
NKC	:	National knowledge commission
NPE	:	National Policy on Education
NREGA	:	National Rural Employment Guarantee Act
ODA	:	Overseas Development Assistance
POA	:	Programme of Action
PPP	:	Public Private Partnership
PROBE	:	Public Report on Basic Education
PTA	:	Parent- Teacher Associations
PTR	:	Pupil Teacher Ratio
PWD	:	Person with Disability

RTE	:	Right to Education
SAP	:	Structural Adjustment Programme
SC	:	Scheduled Castes
SIDA	:	Swedish International Development Authority
SMC	:	School Management Committees
SSA	:	Sarva Shiksha Abhiyan
ST	:	Scheduled Tribes
UEE	:	Universalization of elementary education
UN	:	United Nations
UNCRC	:	Convention on the Rights of the Child
UNDP	:	United Nations Development Programme
UNESCO	:	United Nations Educational, Scientific and Cultural Organization
UNICEF	:	United Nations Children's Fund
UNO	:	United Nation Organization
UPE	:	Universalization Primary Education
WB	:	World Bank

## ***My right to learn***

*I do not have to earn  
The right to learn.  
It's mine.  
And if because  
Of faulty laws  
And errors of design,  
And far too many places where  
Still far too many people do not care –  
If because of all these things, and more,  
For me, the classroom door,  
With someone who can teach,  
Is still beyond my reach,  
Still out of sight,  
Those wrongs do not remove my right.  
So here I am. I too  
Am one of you  
And by God's grace,  
And yours, I'll find my place.  
We haven't met.  
You do not know me yet  
And so  
You don't yet know  
That there is much that I can give you in return.  
The future is my name  
And all I claim  
Is this: my right to learn.*

**-By Robert Prouty**  
*SOURCE: UNESCO 2007*

# CHAPTER 1

## Introduction

---

In any democratic society, freedom, equality, rights and justice are the main elements for development. Without them democracy cannot survive. Democracy is needed for the egalitarian society and opportunity for all round development of the child. Otherwise the gap between deprived and other privileged may be increased. Inequality exists in every society that is why the people who are living in vulnerable situations become the subject of exploitation. Particularly, children are most affected in these situations and are exploited by the others. We easily see in India how children labour for wages when they are supposed to be in schools or enjoy their childhood.

It is not true that India did not have any serious provision that prevents children from working early in their life for wages at the cost of their even basic education, but those provisions were ineffective in redressing the menace of child labour or lack of guarantee from the state to educate them in schools. For instance, India made a Constitutional commitment to provide free and compulsory education to all children up to the age of 14 nearly sixty years ago way back in 1950. The goal, which was expected to be achieved by 1960, remained elusive even now. After the 60 years of independence, Right to Education was made into an Act under the Constitution on April 1, 2010 and the country has embarked on a landmark in the history of modern India. On this day, the country had enacted the seventh fundamental right in the form of Right to Education giving shape and meaning to the most often used phrase 'free and compulsory education' for children in the age group of 6 to 14 years.

Interestingly, this journey of the making of the 'Right to Education' has not been without any contestations and contentions. The very process of formulating the Right to Education involved a complex process of a series of debates among various stake holders, from the international, multi-lateral agencies to the political parties to the civil society organizations to the industry to the scholars engaged in education. The parliamentary sub-committees and standing committee had debated the issue, the Ministry of Human Resources Development had set up many committees such as Saikia Committee, Tapas Majumdar Committee, etc; Planning Commission had

conducted several consultative meetings with experts and other stakeholders to see how India can formulate and implement the 'Right to Education' effectively. The clauses of the Right to Education Bill had been contested by the Private sector schools, the intellectuals of various ideologies, and finally had provoked some groups to approach the Supreme Court to amend the Act, without even giving it a chance to see the light.

Amidst all these debates, the concern for effecting Right to Education in India seems to have met with some resistance at the outset itself. In this context, it is important for us to look into the debates, contentions and understand the implications of these for the future of its implementation in the form it was envisaged. Thus, the study aims to examine these issues with the help of the secondary literature and review of documents and reports of committees set up by the government, civil society organizations, the multi-lateral aid agencies, the business and industry, and the individual researchers and groups. It fundamentally places the entire context of the making of the Right to Education and the opposing voices it had to address and continue to address even after it is made into an Act.

### **WHY ELEMENTARY EDUCATION IS IMPORTANT IN A CHILD'S LIFE?**

Elementary education and basic literacy is an essential part of human life. A non-literate person is significantly less equipped to defend him/herself in court, to obtain a bank loan, to enforce her inheritance rights, to take advantage of new technology, to compete for secured employment, to get on to the right bus, to take part in political activity – in short to participate successfully in the modern economy and society, similar thing can be said about numeracy, and other skills acquired in the process of basic or elementary education (Dreze and Sen 2003:03). But elementary education has been always got negligible attention in India. Dreze and Sen (2003), argue that one aspect of this neglect is the fragrant inadequacy of government policy in the field of elementary education. There has also been much neglect of it on the part of political parties, trade unions revolutionary organizations, and other social movements.

This feature of the social movements in India stands in sharp contrast with the Latin American experience, where basic education has often been a cornerstone of popular

mobilization and major focus of radical politics. With the French and American Revolutions, education was established as a public function. It was thought that the State, by assuming a more active role in the sphere of education, could help to make education available and accessible to all. Education had thus far been primarily available to the upper social classes and public education was perceived as a means of realizing the egalitarian ideals underlining both revolutions. However, neither the American Declaration of Independence (1776) nor the French Declaration of the Rights of Man (1789) protected the right to education as the liberal concepts of human rights in the nineteenth century envisaged that parents retained the primary duty for providing education to their children. It was the State's obligation to ensure that parents complied with this duty, and many States enacted legislation making school attendance compulsory. Furthermore, child labour laws were enacted to limit the number of hours per day children could be employed, to ensure children would attend school.

In his book 'On liberty' John Stuart Mill wrote state has an important role to providing education and setting the standard of excellence. Liberal thinkers of the nineteenth century pointed to the dangers of too much state involvement in the sphere of education, but relied on state intervention to reduce the dominance of the Church, and to protect the right to education of children against their own parents. In the latter half of the nineteenth century, educational rights were included in domestic bills of rights.

Subsequently, education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. The human rights based approach to education addresses the right of access to education, the right to quality education and respect for human rights in education. Approach believes that right to education is instrumental in the realization of other rights (UNICEF 2007:07). It says that getting children into schools is not enough; it is no guarantee of an education that enables individuals to achieve their economic and social objectives and to acquire the skills, knowledge, values and attitudes that bring about responsible and active citizenship. The approach is very much holistic in as it talked about respect of every child equally without discrimination on any grounds, give primary consideration to the best interests of the child, respect the evolving capacities of the



child, respect the right of children to express their views on all matters of concern to them and have those views given due weight in accordance with children's age and maturity, take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's dignity and all other rights in the Convention on the Rights of the Child, protect children from all forms of physical violence, injury or abuse, neglect or negligence, maltreatment or exploitation, including sexual abuse (UNICEF 2007).

Human rights-based approach to education emphasizes on quality, which can encourage the development of school environments in which children know their views are valued. According to the approach, the right to education is a means to reduce disparity and poverty. A rights-based approach to education requires that underlying causes of poverty and inequality be addressed.

Approach also give emphasis on equal opportunity, it says that every child has an equal right to attend school. Making schools accessible and available is an important first step in fulfilling this right but not sufficient to ensure its realization. Equality of opportunity can only be achieved by removing barriers in the community and in schools. It sets out a framework of obligations to provide education that promotes children's optimum development. Article 29 of Convention on the Rights of the Child, 1989 implies "the need for education to be child-centred, child-friendly and empowering, and it highlight the need for educational processes to be based on the very principles it enunciates." Every child has a right to an education that empowers him or her by developing life skills, learning and other capacities, self-esteem and self-confidence (Tomaševski, Katarina, Manual on Rights-Based Education, op. cit., p. 27).

Amartya Sen argues that although legislation is certainly a welcome development, it should not be treated as the only vehicle of implementing human right (as cited in Niranjana Radhya and Kashyap, 2006: 6). Because by law State will restrict its activities to ensure only those issues which are covered under the legislation. He further emphasized that legislation should be supplemented by non-coerceable rules for effective implementation of human rights. For this he said that there is a need for comprehensive policy and programme of action.

Evan (2005) emphasized developing a model for legislative process that incorporates the human rights. For him, this model entails policy formulation, including consultation within and outside the government. He also said that policy formulation is not only necessary from the point of view of legislative process but also from the point of view of implementing human rights. Continuous review process is also important for policy and law. Thus the issues raised by Sen and Evan are significant in the Indian Context because fundamental right is limited to the age group of 6-14 years (Cited in Niranjana Radhya and Kashyap, 2006:06).

Though the right to education has been (as we discussed earlier) universally recognised since the Universal Declaration of Human Rights in 1948 (though referred to by the ILO as early as the 1920s) and has since been enshrined in various international conventions, national constitutions and development plans. However, while the vast majority of countries have signed up to, and ratified international conventions (such as the UN Convention on the Rights of the Child) but so far fewer have integrated these rights into their national constitutions or provided the legislative and administrative frameworks to ensure that these rights are realised in practice. India becomes the signatory on UNCRC on 1992. But it took more than half of the century to make elementary education as fundamental right.

In the policy sociology discourse, Michael Apple (2000) argues that many of the educational policies that we take for granted and the mechanisms that put them into practice are the results of intense conflicts and alliances both within and outside of education. In the Right to Education discourse in India we can find different standpoints, interests, conflicts and issues raised by different stakeholders. Ball (2010) commented that recent and ongoing developments in education policy and service delivery and specifically the participation of some new kinds of actors and organizations in public sector education – a new social enterprise elite or ‘transformocracy’ – exist. Actors are migrating from business and bureaucracy coming and participating in educational system. These actors constitute a new discourse community bringing with them new values, languages and practices. The ‘hierarchies’ of the new state glimpsed are connected by a diverse set of exchanges and relationships – partnership, sponsorship, consultancy, contracting-out, and philanthropy in education in recent time. It will be interesting to see all these

processes in the changing landscape of Indian educational system, particularly with reference to right to education.

Bourdieu argues that by treating all pupils, however unequal they may be in reality, as equal in rights and duties, the educational system led to give its de facto sanction to initial cultural inequalities. The formal equality which governs pedagogical practice is in fact a cloak for and a justification of indifference to the real inequalities with regard to the body of knowledge taught or rather demanded. If the children have right to education then they can share and access social and cultural capital of other children this is very important in a democracy to make an egalitarian society. Economic inequality leads to inequality in access, participation and outcomes in education. Debates on the content and implementation of RTE can further be explored with these theoretical inputs given by Bourdieu.

#### **STEPS TOWARDS FUNDAMENTAL RIGHT TO EDUCATION IN INDIA**

The debate on Right to Education was initiated in India by Mahatma Jotirao Phule more than 125 years ago. The demand for a law on Free and Compulsory Education was made during the freedom struggle, which sought to break the inequitable and neglected education system of pre – British period. In their evidence placed before the Hunter Commission appointed in 1882, Dadabhai Naoroji and Jyotiba Phule demanded state-sponsored free education for all children for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education. The Commission also recommended that schools should be open to all castes and classes. Thereafter, the first law on compulsory education was introduced by the state of Baroda in 1906 which provided for compulsory education to boys and girls in the age groups of seven to twelve years and seven to ten years respectively. In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Council of Bombay, but he faced stiff resistance from the upper castes and upper classes of Indian society, who feared that what would happen, if all children enter schools (Sadgopal, 2008:01). It was the first amongst the provinces to adopt a law on compulsory education. Gradually, other provinces followed suit as control over school education was transferred to Indian ministers

under the Government of India Act, 1919 but progress in universalizing education was poor due to lack of control over resources.

The idea of compulsory education was followed by All India National Conference on Education in 1937 held at Wardha, where Gandhi mooted the idea of self-supporting 'basic education' for a period of seven years through vocational and manual training. This concept of self-support was floated in order to counter the Government's persistent excuse of lack of resources (Sadgopal, 2008: 02). The next landmark development in the history of free and compulsory education in India was the Post War Plan of Education Development of 1944, also called the **Sergeant Plan**, which recommended free and compulsory education for eight years (six to fourteen years of age).

Despite the consistent demand for free and compulsory education during the freedom struggle, at time of drafting the Constitution Assembly debates reveal that an amendment was moved to alter the draft article relating to free and compulsory education. By this amendment, the term 'entitled' was removed from the draft Article to ensure that education remained a non-justiciable policy directive in the Constitution. Therefore free and compulsory education made its way into the Constitution as a Directive Principle of State Policy under former Article 45, whereby states were required to ensure the provision of free and compulsory education to all children till the age of fourteen years within a period of ten years of the commencement of the Constitution (Niranjanadhy and Kashyap 2006).

After Independence, the period spanning between 1950 and 1993 (Judgement in Unnikrishnan's case) saw several policy developments. The Indian Education Commission (Kothari Commission) 1964 – 1968, reviewed the status of education in India and made several recommendations a common school system was one of the important recommendation with a view to eliminating inequality in educational opportunities. Immediately thereafter, the National Policy on Education (NPE), 1968 was formed. This policy was the first official document evidencing the Indian Government's commitment towards school education. Interestingly, it even required special schools to provide a proportion of free studentships to prevent social

segregation in schools. Nevertheless, it retained the status of free and compulsory education as a 'directive principle.'

Subsequently, the National Policy on Education, 1986, re-affirmed the goal of universalisation of school education and promised to take measures to achieve a common school system. In this policy document free and compulsory education continued to remain a non-justiciable Directive Principle of State Policy. On the contrary, the 1986 policy has been criticized for having reduced the constitutional obligation of full-time schooling.

The first official recommendation for the inclusion of fundamental right to education was made in 1990 by the Acharya Rammurti Committee. Thereafter, several political as well as policy level changes influenced the course of free and compulsory education. The country witnessed an increased international focus on its initiatives regarding free and compulsory education after its participation in the World Conference on Education for All in 1990 (Niranjanadhy and Kashyap: 2006).

In India before 1990s external funding for primary and elementary education existed on a small scale and was extended in the form of grants. The first few externally financed projects included the Andhra Pradesh Primary Education Project (1987), with assistance from the Overseas Development Assistance (ODA), the Shiksha Karmi Project (1987), and Lok Jumbish Project (1992) in Rajasthan with assistance from the Swedish International Development Authority (SIDA), the Mahila Samakhya Programme supported by the Dutch government (1989), the Bihar Education Project (1991) supported by United Nations Children's Emergency Fund (UNICEF). But, in March 1991, CABE endorsed the idea of tapping external funds for basic education from multilateral as well as bilateral sources. After liberalisation, the Social Safety Net Credit also became available and loan for primary education could be accessed from the World Bank. The quantum of external finance for primary education thus increases significantly (Sharma and Ramchandran, 2009:06).

India also ratified the United Nation Child Right Convention in 1992. The World Bank funded District Primary Education Programme (DPEP) was introduced in 1994 under the auspices of the IMF-World Bank Structural Adjustment programme. DPEP

introduced a five-year 'primary education' programme and a system of appointment of Para-teachers. From the point of view of a 'right' to education, this five-year programme and the appointment of Para-teacher have been criticized as having diluted the constitutional norm of quality compulsory schooling for children till the age of fourteen. The use of the phrase 'primary education' and its corresponding five-year programme under DPEP may be contrasted with Dr B R Ambedkar's observations at the time of drafting the constitution. He opposed the introduction of the phrase 'primary education; in draft Article 36 (corresponding to former article 45) on the ground that the state was obliged to keep children below the age of fourteen years in an educational institution to prevent them from being employed as child labour Niranjandhya and Kashyap, 2006).

A great legal breakthrough was achieved in 1992 when the supreme court of India held in *Mohini Jain State of Karnataka*, that "the right to education, is concomitant to fundamental rights enshrined under Part III of the Constitution" and that "every citizen has a right to education under the Constitution." The Supreme Court subsequently reconsidered the above-mentioned judgment in the case of *Unnikrishnan, JP v State of Andhra Pradesh*. In this case court stated that education is not a commodity the Court (majority judgment) held that 'through right to life guaranteed under article 21 (and) must be construed in the light of the Directive principles of the Constitution. Thus, 'right to education' understood in the context of article 45 and 41 means;(a) every child/citizen of this country has a right to free education until he completes fourteen years, his right to education is circumscribed by the limits of the economic capacity of the state and its development (Dhagamwar, 2006).

A historic judgment by the Supreme Court of India in 1993 radically transformed the status of Article 45. In its *Unnikrishnan Judgment (1993)*, the Supreme Court ruled that Article 45 in Part IV has to be read in 'harmonious construction' with Article 21 (Right to Life) in Part III of the Constitution, as Right to Life loses its significance without education. The apex Court made the following powerful interpretation:

"It is thus well established by the decisions of this Court that the provisions of Part III and IV are supplementary and complementary to each other and that

fundamental rights are but a means to achieve the goal indicated in Part IV. It is also held that the fundamental right must be construed in the light of the directive principles.”

It further notes,

“...The directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.... there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III.... there is no difficulty in putting a harmonious construction that advances the object of the Constitution....The right to education flows directly from right to life.....Hence, the Supreme Court declared that *Article 45 has acquired the status of a Fundamental Right* (Sadgopal, 2010: 26-27)

The Unnikrishnan Judgment empowered people with a legal claim to free and compulsory education. This is evidenced by a spate of litigations that relied upon the principle of law laid down in the Unnikrishnan judgment. Pressure from different quarters, support from the judiciary, greater international attention and increased civil society and grass-roots level campaigns put forth tremendous stress on the Government to introduce a fundamental right to education.

For the inclusion of a fundamental right to education a Constitutional Amendment Bill was moved in the parliament amidst much criticism and debate regarding contents of the Bill. The said amendment proposed that Article 21- A (fundamental right to free and compulsory education for children in the age group of six to fourteen years) be introduced, former Article 45 (the then existing directive principle on free and compulsory education) be deleted and Article 51-A(k) (fundamental duty on parents) be introduced (Raina, 2008:06). In November 2001 the Bill was re-numbered as the 93<sup>rd</sup> Bill and the 83<sup>rd</sup> Bill was withdrawn. The 93<sup>rd</sup> Bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. Despite continued criticism against the altered version, the bill was passed in 2002 as the 86<sup>th</sup> Constitutional Amendment Act. The 86<sup>th</sup> Amendment of the Constitution that made education a fundamental right was passed in the year 2002. The new Article 21A, which was inserted as part of the 86<sup>th</sup> Amendment says that “the state shall provide free and compulsory education

to all children between the ages 6 and 14 through a law that it may determine.” Since prior to the 86<sup>th</sup> Amendment, the right actually exist through a Supreme Court ruling. In the famous Unnikrishnan judgement of 1993 the court had ruled that read together with Article 21 (Right to life), Article 45 of the directive principles establishes that the right to education exist and would not be hindered by the economic capacity of the state till age 14; the economic capacity would be factor only after age 14. The 86<sup>th</sup> Amendment not only removes the 0-6 age group from the right, but makes right contingent on a law that the state shall determine (Raina.2008:06).

The history of the Bill that led to become law in the form of Right to Education act 2009 is that the previous government did prepare a particularly inadequate Bill in 2004, but lost power at the next election and could not introduce it. The present UPA government constituted the Central Advisory Board for Education (CABE) in 2004, and one of its Committee was charged with the task of drafting the Right to Education Bill. The committee prepared a draft in August 2005 which was discussed by the full CABE in November 2005, and it was put on website of Ministry of Human Resources Development (MHRD) as a public document. While it was receiving comments, the Prime Minister decided to set up a High Level Group (HLG) to examine the financial and legal implications of the bill. Strangely, the HLG concluded that there was no need for a central legislation and advised the MHRD to ask the states to bring in their respective legislations based on a model bill that the MHRD was asked to prepare. The MHRD circulate such a model Bill to the states in 2006 with a covering letter suggesting that they ought to bring in such legislations and provide second priority to educational finance at the state level, after law and order (Raina, 2008: 06).

It took the UPA government almost three and a half years to be ready with a draft which it found convenient enough for its new liberal framework. The draft which was eventually placed in Rajya Sabha in December 2008 was the sixth draft of the UPA government, including the Model Bill (June 2006) sent to the State/UT governments with a decision to shelve the idea of a central Bill altogether. In the process, each and every word, phrase and sentence was examined, debated and modified or adjusted at the highest echelons of the government which included the empowered High Level Group of Ministers (Sadgopal, 2010: 39). Finally with much of the debate and complications, the Parliament passed the RTE as a fundamental right in April 2010.



## **Issues and Debates around the Elementary Education as a Right in India**

RTE has gone through many debates and politics involved in this process. There are many different views and interests regarding RTE. Different stake holders have very different views on Right to Elementary Education. In the process of making RTE, many debates and issues were raised and contested and are still continuing. Central government's argument is that it is very difficult to implement the RTE between the age 0-14 years due to the lack of resources and the shared responsibility with the states. And the Right had been limited to 6-14 years of children. Two committees were established to investigate the desirability and financial implications of amending the constitution to establish primary education as a fundamental right. First, Saikia Committee (1990) recommended imposing a 'Fundamental Duty' on parents to provide opportunities for education to their children in this age group. The second committee Tapas Majumdar Committee (1997) concluded that the universalisation of elementary education for children aged 6-14 years would require an annual GDP growth of 5%, this amount to an additional 0.7% of GDP dedicated to education per year, raising education expenditure to approximately 5% of GDP (Shirname, 2007). However, report holds that the methods of financing will still have to change, given that the state revenue to GDP ratio is unlikely to rise in the short run and if this does not occur, the universalisation of elementary education by 2010-as envisaged by the Government of India (Civil society groups also took up the struggle to give constitutional status to the right to education) (Aston and Bhuta, 2006: 21).

According to the framework developed by the UN Special Rapporteur on Right to Education, and subsequently adopted by the CESCR in its General Comment on Right to Education, the state has four duties, namely, the duties to make schools 'available,' 'accessible', 'acceptable' and 'adaptable'. Various non government organizations (NGO's) under the aegis of NAFRE (National Alliance for Right to Education & Equity) started pressurizing the government to pass a legislation making 'education a fundamental right'. NAFRE emphasized to include a clause on providing 'good quality' and 'equitable education' and ECCE programme along with this right. Pratham's report also tried to make an environment of 'pressure' on government to "mainstreaming" out-of-school children and improving learning in the schools, with making right to education as fundamental.

Confederation of Indian Industry (CII) welcomed the landmark initiative of the Government of India that seeks to implement the Constitutional provision of free and compulsory elementary education in RTE, 2009. But believe that some lacunae still exist in the act of the bill like, Government and aided schools should be equally accountable as private schools in complying with mandatory requirements, norms quality standards. Minimum standards should be at par with Kendriya Vidyalaya, reserving 25% seats for free quota is on the higher side, and recommend a more reasonable 15% reservation (15% reservation of seats for Economically Weaker Section children is already being enforced in some States like Delhi).

On the other hand, the National Knowledge Commission perused the bill and felt that the Bill is flawed for a number of reasons, and most importantly that such legislation must be enforced by the central government following upon the commitment made in the Constitutional Amendment Article 21A. NKC believes that the state-level legislation should specify the period within which universal education of reasonable quality is sought to be achieved, preferably within three years. The model bill does not provide any time frame for adoption and implementation of the provisions. In the view of NKC, any right, including the Right to Education, is only meaningful if it is justiciable. However, in the Bill, the onus is placed on parents/ guardians of the child. The responsibility of the Government, at different levels, must be recognized and made justiciable. The example of the National Rural Employment Guarantee Act (NREGA) could be used in this context.

Overall, the available literature, however, do not speak much about that how the policy change came about and what factors contributed to this shift in policy? The available research in educational policies in India (like of Alston and Bhuta (2005), Sripati and Thiruvengadam (2003), Reddy (2009 etc.) mainly analyze the amendments related to education and very little research is written about the process by which these amendments took shape and evolved as policy of the state. This work is an attempt therefore to fill the gap. It tries to understand the contestations and politics which bring changes in the making of the right to education). This research is a simple attempt to understand and analyse different debates among various stakeholders regarding RTE.

In brief, the following are the **objectives of the study**:

1. To examine the theoretical arguments on elementary and basic education as a fundamental right.
2. To discuss the overview of the evolution, expansion and growth of elementary education in India since Independence. And to explore and understand the impediments to achieving universalisation of elementary education in India.
3. To examine the factors those have led to the formulation of the Right to Education Act in India.
4. To consider the concerns and contestations of various stakeholders on various dimensions of the making of the Right to education.

**Specific Research Questions:**

1. What are the theoretical arguments those make elementary and basic education as a fundamental right?
2. What are the policy shifts in elementary education in India since Independence in order to realize universalisation of elementary education? How did the elementary education expand quantitatively during the past 60 years and what are the impediments to the universalisation of elementary education?
3. What factors have led to the making of Right to Education Act?
4. What are the arguments of different stakeholders (successive governments and the political parties, committees of the governments, planning commission, and civil society organizations, multi-lateral aid agencies, private schools, industry, educationists, parents, teachers, etc.) on Right to Education? What are the debates among various groups and individuals on various clauses of the Right to Education Act?

**Methodology**

The study is an analytical and descriptive study. An analytical study of documents related to policy and right to education is undertaken to know deeply about the trends, issues and debates relating to politics of right to education and interest of different stakeholders involved in the process. Documents, newspaper clippings, policy statements, individual scholarly contributions, etc are important sources of data and

analysis. Thus, the study will be based on primary and secondary data. Sources of data for the study will be the reports and records of national commissions like NPE 1968, 1986, POA 1992 and other reports, supreme court's various judgment related to right to education, planning commissions reports on education, UNO reports on convention of child rights and other international conventions, NGOs like NAFRE Report, CII Reports, various government sites and various stakeholders debates during and after the right to education.

### **Chapterisation**

In this research study politics means diverse kind of interests of diverse group of people which creates some kind of politics. In the process of making right to elementary education and after that there are different interests involved in this which leads to contention and contentestations. The problem is that contention and contestations not as broadly understood by the politician as by the educators. As Rudolph and Rudolph (1972) articulate that the political system must have sufficient influence in the education system in a way that are socially responsible but at the same time educators also must have political influence to command necessary resources and to make and implement educational policy. In brief there should be a proper relationship between politics and education.

In India any Bill when it passed by the both houses of parliament and signed the President, will become the Act. Right to education Bill and Act both were debated and contested by different groups of people which has certain kind of interest which leads to the politics of right to education Act.

This study has been divided in five chapters. The Chapter one introduces the topic and rationale for the study. It also presents the objectives and methodology of the study. Chapter two discusses the theoretical and policy perspectives on the issue of right to education as a basic human right. Chapter three discusses the current status of the policy and practice of elementary education in the country and it also discusses the impediments to achieving the universalisation of elementary education, which ultimately led to the realisation of making of right to education. Chapter four presents and discusses the debates among the stakeholders on various aspects of the Provisions

of Right to Education Act, which made the process of the making of the Act very complicated process. Chapter five summarises and draws a few conclusions of the study.

## **CHAPTER 2**

### **Education as a Human Right:**

#### **Policy, Theory and Practice**

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Any research needs theoretical and philosophical grounds for the clear understanding for any related issue. This chapter will deal with the theoretical framework for the research. Two approaches are mainly discussed in the chapter. One is human right approach to education and another is policy sociology approach to understand the policy discourse, policy development process and debates related to educational policies. The chapter is divided in three sections; first section will deal with education as a human right: philosophical and theoretical perspectives. Second section education as human right articulation in the international conventions and third section explains the policy sociological discourse.

#### **EDUCATION AS A HUMAN RIGHT: PHILOSOPHICAL AND THEORETICAL PERSPECTIVES**

The United Nations (UN) has been promoting and codifying human rights for 62 years. Human Rights have been promoted through the Universal Declaration of human rights and associated resolutions, covenant, fact finding commissions, and monitoring and reporting mechanisms. One of the initial questions in any philosophical inquiry is what is meant by human rights? How we understand the meaning of human rights will influence our judgments on such issue where rights are regarded as absolute, which are universal and given priority. These can be over ruled by other interest and called for international pressure. For the implementation of Human rights programme can be demand and we will fought for.

According to Messer, Human Rights as a philosophical concept refers to the reasonable demands for personal security and basic well being that all individuals can make on the rest of humanity by virtue of their being members of the species homo sapiens.

Building on a foundation of nature law, political principles, national and international legal instruments, and humanitarian agreements, the UN concept of human rights acknowledges that in all times and places, reasonable people, regardless of political affiliation, demand certain minimum standards of behavior by government toward their own citizens (Messer, 1993: 222).

Qureshi, (2004) says that Right is a chameleon like term which can describe a variety of legal relationships. Sometimes right is used in its strict sense of the right-holder being entitled to something with a correlated duty in another. According to him right is used to indicate immunity from having a legal status altered. Sometimes it indicates the privilege to do something (Qureshi, 2004: 22).

But what human rights are and who is protected under them, has varied according to historical and social context and political interest. Henkin, (1990) says that human rights practice ascribes civil-political and socioeconomic rights to individual persons, this ascription does not represent & philosophical position on the nature of individual persons but rather inter culturally agreed-upon conditions perceived to be necessary for personal (and social) development in diverse societies and cultures. (Cited in Twiss, 1998: 275).

The Magna Carta in England, the American Declaration of independence, the French Declaration on the rights of man, Bolschevik Revolution in Russia was the important landmarks in the development of the concept of human rights. Magna Carta yielded certain concessions only to the feudal lords, through did set limitations to arbitrary rule and laid the foundation for the rule of law. The American declaration followed by constitutional amendments contained fairly exhaustive guarantees for the rights of man. While the American and French declaration set the basic principles of equality before the law, freedom of thought, human dignity and democratic government, the countries undergoing rapid industrialization were experiencing the need more for social justice and economic security. The Bolschevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights (Naseema, 2002:03).

In Europe and North America, the concept of natural rights was secularized, rationalized and democratized, by the end of the 18<sup>th</sup> century there emerged a concept of what was called “the rights of man.” This concept covered substantially what is now known as civil and political rights. In the beginning of the mid nineteenth century, the development that followed, sometime accompanied by violence within the industrial-capital economy of Europe and North American took a new direction (Naseema, 2002: 03). Social contract theorist like Hobbes, Locke and Rousseau say that man had natural rights even before society and state were born. According to Locke nature has made all men free and rational, and has given him rights like right to life and liberty. Herbert Spencer also thinks that all men have the fundamental right to equal freedom which enables them to do what they will. Such a right comes from nature and not from any human agency like state (Naseema, 2002:06)

According to legal theory of, rights spring from state. The state defines what rights are and what are not. State provides the list of basic and fundamental rights. The state makes laws to uphold rights and also sets up machinery to enforce law and upholds rights. At the other side socialist theorist believe that rights are created by society for social welfare (Naseema, 2002:07). Rights had a long history which sets the grounds for human rights.

Western nations and political concepts, in the consequence of the inhumanity of World War II, dominated the drafting of the UN Universal Declaration of human rights and emphasized the so called “**first generation**” of political and civil rights, which protect basic security of persons. Socialist and welfare state concepts and nations added a “**second generation**” of socio economic and cultural rights including rights to employment and fare working conditions; rights to a standard of living that ensures health and well being; rights to social security, education, and participation in the cultural life of the community; and special rights of women and children (Messer, 1993: 222).

Third world nations, especially in Africa, added a “**third generation**” of solidarity or development rights to peace, a more equitable socio economic order, and a sustainable environment. Indigenous peoples are now in the process of adding a “**forth generation**” of indigenous rights, which will protect their rights to political self



determination and control over socioeconomic development – rights that are currently threatened within states frameworks. All four categories harmonized under the international legal framework’s umbrella of human rights, under which they are subject to international, national, religious, and local interpretation and compliance (Messer, 1993: 223).

Dembour, (2010) says that a close reading of academic literature reveals that we do not all conceive of human rights in the same way. Different people hold different concepts of human rights. Based on an analysis of the human rights academic literature, this contribution identifies four schools of thought on human rights. It proposes that “**natural scholars**” conceive of human rights as *given*; “**deliberative scholars**” as *agreed upon*; “**protest scholars**” as *fought for*; and “**discourse scholars**” as *talked about*. It further proposes that these four schools act as ideal-types, which, arranged around two axes, potentially cover the whole conceptual field of human rights (see Figure 1). This mapping exercise is useful in that it clarifies positions from which various arguments about human rights are made, helping to understand where, why, and to what extent agreements are reached and disagreements persist in the human rights field (Dembour, 2010:01).

The **natural school** gave the most common and well-known definition of human rights: they identify human rights as those rights one possesses simply by being a human being. This definition, where human rights are viewed as given, can be considered the belief of the natural school. For most natural scholars, human rights are entitlements that, at their core, are negative in character and thus, are absolute. These entitlements are based on “nature,” a short which can stand for God, the Universe, reason, or another transcendental source. The universality of human rights is derived from their natural character. Natural scholars believe that human rights exist independently of social recognition, even though recognition is preferable (Dembour, 2010:02).

**Deliberative school of thought** conceives human rights as political values that liberal societies *choose* to adopt. Deliberative scholars reject the natural element on which the traditional orthodoxy bases human rights. For them, human rights come into existence through societal agreement. Deliberative scholars would like to see human rights

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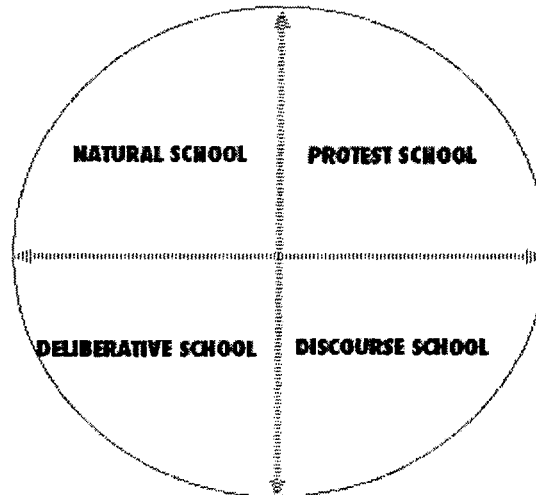
become universal, but they believe that some time require to make human right universal. In addition, they understand that this will happen only when and if everybody convinced that human rights are the best possible legal and political standards that can rule society and therefore, should be adopted. This school invariably stresses the limits of human rights, which are regarded as fit to govern exclusively the polity and not being relevant to the whole of moral and social human life. Deliberative scholars often hold constitutional law as one of the prime ways to express the human rights values that have been agreed upon (Dembour, 2010:03).

The **protest school** is concerned foremost for injustice. For protest scholars, human rights articulate rightful claims made by or on behalf of the poor, the unprivileged, and the oppressed. Protest scholars look at human rights as claims and aspirations that allow the status quo to be contested in favor of the oppressed. As such, they are not particularly interested in the premise that human rights are entitlements (though they do not reject it). Protest scholars advocate relentlessly fighting for human rights, as one victory never signals the end of all injustice. They sometimes regard the elaboration of human rights law as a goal, they nonetheless tend to view human rights law with suspicion as participating in a routinization process that tends to favor the elite and thus may be far from embodying the true human rights idea (Dembour, 2010:03).

The **Discourse school** is characterized by its lack of reverence towards human rights. In its perspective, human rights exist only because people talk about them. Discourse scholars are convinced neither those human rights are given nor that they constitute the right answer to the ills of the world, but they do recognize that the language surrounding human rights has become a powerful language with which to express political claims. Discourse scholars fear the imperialism of human rights imposition and stress the limitations of an ethic based on individualistic human rights. (Dembour, 2010:04).

Dembour (2010) says that four-school model leads to a mapping of the entire human rights conceptual field, as Figure 1 suggests. In this figure, the top half of the field corresponds to an orientation that tends to ground human rights transcendentally and the bottom half to an orientation that tends to see human rights as a society/language-based reality; the left hand-side of the field corresponds to a liberal and individualistic

orientation and the right hand-side to a more collective orientation of social justice (Dembour, 2010:04).



The human right field (figure 1)

*(Source: Dembour, 2010: 05)*

Human right approach is important for improving the quality of human life and also essential for social and human development. It deals with such human rights as the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. These rights give all people moral claims on the behaviour of individuals and on the design of social arrangements and are universal, inalienable and indivisible. They express our deepest commitments to ensuring that all persons are secure in their enjoyment of the goods and freedoms that are necessary for dignified living (Save the Children, 2002: 10).

Human rights are based on respect for the dignity and worth of each person both as individuals as well as the members of society as a whole, a community or a group. Every human being should have a dignified life and should be respected regardless of age, gender, race, religion, caste nationality, or any other factor; everyone is entitled with quality of life. National government and international institutions both have responsibility to make sure that rights are respected and protected. Human rights encompass those values which can be found in all cultures and religious and ethical traditions (Save the Children, 2002: 13). These values cover those qualities of life to

which everyone is entitled, regardless of their age, gender, race, religion, nationality, or any other factors. They also provide a guide for common standards of conduct which can be expected from governments and societies (Save the children 2002:13).

On the other hand, the policy sociology helps us understand the nuances of making the policy, its process and dynamics, which can be applied to understand the politics of making the Right to education in India. It draws upon the literature produced in other countries so that it examines the relevance of some comparative understanding of the policy making as a distinct process that affects all societies and aspects of governance in those societies.

### **EDUCATION AS A HUMAN RIGHT: ARTICULATION IN THE INTERNATIONAL CONVENTIONS**

Education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1981). These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to provide basic education for individuals who have not completed primary education. They suggest that the aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance.

The right to education has been recognized as encompassing access to educational provision, as well as the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. In addition, education is necessary for the fulfillment of any other civil, political, economic or social right (UNICEF 2007: 07). The advantages of a right based education are far

reaching; education becomes associated with all other human rights and fundamental freedoms, such as the right to work, which plays an important role in poverty eradication, the right to political participation, which highlights the importance of education for building all inclusive societies (Tomasevski, 2004:06).

The United Nations Convention on the Rights of the Child (1989) strengthens and broadens the concept of the right to education in particular through the obligation to consider in its implementation of four core principles, namely, nondiscrimination; the best interests of the child; the right to life, survival and development of the child to the maximum extent possible; and the right of children to express their views in all matters affecting them and for their views to be given due weight in accordance with their age and maturity. These underlying principles make clear a strong commitment to ensuring that children are recognized as active agents in their own learning and that education is designed to promote and respect their rights and needs. The Convention elaborates an understanding of the right to education in terms of universality, participation, respect and inclusion. This approach is exemplified both in the text itself and in its interpretation by the Committee on the Rights of the Child, the international body established to monitor governments' progress in implementing child rights (UNICEF 2007: 08).

Education is a fundamental human right of all people. The right to education has been recognized as fundamental right since the universal declaration of human rights 1948 (Watkins, 2000). Education is both a human right in itself and means of realizing other human rights. Right to education is known as enabling right.

“Education creates the ‘voice’ through which rights can be claimed and protected. If people have access to education they can develop the skill, capacity and confidence to secure other rights. Education gives people to develop the communication skills to demand these rights, confidence to speak in variety of forums, and the ability to negotiate with a wide range of government officials and power holders” (Watkins. 2000: 19).

As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain

the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments states can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, are one of the joys and rewards of human existence (UNESCO 1999:04). So education is important for all human beings.

In the Dakar framework, it is said that basic education is the core responsibility of the state with active and genuine collaboration of parents, communities, and civil society. All people specially those belonging to the most disadvantaged and excluded, must be guaranteed access to a basic education of decent quality (UNESCO, 2000: 57).

The goal of a human rights based approach to education is to assure every child a quality education that respects and promotes her or his right to dignity and optimum development. Achieving this goal is not easy. The right to education is high on the agenda of the international community. It is affirmed in many human rights treaties and recognized by governments as pivotal in the pursuit of development and social transformation. This recognition is exemplified in the international goals, strategies and targets that have been set during the past 20 years. The Education for All (EFA) goals were established at Jomtien (Thailand) in 1990 and reaffirmed at the 2000 World Education Forum in Dakar (Senegal). The Dakar framework for action has reaffirmed education as a fundamental human right and underlined the importance of right based government action in implementing EFA at national levels (Tomasevski 2004: 03). In the Millennium Development Goals (MDGs), established in 2000, the world's governments committed to achieving universal access to free, quality and compulsory primary education by 2015. In 'A World Fit for Children', the outcome document from the United Nations General Assembly Special Session on Children in 2002, governments reaffirmed these commitments and agreed to a range of strategies and actions to achieve them. (UNICEF 2007: 01)

In 1948, when education was recognized as a human right, only a minority of the world's children had access to any formal education; now a majority of them go to

school, and participation in formal education beyond the elementary stages has increased. Progress made in education is still far from adequate. UNESCO statistics on enrolment indicate that 77 million children in 2004 were still not enrolled in school. According to UNICEF sources this figure may be as high as 90 million children for 2005–2006. In many regions, girls lag far behind (UNICEF 2007:01).

Most international attention has been focused on helping children get into school. But quality of education was ignored as a consequence, huge numbers of children experience education that is extremely poor in quality. This kind of education is leaving them without the skills and knowledge they need to lift themselves out of poverty. The approaches adopted to achieve the goals of universal access and quality education is inadequate. There has been a failure to acknowledge the complexity of the barriers impeding children's access to school, to listen to the concerns expressed by children themselves concerning their education, to build a culture of education in which all children are equally respected and valued, to engage parents and local communities in supporting education, to embrace a holistic approach to education, to address children's rights in education or to embed schools as vibrant centers for community action and social development. Energy has been focused too narrowly on enrolment, without sufficient attention to attendance, completion and attainment or to the processes through which those outcomes can be achieved (UNICEF 2007:02).

Many international agencies have, therefore, increasingly turned to a human rights based approach. As early as 1997, as part of the United Nations Programme for Reform, the UN Secretary-General called on all entities of the UN system to bring human rights into the mainstream of their activities and programmes. The outcome was the UN Statement of Common Understanding, which integrates international human rights into plans, strategies and policies associated with development programmes. The rights-based approach focuses on the inalienable human rights of each individual, as expressed in UN instruments, and on governments' obligation to fulfill, respect and protect those internationally defined human rights. In doing that, it aims to support and empower individuals and communities to claim their rights. In addition, a distinctive feature of this approach is that it requires an equal commitment to both process and outcomes (UNICEF 2007:02).

However, it must be understood that adopting a rights-based approach to education is not a panacea. It does pose some challenges – for example, the need to balance the claims of different rights holders and address potential tensions between the realization of different rights or between rights and responsibilities. Nevertheless, consistent adherence to its core principles can help meet the education goals of governments, parents and children. It demands the creation of strategies to reach all children, including the most marginalized. It empowers communities, parents and other stakeholders to claim their rights, insist that these be fully implemented and, when necessary, seek their enforcement in national courts (UNICEF 2007:03).

This approach offers a concept and framework of strategies and actions necessary to translate those human rights into legislation, policies and programmes for the attainment of Education for All. Together, the conceptual analysis and the framework can be used as a resource for advocacy and social mobilization. They provide the tools with which to conduct a critical review of the current state of education in any country from a human rights perspective and to engage in political dialogue with governments and other partners with a view to adopting a rights-based approach (UNICEF 2007:03).

In a nut shell, the perspectives introduced in the Convention on the Rights of the Child as a result of these endeavors are as following:

1. The right to education is to be achieved on the basis of equality of opportunity.
2. Measures must be taken to encourage regular school attendance and reduce dropout. It is not sufficient just to provide formal education. It is also necessary to remove such barriers as poverty and discrimination and to provide education of sufficient quality, in a manner that ensures children can benefit from it.
3. Discipline must be administered in a manner consistent both with the child's dignity and with the right to protection from all forms of violence, thus sustaining respect for the child in the educational environment.
4. The aims of education are defined in terms of the potential of each child and the scope of the curriculum, clearly establishing that education should be a preparatory process for promoting and respecting human rights. This approach is elaborated in the General Comment on the aims of education, in which the Committee on the Rights of the Child stresses that article 29 requires the development of education that is child centred, child friendly and empowering, and that education goes beyond formal schooling to embrace



a broad range of life experiences through which positive development and learning occur.

5. In its General Comment on early childhood, the Committee on the Rights of the Child interprets the right to education as beginning at birth and encourages governments to take measures and provide programmes to enhance parental capacities to promote their children's development (UNCRC 1989).

Beyond the formal obligations undertaken by governments in ratifying human rights treaties, a number of global conferences have affirmed the right to education. Although lacking the legally binding force of the treaties, these conferences have introduced an additional impetus for action, together with elaborated commitments and time frames for their attainment. The World Conference on Education for All (1990) set the goal of universal primary education for the year 2000, a goal not met but subsequently reaffirmed for 2015 at the World Education Forum in 2000. This Forum also committed to an expansion and improvement of early childhood care and education, the elimination of gender disparities in education and the improvement of quality in education (UNICEF 2007:09).

In addition, the international community and leading development institutions have agreed to the Millennium Development Goals, expressed in the Millennium Declaration, which commit them to ensuring that all girls and boys complete a full course of primary education and that gender disparity is eliminated at all levels of education by 2015. The 'International Conference on the Right to Basic Education as a Fundamental Human Right and the Legal Framework for Its Financing' (Jakarta, 2005) adopted the Jakarta Declaration. This emphasizes that the right to education is an internationally recognized right in its interrelationship with the right to development, and that the legal and constitutional protection of this right is indispensable to its full realization (UNICEF 2007:08).

The capacities of governments to fulfill their obligations in terms of education vary greatly. Armed conflict, AIDS, poverty, natural disasters, internal displacement, corruption and weak government all have a direct impact on education and the strategies needed to ensure it is provided for every child. Human right framework has application in all contexts and can be used by all those involved in promoting the right

to education. Stakeholders also can use it to develop programmes and activities for their specific social, economic and cultural context. It recognizes that there is an integral relationship between the obligations to fulfill, to respect and to protect rights, and that all are vitally important if the Education for All goals are to be achieved. Governments, with the active participation of civil society partners, have to fulfill their obligations to ensure the right to education and intensify their efforts to promote human rights education by the provision of quality learning environments for all children (UNICEF 2007:03).

### **ADOPTING A RIGHTS-BASED APPROACH TO EDUCATION**

A rights-based approach to development is often defined by contrasting it with a needs-based approach. They are both based on a desire to help people survive and develop to their full potential. They both seek to identify a range of assistance and actions that are needed to achieve this (Save the Children 2002:12). But needs-based development approaches to education have, to date, failed to achieve the Education for All goals. Because it is inclusive and provides a common language for partnership, a rights-based approach although certainly not without tensions and challenges but it has the potential to contribute to the attainment of the goals of governments, parents and children. Girls' right to education, for example, can be achieved more effectively if measures are also implemented to address their rights to freedom from discrimination, protection from exploitative labour, physical violence and sexual abuse, and access to an adequate standard of living. Equally, the right to education is instrumental in the realization of other rights (UNICEF 2007:11).

One of the key differences between these two approaches is that a need – based approach does not come with accountability. There is no moral or legal obligation on the state and/or other statutory bodies to protect or assist. Many rights have developed from needs, but a rights-based approach adds legal and moral obligations and accountability. Equally, in a rights-based approach, the holders of the rights are encouraged and empowered to claim their rights. This means that they are not seen as objects of charity (as they are in a needs-based approach) but rather those who are claiming their legal entitlements (Save the Children, 2002: 12).

Further, rights-based approach emphasizes that all programmes of development cooperation, policies and technical assistance should further the realization of human rights, and therefore that human rights principles and standards should guide all phases of the programming process. The following elements are necessary, specific and unique to a rights-based approach and can be used for policy and programming in the education sector:

- Human right based approach monitor and evaluate both the outcomes and processes, guided by human right standard and principles. It require measures to promote universal access to education and overcome discrimination against girls, children with disabilities, working children, children in rural communities, and minority and indigenous children will serve to widen the economic base of society, thus strengthening a country's economic capability. In addition, many elements of good programming practice are essential within a rights-based approach. Overall, then, the required steps are:
- Situation assessment and analysis. Steps include some dimension like analysis of the legislative, policy and practice environment, Analysis of rights violations and denials, disaggregated data.
- Assessing capacity for implementation. The step places a particular focus on assessing the capacity of both rights holders to claim their rights and governments and public authorities to full their obligations. The process involves plans and activities to increase the capacity of individuals to support the implementation of education priorities.
- Programme planning, design and implementation. The important step takes into consideration the important principle of Universality and inalienability, Indivisibility, Interdependence and interrelatedness, Equality and non-discrimination.
- Step monitoring and evaluation has implications, beyond those that would be addressed as good development practice, for both the process by which it is undertaken and the outcomes it seeks to measure. In terms of process, there is a

need for greater transparency of information about education provision.  
(UNICEF 2007:13).

The development of a human rights-based approach to education also requires a framework that addresses the right of access to education, the right to quality education and respect for human rights in education. These dimensions are interdependent and interlinked, and a rights-based education necessitates the realization of all three.

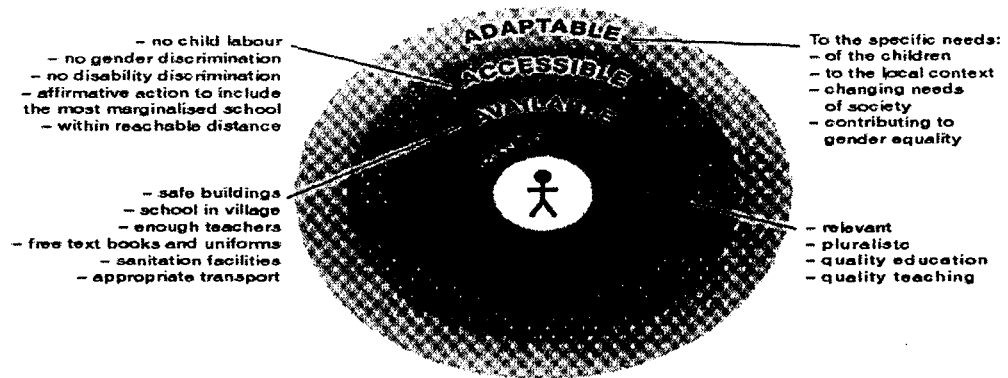
The right to education requires a commitment to ensuring universal access, including taking all necessary measures to reach the most marginalized children. But getting children into schools is not enough; it is no guarantee of an education that enables individuals to achieve their economic and social objectives and to acquire the skills, knowledge, values and attitudes that bring about responsible and active citizenship. Quality of education is also important. Rights-based approach recognizes and respects the human rights of children while they are in school – including respect for their identity, agency and integrity. This will contribute to increased retention rates and also makes the process of education empowering, participatory, transparent and accountable. In addition, children will continue to be excluded from education unless measures are taken to address their rights to freedom from discrimination, to an adequate standard of living and to meaningful participation. A quality education cannot be achieved without regard to children's right to health and well-being. Children cannot achieve their optimum development when they are subjected to humiliating punishment or physical abuse (UNICEF 2007:27).

The Covenant on Economic, Social and Cultural Rights (CESCR), in its General Comment 13, identifies four elements of the state's obligations with respect to the right to education to make it meaningful. These are:

- (1) Availability,
- (2) Accessibility,
- (3) Acceptability and
- (4) Adaptability.

This framework is developed by UN Special Rapporteur, Tomasevski, under the human right approach to education this framework is develop to look different dimensions of right to education.

The four circles show different aspect of the right to education. The inner circle shows issues that will make education accepted to the individual or group. The second circle identifies the ‘ingredients’ which would make education available. The third circles ‘ingredients’ that would make education accessible, and this is framed within the context of the wider environment of how the adaptable the education is- the outer circle (Save the Children, 2002:24)



Educational Right Circle Diagram

(Source: Tomasevski, Save the Children, 2002)

### Availability

The duty to provide compulsory and free primary education is undoubtedly a prerequisite for the realization of the right to education. Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some

will also require facilities such as a library, computer facilities and information technology (ICESCR 1999:05) The CESCR in its General Comment 11 on article 14 of the international Covenant on Economic, Social and Cultural Rights (ICESCR) considers that states parties have a clear and unequivocal obligation to draw up a plan of action for ensuring compulsory and free primary education. The committee has stated that lack of educational opportunities for children often reinforces their subjection to various other human rights violations.

According to the Special Rapporteur, Tomasevski (1999), on the Right to Education,

"The state's obligation to make primary education free of charge is frequently, albeit erroneously, associated with the State's provision of primary education. The State's obligation to make primary education free is in quite a few countries implemented through subsidies to a diverse range of primary schools" (ICESCR 1999: 24)

She has also stated:

The first State obligation relates to ensuring that primary schools are available for all children, which necessitates a considerable investment. While the State is not the only investor, international human rights law obliges it to be the investor of last resort so as to ensure that primary schools are available for all school-age children. If the intake capacity of primary schools is below the number of primary-school aged children, legal provisions on compulsory education will not be translated into practice and access to education will remain a need rather than being a right (ICESCR 1999: 24).

The provision of secondary and higher education is also considered an important element of the right to education. The requirement of "progressive introduction of free education" does not mean that a state can absolve itself from its obligations.

Finally, the CESCR has stated that a state party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available.

## **Accessibility**

Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. At a minimum, governments are obligated to ensure the enjoyment of the right to education through guaranteeing access to existing educational institutions by all on the basis of equality and nondiscrimination. Accessibility has three overlapping dimensions:

**Non-discrimination** - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.

**Physical accessibility** - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme).

**Economic accessibility** - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education (ICESCR 1999:05) .

The right to education has been affirmed for disabled persons. Rule 6 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that "States should recognize the principle of equal primary, secondary, and tertiary educational opportunities for children, youth, and adults with disabilities, in integrated settings"( UN Document. 1993) To this end, the Covenant on Economic Social and Cultural Rights (CESCR) directs states parties to "ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers" (CESCR 1993: 12,13).

### **Acceptability**

The Special Rapporteur has said that "the State is obliged to ensure that all schools conform to the minimum criteria which it has developed as well as ascertaining that education and curriculum is acceptable both to parents and to children." Language does not form a barrier to education, and that schools are child friendly (Tomasevski 2004:28, 29)

The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by Article 13 (1) and such minimum educational standards as may be approved (ICESCR 1999:06)

### **Adaptability**

Adaptability imposes on the state the duty to make the content flexible enough to adapt to the changing needs of the student within their cultural setting Normally, what a child learns in school should be determined by his or her future needs as an adult. However, the Convention on the Rights of the Child requires that the best interests of the child be given prominence. Thus, the education system should remain adaptable, taking into account the best interests of the child (Niranjanradhya and Kashyap 2006: 08, ICESCR 1999:06).

Therefore, a legal system that seeks to address the right to education should necessarily develop enforceable minimum norms that correspond to each of above mentioned duties. Such enforceable minimum norms should be developed taking in o account human right perspective. This human right approach should be including in policy formation of the states. Through the implementing the legislation policies right to education can be achieved.

Amartya Sen (as cited in Niranjanradhya and Kashyap, 2006: 6) argue that although legislation is certainly a welcome development, it should not be treated as the only vehicle of implementing human right. Because by law state will restricts its activities to ensure only those issues which causes under legislation. He further emphasized that



legislation should be supplemented by non coerceable rules for effective implementation of human rights. For this he said that there is a need for comprehensive policy and programme of action.

Evan emphasized to develop a model for legislative process that incorporates the human rights analysis. For him model entails policy formulation, including consultation within and outside the government. He also said that policy formulation is not only necessary from the point of view of legislative process but also from the point of view of implementing human rights. Continuous review process is also important for policy and law (as cited in Niranjana Radhya and Kashyap, 2006: 6).

Thus the issues raised by Sen and Evan are significant in Indian Context because fundamental right is limited to the age group of 6-14 years. This not only excludes early childhood care and educations (ECCE) but also excludes higher including the right to education all stages that are fundamental and basic including the right to ECCE. Any law implementing the fundamental right to education right to education should be inclusive not exclusive.

Rights based model should be developed for capacity-building strategies for not only rights- holders' to claim their rights but also for duty bearers to fulfill their obligations. Capacity-building of rights-holders involves two fundamental elements; a) building awareness of the rights and b) creating an enabling environment to access the rights that have been guaranteed (cited in Niranjana Radhya and Kashyap, 2006: 6).

Many countries in the world have secured right to education for their citizens but years are not same for compulsory education. India is only giving eight years of education under the right to education. Country like Chile provides compulsory education for fifteen years. Netherlands, Germany, Italy, Belgium, Peru and Anguilla is providing 12 years of compulsory education but after the 60 years of commencement of constitution India is able to provide only 8 years of compulsory education. There are many countries like Pakistan and Sri Lanka who gave no guarantee for compulsory education. How many years of compulsory education have been provided by different countries can be seen in the following table.

How others secure their future: Duration of compulsory education

15 Years	12 years	11 years
Chile	Netherland, Germany, Italy, Belgium, Peru, Anguilla	UK, New Zealand, Mauritius & 6 other countries
10 years	9 years	8 years
France, Canada, Norway, Spain, Iceland, Australia and 14 others	Japan, Republic of Korea, Russia, Hungary, Denmark, Finland, Sweden and 27 others	India, China, Cuba, Switzerland and 17 others
7 years	6 years	5 years
Brazil, Romania, Sudan and 4 others	Philippines, Georgia, Trinidad- Tobago and Sao Tome and Principe	Saudi Arabia, UAE, Nepal, Iraq, and 7 others
4 years	No legal guarantees	Information not available
Iran, Bangladesh, Myanmar, Madagascar and Equatorial Guinea	US, Pakistan, Sri Lanka, South Africa, Singapore, Monaco and 49 others	Palestinian, Montenegro and 12 others
<i>Source: Education For All Global Monitoring Report 2010 as cited in TOI, April 1, 2010</i>		

To make education as fundamental human right policy formation and implementation is very important. But policy formation is not a simple process. It is very complex process in this different type of interest or we can say politics has been involved in this. The third section of the chapter Policy Sociology discourse gives the theoretical understanding and will explain the priorities and politics behind the education policies.

## **MAKING EDUCATION AS A HUMAN RIGHT - POLICY SOCIOLOGY**

### **DISCOURSE**

In the **policy sociology discourse**, Apple (2000) argues that many of the educational policies that we take for granted and the mechanisms that put them into practice are the

results of intense conflicts and alliances both within and outside of education. For example, such things as *right to education* or state textbook adoption policies are the result of a complex articulation of social movements, class relations, regional conflicts, and a heavy dose of racial fears (Apple, 2000) (emphasis added). According to Ball (1994: 16), policies as *texts* are the 'product of compromises at various stages' these might be in the initial influence, in the parliamentary process and in the politics and micro-politics of interest group articulation. 'They are typically the cannibalized product of multiple (but circumscribed) influences and agendas' (ibid.)

Policy development is not a simple case of understanding the priorities, or indeed the whims, of governments or individual school leaders. Policy must be seen as a dialectic process in which all those affected by the policy will be involved in shaping its developments.

'Policy development is therefore both a *continuous* and a *contested* process in which those with competing value and differential access to power seek to form and shape policy in their own interests' (Bell and Stevenson: 2006; 02).

Policy contexts are shaped by its historical and cultural location, and these contexts have relationship with wider political, cultural and economic and ideological movements in society (Grace 1995, in Bell and Stevenson: 2006; 07), thus we can decipher that policy is decisively shaped by powerful structural forces of an economic, ideological and cultural nature.

Policy is political: it is about the power to determine what is to be done. It shapes who benefits, for what purpose and who pays (Bell and Stevenson: 2006; 09). The *political process* framework collects approaches that look at the political context of policies and politics in policy and policy making. Parsons (cited in Simons et al, 2009: 12) distinguishes between six approaches:

1. **Stagist approaches:** the analysis of policy as a process with different stages, from agenda to evaluation
2. **Pluralist -elitist approaches:** the analysis of the distribution of power among (elite) groups and how they influence or make policy

3. **Neo-Marxist approaches:** the analysis of ideology, hegemony, repression and contradictions in policy-making, and the link between different levels in the political/policy system
4. **Sub-system approaches:** the analysis of policy-making at the level of networks, communities and the influence of sub-systems and their institutions
5. **Policy discourse approaches:** the analysis of policy-making at the level of language, discourse and communication
6. **Institutionalism (economic, sociological or political):** analysis of the constitutional and institutional spaces and arrangements in which policy takes place, and relying on economics (e.g. transaction cost economics, agency theory), organizational sociology or political theory and historical accounts.

In this research there are scopes of taking some insights from the issues raised by pluralist -elitist approaches, neo-Marxist approaches and institutionalism approaches in the policy research and using them to explore the different issues, interests, standpoints and efforts of different stakeholders.

Ball (2010) commented that recent and ongoing developments in education policy and service delivery and specifically the participation of some new kinds of actors and organizations in public sector education – a new social enterprise elite or ‘transformocracy’-exist. Actors are migrating from business and bureaucracy coming and participating in educational system. These actors constitute a new discourse community bringing with them new values, languages and practices. The ‘heterarchies’ of the new state glimpsed are connected by a diverse set of exchanges and relationships – partnership, sponsorship, consultancy, contracting-out, and philanthropy in education in recent time. It will be interesting to see all these processes in the changing landscape of Indian educational system, particularly with reference to right to education.

The relationship between the educative process and the state and assumptions about the purpose of education all shapes the nature of policy both globalization and economic utilitarianism can be analyzed for a range of educational policies that how this might influence the perceptions of equity and social justice (Bell and Stevenson: 2006; 02). ‘Global policy field’ as used by Lingard ( 2005) address cross-field effects on different scales and suggests that by taking into account different time frameworks, it becomes

possible to analyze the conflicts and struggles around education policy (Lingard, 2005, p. 293). Additionally, it is possible to focus on the different strategies adopted by nations based on their respective “national capital” in the global field, and on how the neoliberal logic of globalization combined with the mediation of policy leads to reduced autonomy in the national education policy field.

Rizvi and Lingard(2010) stresses the importance of exploring the “context of authority” in policy making they suggests researchers elaborate how the context of state authority is rooted in national “social imaginaries” and how new neoliberal, global imaginaries re-organize authority and conditions for policy making. Thus, each of the contexts (influence, production and practice of educational policy) can be enlarged by including global fields next to national fields, by addressing the relationship between global and national contexts, and by taking into account the new imaginaries within which authority is rooted. Similar strands and arguments in making Right to Education, which points out to the role of ‘donor agencies’, ‘international pressure’ etc. can be further explored through these understandings.

Simons et al (2009:20) pointed out that politics is a messy field of interests, conflicts and power, which is mainly concerned with discussing goals, strategic options and agendas. Policy on the other hand refers to the domain of rational decision making, as well as the efficient allocation of resources and optimal outcomes. The critical orientation in the study of policy clearly questions this distinction, and particularly the exclusion of politic from the sphere of policy.

Dale (1989 cited in Simons et al, 2009:21) studies the “politics of education”, that is, the way the broader social, economic and cultural context gives rise to particular state politics and education policies. His concern is how the needs of the economy and social expectations are translated into a policy agenda for schools, what the role of the state is in these translations, and he develops a critical policy orientation as an answer to the limited scope of classic reproduction theories (Dale, 1994, p. 37). Dale thus suggests focusing on the ‘politics of education’ next to the more narrow field of ‘educational politics’, that is, how actors within the field determine the policy agenda( Cf. Simons et al , 2009 :21).

'Policy...is taken to be any course of action (or inaction) relating to the selection of goals, the definition of values or the allocation of resources. Fundamentally, policy is about the exercise of political power and the language that is used to legitimate that process' (Codd, 1988, p. 235 cited in Simons et al, 2009: 12).

Here also in this research it has been tried to understand the relationship of politics and education policy, with respect to Right to Education Act 2009. And within this discourse in India (where different standpoints, interests, conflicts and issues are being raised by different stakeholders with reference to Right to Education), this research is trying to capture the politics around the process of making of Right to Education Act 2009.

Interest is growing in the adoption of the ideas of Bourdieu in elaborating a distinctive approach to education policy as a social field (Lingard & Rawolle, 2004: 365). Bourdieu defines a social field as follows:

'A field is a structured social space, a field of forces, a force field. It contains people who dominate and people who are dominated. Constant, permanent relationships of inequality operate inside this space, which at the same time becomes a space in which the various actors struggle for the transformation or preservation of the field. All the individuals in this universe bring to the competition all the (relative) power at their disposal. It is this power that defines their position in the field and, as a result, their strategies' (Bourdieu, 1998, pp. 40–41, quoted in Lingard & Rawolle, 2004, p. 365).

Bourdieu argues that by treating all pupils, however unequal they may be in reality, as equal in right and duties, the educational system led to give its de facto sanction to initial cultural inequalities. Within the education policy field, like in all other fields, agents struggle and compete over (cultural, economic, and social) capital and strategies in order to secure their own position and social power. The formal equality which governs pedagogical practice is in fact a cloak for and a justification of indifference to the real inequalities with regard to the body of knowledge taught or rather demanded. If the children have right to education then they can share and access to social and

cultural capital of other children this will very important in democracy to make egalitarian society. Economic inequality leads to inequality in access, participation and outcomes in education. Debates on the content and implementation of RTE can further explored with these theoretical inputs given by Bourdieu.

### **Summary**

This chapter has been described the evolution of rights which leads to human right. In the first section of the chapter explains the Philosophical concept and theoretical concept of human rights. Philosophical concept of human rights refers to the reasonable demands for personal security and basic well being that all individuals can make on the rest of humanity by virtue of their being members of any society. Messer explains the four generations of human rights. It explains why human rights are important in today's world. Dembour explains the four schools of thought on human rights. It proposes that “**natural scholars**” conceive of human rights as *given*; “**deliberative scholars**” as *agreed upon*; “**protest scholars**” as *fought for*; and “**discourse scholars**” as *talked about*. Second section of the chapter education as a human right explains why education as a human right is important because it enable any human being to develop in full potential an its enable us to realize other human rights. International concern for education is the part of the same section. Right based approach has taken the place of need based approach. The Covenant on Economic, Social and Cultural Rights (CESCR), in its General Comment 13, identifies four elements of the state's obligations with respect to the right to education to make it meaningful. These are availability, accessibility, acceptability and adaptability.

In the last section of the chapter policy sociology discourse describes that how education policies emerged, and what kind of politics plays the role of behind the education policies. Apple argues that many of the educational policies that we take for granted and the mechanisms that put them into practice are the results of intense conflicts and alliances both within and outside of education. According to Ball, policies as *texts* are the ‘product of compromises at various stages’ these might be in the initial influence, in the parliamentary process and in the politics and micro-politics of interest group articulation. Dale studies the “politics of education”, that is, the way the broader social, economic and cultural context gives rise to particular state politics and education policies.

This theoretical understanding of education as human right help us to why education as a fundamental right is essential for any human being and what kind of politics behind the policies keep away the unprivileged section of society to deny or alter their rights. What kind of international and national politics behind the policy formation which restricted the education to become a fundamental and human right. Democratic nations like India take 60 years to make elementary education as fundamental human rights. Various kinds of Laps and gaps and politics were in the policy formation an implementation will explains in the next chapter.



## CHAPTER 3

### Elementary Education in India: an Overview

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As the foundation of mankind development, the importance of ensuring elementary education entitlements has been well accepted across the world. The education policy in general and directive principle in particular stated that all children in the elementary age group would be provided free and compulsory education. Resultantly, after a huge gap, much awaited right to education bill has also been passed in our country. For the last five decades, this mandate of Indian constitution has been attracting the attention of educationists, scholars, education planners, administrators, ministers and nation as a whole. The goal of universal Elementary Education has also been receiving priority at the international level. Besides being included in the Child Rights under Right of Development and the emphasis that has been placed in UN resolutions, Universal Elementary Education has also been included in Millennium Development Goals (MDG) importantly there have been numerous well planned educational policy in time and again, however, the decade nineties experienced a turning point in the history of education in India.

The new policy of Education as formulated in 1986 was amended in 1992 to put in place more focussed attention to achieve goals of universalization of Elementary Education. However the cherished goal of UEE still remained in rhetoric. Now even after the conception of education as a fundamental right for which citizen of our nation is entitled on account of his/her being a human being, can minimum levels of education be ensured for one and all?

It is in this backdrop, the chapter attempts to trace the expansion and growth of elementary education in India with special reference to infrastructure and enrolments. It then examines the evolution of education policy in independent India with respect to elementary education and its present status. The third section throws light on policy shifts or major policy failures. It discusses at length the impediments to success and also seeks an answer to the question why did we really need RTE? The chapter ends

with a critique on the policy and possibilities of the success of RTE in the contemporary context of neo-liberalism.

### **Elementary Education in India: Expansion and Growth:**

The Educational system inherited from the British was fraught with problem of serious nature such as extremely low literacy level, poor retention, abysmally low educational opportunities for the backward section of society and women as so on (Ghosh, 1988). These problems needed to be transformed in a major way so that it could be the means for the transformation of nation enslaved for centuries to a modern and developed nation. The first task was to expand the educational system so that it reached the millions, especially to those at the fringes of society. There was the need to initiate the eradication of illiteracy, vocationalise education and bring about other necessary reforms in the curriculum (Singh, 1992).

In the British period, the need for the education of the masses was realised but not much was achieved. Soon after independence in 1951, it was realised that literacy was also felt to be the most effective tool for duties. Enhancing literacy was also felt to be the most effective tool for arresting population explosion. Therefore, a campaign was started to provide education to the masses and especially to the deprived section of society. Resultantly, elementary education was considered to be the initial target to begin with. The importance of elementary education was considered to be very crucial not only for the country but also for all the citizens of the country. The concept of elementary education in its structural sense varies from state to state. However, there is a common structure of education, which has been accepted as the national system of education (NPE 1968). The national system of education was enunciated by the National Policy on Education (1968) in the form of 10+2+3. The NPE 1986 defined that the structure of elementary education would consist of 5 years of upper primary education. But there are variations in the states with regard to organisation of elementary education. In spite of these variations, elementary education structure is understood as defined by NPE (1986), as presented in figure 3.1.

**Figure3.1**

**National System of Education**

Age 4-6 years	Pre-Primary	<b>Elementary Education</b>
Class I-V age 6-11 years	Primary	
Class VI-VIII age 12-14 years	Upper-Primary	
Class IX-X age 15-16 years	Secondary	
Class XI-XII age 17-18years	Senior-Secondary	

*Source: Naik, J.P. (1997)*

Going back to pre-independence period serious concerns for education among Indian started with Macaulay's Minutes. It was to spread western education among the masses. During that time, there were indigenous elementary schools, providing the education to a few categories of people like priests, business community and rich farmers (Pandey, 2004). British government introduced elementary education to educate Indians to help it in administrative work. The content of education was mostly western. But the system of elementary education was not benefiting the local community especially the disadvantaged sections of society viz poor peasants, females and socially deprived categories.

However, since independence, there has been significant progress in elementary education in terms of literacy, enrolment rates, and number of primary and upper primary schools. Similarly Gross Enrolment Ratio (GER) at primary and upper primary level has improved from 1950-51 to 2007-08.

Table 3.2 Gross Enrolment Ratio (GER) at Elementary level.

Year	Primary Level			Upper Primary Level		
	Boys	Girls	Total	Boys	Girls	Total
1950-51	60.6	24.8	42.6	20.6	4.6	12.7
1960-61	82.6	41.4	62.4	33.2	11.3	22.5
1970-71	95.5	60.5	78.6	46.5	20.8	33.4
1980-81	95.5	64.1	78.6	54.3	25.6	41.9
1990-91	98.1	75.9	80.5	79.8	54.6	62.1
2000-01	104.1	85.2	94.9	67.2	49.7	58.8
2005-06	112.8	105.7	109.4	75.2	66.4	71.0

*Source: Selected Educational Statistics (SES) 2005-06, GOI 2006*

From table 3.2 it is clear that enrolment figures in terms of Gross Enrolment Ratio at primary and upper primary levels have improved from 1950-51 to 2005-06. Moreover, the differences in the Gross Enrolment Ratio have also reduced. But the Net enrolment Ratio (NER) at primary level for boys and girls was 78 percent and for girls 64 percent in 1997-99. The overall Net Enrolment Ratio was 71 per cent suggesting that 29 per cent of children at primary level in 6-11 age group continued to remain out of school, Educationally states have been lower Net Enrolment Ratio than the national average of 71% (Sinha, 2004). Moreover dropout rates continue to be high, retention of children in schools is poor, achievement levels are low, and wastage is considerable despite increased participation of girls, disparity still exists, more particularly among scheduled castes and scheduled tribes (Gopalan, 1998).

As per Selected Educational Statistics (SES) 2005-06, GER of SC and ST students in elementary classes, has improved considerably but disparities between the genders persist. Table 3.3 reveals that ST boys seem to be having better GER as compared to their SC counterparts at elementary education level. Same is the case with ST girls who have better GER (121.1%) however for upper primary level (classes' VI-VII) SC girls as well as boys have higher GER viz 81.1% and 65.1% respectively as compared to their ST counterparts. Such a scenario reveals that ST children don't really retain to the system for a longer period of time and dropout in great numbers.

Table 3.3 GER of SC and ST (in %)

Age Group(Class)	Scheduled Castes			Scheduled Tribes		
	Boys	Girls	Total	Boys	Girls	Total
6-11(Class I-V)	126.3	110.2	118.6	131.4	121.1	126.4
11-14(Class VI-VII)	81.1	65.1	73.5	77.5	64.9	71.5

*Selected Educational Statistics (SES) 2005-06, GOI 2006*

Importantly in spite of great efforts being made to achieve universalisation of Elementary Education (UEE), nation is still far from achieving it. Deadlines have been fixed for achieving it but they have been missed. The greatest impediments to educational growth have been the poor retention rate in primary schools. There has been a sustained campaign for UEE and as a result there have been great achievements in terms of enrolments. But the number of children dropping out is enormous.

Therefore, the high enrolment ratio is unable to take us anywhere near the achievements of UEE. In spite of the enrolment ratio being as high as about 97%, the dropout rate is 25 in grades I-V which means one third of the children enrolled dropout. It is still higher at 48.8% in grades VI-VIII. Thus, it may be observed that poor retention is impeding the achievement of UEE. Enrolments as well as retention are all the mire in a dismal state when it comes to weaker sections of society namely the backward communities and female members.

Table 3.4 Dropout Rates at Elementary Education

Classes	Total			Scheduled			Scheduled Tribes		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
(Class I-V)	28.7	21.8	25.7	32.1	33.8	32.9	40.2	39.3	39.8
(Class VI-VIII)	48.7	49.0	48.8	53.7	57.1	55.2	62.9	62.7	62.9

*Source: Selected Educational Statistics (SES) 2005-06, GOI 2006*

According to table 3.4, it is evident that backward communities (SC and ST) have much higher dropout in comparison to advantaged communities. Within these categories girls are even poorly placed, however ST girls have marginally lower

dropout rates as compared to their male counterparts in grades VI-VIII such as 62.9% respectively.

In glance, the enrolment at the primary level was about 19.2 million. It has enhanced by about 5.75 times. For girls, enrolments since then as enhanced by about nine times in 1996-97. At the upper primary level the net increase since 1951 has been about 13 times, while for girls the increase has been by about 32 times. The gross enrolment ratio in 1950-51 at the primary level was 42.6% while in 2005-06 it rose upto 109.4% today with this great number in Elementary Education, India is largest in the world (Gopalan, 1998).

In the last five decades the number of education institution as grown manifold. From 1950-51 to 2001-02 the number of schools of different levels have grown by many times. Table 3.5 indicates the growing trend in educational facilities. Today due to the efforts made during the last several decades since independence, about 94% of the population has access to a primary school within radius of one kilometre.

Table: 3.5 Number of Schools at Elementary Level in 2005-06 according to type of management

Level	No.(in Lakhs)	Type of management			
		Govt.	Local Body	Private aided	Private Unaided
Primary	7.7	46.6	46.5	3.1	7.8
Upper Primary	2.9	43.2	28.8	6.1	21.9

*Source: SES 2005-06 GOI 2006*

Table 3.5 reveals that in the 2005-06, the number of primary schools was 7.7 lakhs which is more than three times the figures in 1950-51 i.e. 2,09 lakhs. At the upper primary level, the number of schools in the year 1950-51 was 13,596 which more up to 2.9 lakhs in 2005-06. By 2005-06, the share of government such schools at both primary and upper primary levels was not even half of the total number. Alternative systems of education and private providers of education at elementary level have

significantly emerged on the scene, resulting to which institutional and infrastructural growth can be noticed at elementary education level.

But according to Govinda and Bandhopadhyay, (2008) it is important that access and equity go together in order to make UEE a reality. Almost all programmes and plans aim at bridging gender and social gaps in enrolments retention and learning achieving at the primary stage. Special interventions and strategies have been adopted to include girls, SC/ST children, working children, children with special needs, urban deprived children, children from minority groups, children living below the poverty line, migrating children and children in the hardest to reach groups.

## **B. EDUCATIONAL POLICIES IN INDIA: EVOLUTION AND PRESENT STATUS**

Serious concerns for Education among Indians during the pre-independence period are evident in efforts made by various social reformers and political leaders. With the recommendations laid down by western thinker Macaulay and Wood, indigenous nature of Indian education was at threat. British way of educating the people of India only benefited the elite classes and elementary education remained far from being universal in nature. However, reformers like Raja Rammohan Roy advocated European education in India and opposed the plan of establishing a Sanskrit College at Calcutta in 1823 (Pandey 2004). Along with the recommendations and support for European English Science based education, there emerged a sway for compulsory primary education. For instance Mahatma Jyotirao Phule demanded that the State introduced compulsory primary education for children up to the age of 12 years (Chanana & Rao 1999, Kumar, 2006).

As a result of these efforts, Hunter commission in 1882 envisaged the idea of education for poor and backwards. Later, the Indian Education Commission of 1882 emphasised elementary education as crucial for natives' growth and progress, and consequently, there was a transfer of elementary education to the local community. The first ever substantial and judicial demand for compulsory primary education was made by Gokhle. Gokhle's Bill on primary education (1911) had an object to provide for the

gradual introduction of the principle of compulsion into the elementary educational system of the country. It said:

“It is obvious that the whole working of this bill must depend, the first instance, upon the share, which the Government is prepared to bear, of the cost of compulsory education wherever it is introduced. I find that in England, the parliamentary grants cover about two-thirds of the total expenditure on elementary schools. In Scotland, it amounts to more, than that proportion whereas in Ireland it meets practically the whole cost. I think that we are entitled to ask in India that at least two thirds of the total expenditure should be borne y the state.” (Cited in Pandey, 2004:35).

With the above statement it becomes clear that Gokhle demanded compulsory primary education safeguarded completely by state for the people of one nation. During 1921-37, elementary education came under Indian control and made a remarkable progress. But the large-scale expansion got a setback with the Hartong committee Report in 1928. However the committee emphasised improving retention, reducing wastage and stagnation and improvement of elementary education. Another landmark during the pre-independent period was that of Basic Education Programme of Gandhi ji mobilised people of India and awakened them towards education. According to Kumar, (2006) Gandhiji opposed colonial education not only because of its western origin, but also because of ‘its inherent elitism, which happened to sideline excluded strategically the great masses of India which lived in rural areas under disadvantaged conditions.

The post-independent period witnessed a series of committees, commissions and constitutional amendments recommending for free and compulsory elementary education. During 1944, Central Advisory Board of Education (CABE) was established that aimed at not only the steady introduction of a system of universal, compulsory and free education for all but also bringing about quality education (Kumar 2006) for instance, the Kher committee was set up to explore means to promote universal elementary education and it made recommendation on the association of local bodies with the administration of primary education and the creation of local bodies. With the inception of constitution in 1950, Government of India through its various agencies formulated on policies on education and also revised them time to time.



The constitution provision were framed way back but since then with the changing socio-economic milieu, there has been new thinking on social issues including education with the changing demands of socio-economic order and those put forth by a changing global situation, policies on education have been changing to accommodate these changes constitutional provisions regarding education too have been amended time to time. But the first milestone to universalising elementary education was laid down with the adoption of constitution in 1950. Article 45 of the Indian constitution under the Directive Principles of State Policy says “the state shall endeavour to provide within a period of 10 years from the commencement of the constitution for free and compulsory education for all children until they complete 14 years.”

### **The Constitutional Mandate**

The Indian Constitution emphasized the importance of education and enjoined on the state to provide, within a time frame of ten-years, free and compulsory education for all children until they complete the age of 14. This Directive Principle of State Policy played an important role in the development and management of education in post-independent India. Education was a state subject when the Constitution of India came into being and, it was only in 1976 that at the school level, it was brought into the ‘**Concurrent List**’.

### **THE CONSTITUTIONAL PROVISIONS**

The Constitution contains several provisions for the promotion and management of educational development in India. They are:

Article 45 enjoins that the state will endeavor to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of 14. The priority given by the Constitution to this provision was clearly evident from the time frame specified therein. (No other clause in the Constitution carries this sense of urgency.)

Under Article 15(4) (which was inserted in the 1<sup>st</sup> Amendment in 1951) reservation of seats for backward classes in educational institutions is provided.

Under Article 46 the state is obliged to promote with special care the educational and economic interests of the weaker sections of the people and, In particular, of the SCs and STs and protect them from social injustice and all forms of exploitation.

Article 29(1) provides that any section of citizens residing in the territory of India and any part thereof, having a distinct language; script or culture of its own shall have the right to conserve the same.

Article 29(2) lays down that the citizen shall be denied admission to any state-woned or state-aided educational institution on grounds of only religion, race, caste, language or any of them.

Article 30(1) enjoins that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Article 30(2) lays down that the state shall not, in granting aid to educational institutions, discriminate against any on grounds of their being managed by a religious or linguistic minority.

Article 350A lay down that, it shall be the endeavor of every state and local authority within the state to provide adequate facilities for children of linguistic minority groups to receive instruction in the mother tongue at the primary stage of education.

In compliance with and continuation of these provisions, several state governments and Union Territories introduced new legislations for providing free and compulsory primary education in their respective jurisdiction.

Following the constitutional provisions the Five-year plans were adopted as strategic approach to nation development. It allocates large finance for elementary education. There was an attempt to adopt Basic Education propagated by Gandhi ji to elementary education. Later in 1964, the Indian Education Commission was constitution which proposed for a common school system, which was accepted by the first ever National Policy on Educaion 1968. But the most comprehensive Policy on Education (NPE 1986), which was reviewed and revised in its Programme of Action (1992). Both NPE (1986) and POA (1992) took universalization of elementary education with serious

concern and emphasised universal access, universal enrolment and, universal retention. In 1990, Acharya Rammurthi Committee also recommended for compulsory primary education. In 1992, India signed 'UN Convention on Right of the Child' and committed itself to providing compulsory education atleast at elementary level. In 1993, Unnikrishnan Judgement at the Supreme Court upheld elementary education as a fundamental right. The Saikia Committee also recommended making elementary education a fundamental right in 1997. In 2000, the 93<sup>rd</sup> Amendment Bill was tabled to make free and compulsory elementary education a fundamental right.

**Major Educational commissions and committees and their recommendation:  
Elementary Education in With specific reference to India**

Efforts initiated led by **University Education Commission (1948-49)** which reviewed the development of higher education in the country and made proposal for its future expansion and improvement, and **Secondary Education Commission (1952)** to lay down recommendation led to the need to a comprehensive Education Commission encompass all aspects of education. A strong demand was, therefore being made in the Government of India should appoint an education commission to look at education as a whole including primary and adult education (Naik, 1997). Resultantly, Central Government appointed the **Education Commission (1964-66)** under the chairmanship D.S. Kothari, and entrusted it with the task looking at the entire spectrum of education, except medical and legal education. (Naik, 1997) Kothari Commission, is therefore considered first ever initiative to look at education so comprehensively. This commission underlined the importance of search for and development of Talent and said; any race which does not value trained intelligence is doomed: it agreed that 'very little of the available talent is now discovered and developed. (GOI: 1966). The Kothari Commission saw the utility of education as an instrument of change. According to Kumar, (2006) the Kothari Commissions proposal for a common school system and its reaffirmation in the NPE in 1986 was a clear cut indication that equal access to educational opportunities is state's responsibility. Commissions advocated education with the objective to equalize opportunity, enabling the backward classes to use education an instrument for the improvement of their condition. It said:

“Quantitatively, education can be organised to promote social justice or to relaid it. On the other hand a social and cultural revolution has been brought about in a system where equality of education opportunity is provided and education is deliberately tries to develop more and more potential talent to harness it to the solution of national problem”(GOI 1966:4).

Kothari Commission therefore education for all in a qualitative form which had science and technology. It stressed in science to be made and integral part of school and university education. It also propogated a uniform national system of education as 10+2+3 pattern which was later accepted by NPE 1968, and NPE1986.

The Commission visualized that total enrolment would rise from 70 million in 1965 to 179 million in 1985 along with an increase in expenditure on education from 2.9 per cent of Gross Domestic Product (GDP) in 1965 to 6 per cent in 1985. The recommendations along with a report of the discussions emerged the first national policy in independent India in the form of resolution on education in July, 1968. Even though the recommendations of the Kothari Commission were diluted at every stage, they remained the basic framework on which important decisions on education were taken by successive governments (Rao, 2010:44).

**National Policy on Education (1968)** was conceived by Government of India, with the radical reconstruction of education on the broad lives recommended by the Education Commission 1966 for economic and culture development of the country, for national integration and for realising the ideal of a scholastic pattern of society. It aimed at the transformation of the system to relate it more closely to the life of the people, to make continuous efforts to expand educational opportunity, to sustain and make intensive effort to raise the quality of education at the transformation of the system to relate it more closely to the life of the people, to make continuous efforts to expand education opportunity, to sustain and make intensive effort to raise the quality of education at all stages, and to development science and technology and integrate into all levels of education. NPE 1968 recommended for free and compulsory education. It suggested that strenuous efforts should be made for the early fulfilment of the Directive Principle under Article 45 of the constitute seeking to provide free and compulsory education or all children up to the age of 14. It further suggested that suitable programmes should be

develops to reduced the prevailing wastage and stagnation in schools and to ensure that every child who is enrolled in school successfully completes the prescribed course.

The adoption of the educational policies formulated in 1968 led to the considerable expansion in educational facilities all over the country and schools came up even in many parts of the rural areas within a radius of one kilometre of habitations. However, problem of access, quality etc. that had accumulated over the years had assumed such massive proportion that they had to be dealt with utmost urgency. (Naik, 1997) highlights that expansion of educational access from 1966 to 1986 has been remarkable:

Table 3.5: Educational Expansion 1966-80

Stages	1966	1986
	ENROLLMENTS	
Pre-Schools of one to three years (in thousands)	250	2,352
Lower Primary (class I-IV) (in thousands)	37,000	76,239
Upper Primary (V-VIII) (in thousands)	12,549	48,714

*Source: Naik, J.P. (1997)*

Table 3.5, presents the net effect of the recommendation laid down by education Commission 1966, 1968. Draft National Policy on Education then emerged in 1979. Though this policy could not be implemented due to fall of 'Janata' Government at the centre but it pointed out some important aspects of universal Elementary Education. It suggested that while it is necessary to expand facilities for formal education in elementary schools for all children in the age group 6-14, it is also important to formulate schemes of non-formal education for dropouts and the older children in the age group who have had no schooling.

#### **National policy on education (NPE) 1986**

NPE 1986 emphasized three important aspects in relation to elementary education: 'Universal access and enrolment', 'Universal retention' of children up to 14 years of age, Substantial improvement in the 'quality of education' to enable all children to achieve essential levels of learning. The policy further made a significant shift in emphasis, from enrolment to participation and retention. The goal of UEE was enlarged

to include providing education of a satisfactory quality to all children the NPE emphasized the fact that all eligible children were to be exposed to mainstream learning activities; those who were non-enrolled were to be given alternative learning processes that were to be designed to suit the varied needs of various types of children. The NPE also envisaged a coordinated network involving the non-formal system so that by 1990, all children attending the age of 11 years would have had five-years of schooling and by 1995, all children up to 14 years of age would have been provided free and compulsory education (Rao, 2010:46).

This idea of facilitating Non-Formal Education became the major standpoint for the evolution of the most comprehensive of all educational policies viz. National Policy on Education (NPE) 1986, included non-formal education (NFE) as part of a policy document in a major way for the first time. It argued that NPE can result in provision of education comparable in quality with formal schooling. Kumar (2006) in this regard argued that such an argument upheld by 1986 may hardly be considered as a logical justification for introduction of newer streams of non-formal education. Like all earlier educational policies, NPE 1986, also reiterated the issues of quality of educational opportunity and free and compulsory education for all children up to 14 years.

National Policy on Education (NPE) 1986, vouched for a national System of Education, which would imply that up to a given level, all students, irrespective of caste, creed, location or gender, have access to education of a comparable quality and to achieve this, the Government will initiate appropriately funded programmes. NPE 1986 laid down targets to uplift weaker and neglected sections like women, scheduled castes (SCs) and Scheduled Tribes (STs). The policy aspired to use education as an agent of basic change in the status of women. It may said that post NPE 1986, the Indian states policy on education has witnessed a major shift. It began meeting demands for formal schooling by implementing non-formal schemes under the grab of increasing the literacy rates. It also gives highest priority to saluting the problem of dropout. According to Chanana and Rao, (1999) NPE 1986, formulated strategies based on micro planning, too ensure children's retention at school.

The national policy on education 1986 was regarded as a landmark. It redefined educational priorities and made a fresh attempt to cope with the three stands that have

influenced educational policy in India, viz., issues relates to quantity, quality and equity. The policy gave highest importance to universal primary education (UPE). The activity that foster and promote the all round balanced development of the child in age group of 0-6 years in all dimensions- physical, mental, social, emotional, and moral- have been collectively described in NPE 1986 as early childhood care and education (ECCE). Both these components care and education are essential. ECCE is the birth right of every child. The national policy has explicitly recognized the importance of early childhood care and education (ECCE) as a crucial input not only for human development but also for universalization of elementary education and women's development. It has, therefore, emphasized the need for large scale investment in the development of the young child, both through the government and through voluntary organizations. It has recommended the holistic approach of providing ECCE programmes (Bajpai, 2003:343). ECCE which was got attention in 1986 educational policy, ignored by right to education act because it exclude the 0-6 years children from their birth right.

NPE 1986 has been criticized for its recommendation for non formal education. The NPE 1986 provides for schooling or its equivalent which may include Schooling or its equivalent which may include non formal education and its variation or hybrids like alternative schools, education guarantee schools and the innovation of this genre. There are educationalists and activists who believe that the provision of equivalent in the NPE 1986-1992 is admission of the state's inability or unwillingness to ensure school education for all children as envisaged in the spirit of article 21A of the constitution. It is the way of diluting the state responsibility to provide well quipped schools for all children by organizing second rate, lower quality education for the deprived who cannot attend current form of regular schools that are rigid and modelled on conveyer-belt industries for mass production without any sensitivity to the needs of individual learners and their socio-cultural, linguistic and economic background as if they are not human being but industrial goods (Behar, 2009:63 in Kumar et al 2009:63).

### **National Curriculum Frameworks (NCF)**

The NPE 1986 proposed the periodical preparation of a National Curriculum Framework (NCF) as a means of evolving a national system of education. It

recommended that the core component be derived from the vision of national development enshrined in the constitution. The POA 1992 elaborated this further by laying emphasis on relevance, flexibility and quality.

In order to carry out the directives in the policy, the NCERT prepared the first NCF in 1988 that tried to address some of the emerging curricular concerns based on the socio-cultural, political and economic considerations prevailing at that time. NCERT has been bringing out NCFs periodically so as to give a suitable orientation to the curricular policies and programmes followed by the states.

### **Acharya Ramamurthi Committee Report 1990**

After the Congress government was replaced by the National Front government headed by V.P. Singh, a review committee was set up under Acharya Ramamurthi in May, 1990. The committee called for recognition of the right to education as a fundamental right: 'Now time has come to recognize 'Right to Education' as one of the fundamental rights of the Indian citizens for which necessary amendments to the constitution may have to be made and more importantly, conditions to be created in society such that this right would become available for all children of India.' The recommendations of the committee also pertained to issues like equality, social justice and education, ECCE, UEE, adult and continuing education and 'education and the right to work.' The redeeming feature of the report was that it suggested developing all educational programmes bases on the requirements of the society (Rao, 2010:48).

### **The Programme of Action (POA) 1992**

In 1991, the new Congress government headed by P.V. Narasimha Rao took steps to review the NPE 1986. In July of the same year, a Central Advisory Board of Education on policy was constituted under the chairmanship of the chief minister of Andhra Pradesh comprising six education ministers from major political parties and eight educationists. The recommendations resulted in the 'POA 1992.'

POA was formed to examine the present situation, to elaborate the specific statements contained in the NPE 1986, projected the actions that would be necessary. In the sphere of elementary education, POA 1992 targeted free and compulsory education up



to 14 years of age by 1995. It also emphasised on improving the retention rates in elementary schools and completion of 5 years of education, POA 1992 highlighted that the progress of non-formal education.

On the recommendation of the POA the District Primary Education Programme (DPEP) was initiated to promote Universalization of elementary education in the country. By May, 1995 education projects were prepared in 42 districts spread over seven states of Assam, Haryana, Madhya Pradesh, Karnataka, Maharashtra, Tamil Nadu and Kerala. They were identified based on the following criteria: i) Educationally backward districts, with female literacy below national average and ii) districts where Total Literacy Campaign's were successful leading to an enhance demand for primary education (Rao, 2010: 49).

It again emphasised on non-formal education which was then considered as an accepted attractive channel. Therefore Minimum Level of Learning (MLL) along with access and retention was planned to be ensured. It envisaged total literacy campaign. Resultantly, District Primary Education Programme (DPEP) was launched in November 1994 to achieve Universalisation of elementary education through district specific planning and disaggregated target setting. The major features of DPEP were decentralized management, community mobilization and district specific planning based on contextuality and research based inputs.

### **The Report of the Saikia Committee**

Saikia Committee was set up under the chairmanship of M.R. Saikia with education ministers of states as its members in 1996, to examine and consider the legal, academic, administrative and financial implications of the proposal to amend the Constitution. The Committee proposes to amend the Constitution through a legislation making elementary education up to 14 years of age a fundamental right. The Committee also recommended amendment of the existing state legislations on compulsory education. The report of the Committee recommended. 'The Constitution of India should be amended to make the right to free elementary education up to 14 years of age a fundamental right. Simultaneously an explicit provision should be made in the

Constitution to make it the fundamental duty of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age’.

In 1997, the united front government introduced the 83<sup>rd</sup> constitution amendment act that proposed to make free and compulsory education for children aged 6-14 years a fundamental right. The draft was scrutinized by a parliamentary standing committee which invited suggestions from the civil society. The 165<sup>th</sup> Report of the Law commission of India also endorsed the proposed constitutional amendment and placed a draft proposal for the central legislation to enforce it.

It was during this period that the influential ‘public report on Basic Education’ was published(1999) and released by Amartya Sen, making a strong case for the fundamental right to elementary education, given the strong demand for education from the poorest households. NGOs like the National Alliance for the Right to Education (NAFRE) held the issue centre stage through a series of national and regional consultations (Rao, 2010:53).

#### **Report of the Tapas Majumdar Committee**

The Tapas Majumdar Committee, in its report in 1999, emphasized that the financial implications of the fundamental right to elementary education was well within the national commitment of 6 per cent of GDP for the education sector. It took into account the overall projections of the 6-14 population and computed norm-based requirements for UEE. This was done in order to ensure that quality schooling was available to all children, irrespective of the number of out-of-school children’.

The assessment of schooling facilities required for 200 million children was made on the basis of a set of norms for minimum amenities that were essential for providing quality education to all. The committee concluded that the additional expenditure for achieving the goal of UEE (based on the norm of minimum of two classrooms and two teachers per school with a pupil teacher ratio of 30:1 and calculating the teachers’ salary at the rates revised by the fifth centre pay commission) would be Rs.136,922 crores over a ten year period from 1998-99 to 2007-08.

The financial memorandum for the resubmitted constitutional amendment act that was approved indicated the requirement of Rs.98000 crores over a ten year period for elementary education. It was a pragmatic assessment, as the actual requirement of resources was lower since a teacher deployment was taken at a PTR of 40:1(Rao 2010:53-54).

In the year 2000, the scheme of Sarva Shiksha Abhiyan (SSA) was approved by the Government of India on November 16. It subsumed all existing programmes of UEE except Mahila Samakhya and Mid-day meal Scheme. The districts have been its units of programme implementation. Apart from imparting the efficiency of the delivery system for quality based education up to class VIII it aimed to bridge the gender gap by involving the community in the school management. The Sarva Shiksha Abhiyan is a massive mission- mode campaign which covers the entire country and seeks to address the needs children in various habitations. As per MHRD Annual Report 2009-10 under SSA, India has not only been able to improve access to 99% at primary level but have also been able to reduce out of school children to 3-4 % of the age group year.

## **IMPEDIMENTS TO SUCCESS AND EMERGENCE OF RIGHT TO EDUCATION**

### **Child labour**

In Indian context where the largest number of child labour exist human right approach is very useful to look at the situation why children are out of the school? A rights-based approach when applied, for example, to the problem of out-of-school children, dictates an inclusion of all such children into the schooling system irrespective of whether they work in agriculture, in industry or at home. In the Indian context, many commentators and development agencies have sought to distinguish between children who work at home, in agriculture or in assisting petty family business from those who work outside the home for a wage. Moreover, since it is primarily girl children who work at home assisting their mothers in the household tasks of looking after younger siblings, cooking, cleaning, washing, etc., such a distinction would openly discriminate against female children. It is here that engendering of the development strategy links up with the rights of all children who are out of school (Burra, N 2002:01).

Child labour is conventionally defined to include all 'economically active' children in the age group 5-14 years. A person is treated as economically active or gainfully employed if s/he does work on a regular basis and receives remuneration for it. The ILO defines 'child labour' as "work that deprives children of their childhood and their dignity, which hampers their access to education and the acquisition of skills, and which is performed under deplorable conditions harmful to their health and their development." Child work, on the other hand, includes all paid and unpaid work for the household or for the market, whether it is full-time or part-time. Participation in household activities on a regular basis and for several hours in a day to relieve adults for wage employment is also included in this definition. The ILO argues that it is not concerned with children helping in family farms or doing household chores (as cited in Burra, N 2002:3).

The World Bank argues that child work that does not involve an exploitative relationship should be distinguished from child labour. It further argues that in some instances, work done by children within the family may even contribute to the development of the child. Not all child labour is harmful. Many working children who are living within a stable and nurturing environment with their parents or are under the protection of a guardian can benefit in terms of socialisation and from informal education and training. According to a recent UN report, the problem of child labour in agriculture is extremely acute. According to experts, "... some 70 % of the estimated 218 million world totals of child labourers... are employed in agriculture, and of these 132 million are between the ages of 5 and 14." Further, the report says, "Many of these are in jobs that can undermine their health or lead to serious accidents including loss of limbs, including handling toxic pesticide, using dangerous cutting tools, working in extreme temperatures, or just working long hours" (cited in Burra, 2002:03).

#### **What prevent access to elementary education?**

While rurality, caste/tribe and gender are most crucial in preventing universal access to basic education, the factors that prevent access may be divided in three categories, namely, institutional/school factors, home or family related and community related. The negative schools factors are: alien language as the medium of instruction; unsuitable school curriculum; lack of preschool and non formal education centres, lack

of training or poorly-trained teachers; single teacher school; inadequate pedagogic training of teachers; lack of teacher motivation; ill-equipped schools; etc (NCERT 1995).

Another factor for institutional relate to facilities and timing. For example some school building are either in poor condition or cramped; lack of toilets especially for girls and women teachers; have no libraries sports or play grounds; lack of drinking water; and have unsuitable timings (i. e, during harvest season children's absence increases).

Home related factors that have prevent universal access are; lack of parental education; SC&ST background as well as gender; parental indifference and apathy especially about daughters' education; sibling and household care by girls and the parents' perception that the system is not mean for them (NCERT 1994) i.e. the disjunction between the production and reproduction function of education viz-a-viz girls. Community factors lack of awareness about literacy; social practices such as early marriage and seclusion of women (parda); poor socio economic conditions; no immediate or long-term perceived gains; and lack of alternatives to formal schooling, etc.).

Thus this is not true that poverty or economic conditions alone prevent universal access to education especially at the macro level. Kerala, in India and Sri Lanka in south Asia are good examples of states with lower per capita income and with high literacy level along with high scores on other social development indicators. According to one view point, lack of implementation of compulsory elementary education is responsible for preventing universal access (Weiner 1991). Experience in Thailand suggests that compulsion propelled literacy (Varavarn, 1990).

#### **World Bank-UN Framework of Education**

In March 1990, India signed the 'World Declaration on Education For All' and 'Framework For Action To Meet Basic Learning Needs' adopted at the 'World Conference on Education for All: Meeting Basic Learning Needs', held at Jomtien, Thailand under the joint sponsorship of three UN agencies (UNDP, UNESCO & UNICEF) and the World Bank. The twin documents together known as the Jomtien

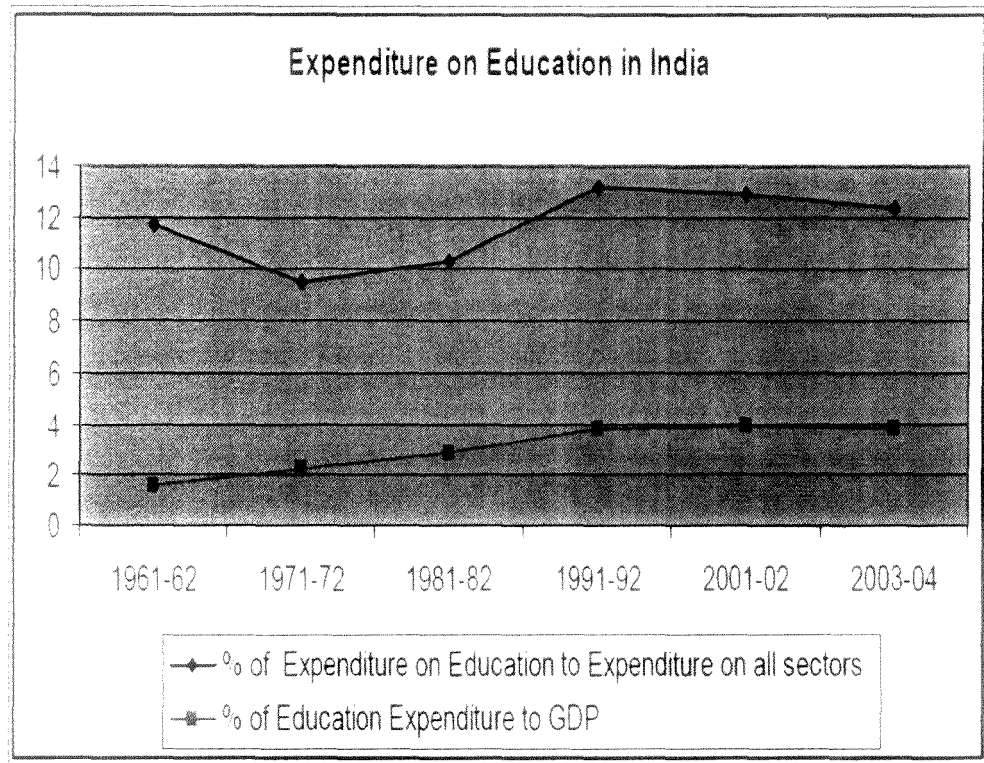
Declaration have since become the chief strategic instrument of the neo-liberal forces in school education. It laid the foundation for the World Bank intervention by advocating international aid for *primary* (not *elementary*) education in the developing countries, making it '*unnecessary*' for them to mobilize resources by re-prioritizing national economies.

The call for external financing of primary education was part of the IMF-World Bank's Structural Adjustment Programme (SAP) and Social Safety Net. The Social Safety Net Adjustment Credit, however, turned out to be a minimal compensation against the substantial withdrawal of state funding under SAP. The pre-condition of SAP meant, among other things, that the Indian government was *obliged to steadily reduce its expenditure on the social sector*, particularly health and education. This was a rather enigmatic pre-condition in a country where the vast majority of the people did not have access to quality health or education (Sadgopal, 2010:28.29).

The following figure gives the details of expenditures by level of education in India and its percentage to GDP and total Government expenditure during the period 1990-91 to 2004-05. The expenditure on elementary education was 1.78% to GDP in 1990-91. The percentage expenditure on elementary education to GDP after a gradual rise and fall has remained almost same i.e. 1.89% in 2004-05. The percentage expenditure to GDP on secondary/higher secondary shows an irregular rise and fall and it has remained between 1.13 to 1.11 percent during 1997- 98 to 2004-2005. The share of expenditure on Elementary Education to total expenditure on all sectors was 6.19% during 1990-91 and which shows irregular rise and fall and is 6.57% in 2004-2005.

The public expenditure on education in India during the period 1961-62 to 2004-2005 is given in the graph. The percentage expenditure to GDP shows an irregular rise and fall. It rose to 2.33% in 1972-73 but in 1973-74 declined to 2.15%. It increased to 3.07% in 1979-80 and decreased to 2.83% in 1981-82. Continuing to rise and fall slightly, it has reached a level of 4.33% in 2000-01 and then slightly decreased to 3.68 in 2004-05. Similarly, the percentage of expenditure on education and training to total expenditure of all sectors during the period 1961-62 to 2004-2005 indicates that it has increased from 11.70% in 1961-62 to 14.60% in 1999-2000 and then declined to

12.76% in 2004-2005. Before 1990,s there was constant rise in the education sector but after 1990's there is a decline of expenditure in education sector.



*Selected Educational Statistics 2004-05. GOI*

In education, it made even less sense as it was imposed by those powerful capitalist economies, led by the USA, who were *apparently* advocating the much-proclaimed 'Education for All' (EFA) programme along with the move towards the so-called 'Knowledge Economy'. One can't, therefore, avoid asking the question: *What was the hidden agenda?*

The central thesis of the Jomtien Declaration in the Indian context was five-fold, viz., - First, the State *must 'progressively' abdicate* its Constitutional obligation towards education of the masses in general and *school based* elementary education (Class I- VIII) in particular, become dependent on external aid even for primary education (Class I-V) and work in partnership<sup>17</sup> with NGOs, religious bodies and corporate houses<sup>18</sup>:

- Second, the people *neither have a human right as enshrined in the UN Charter nor a Fundamental Right* to receiving *free* pre-primary and elementary education (from kindergarten to Class VIII) of *equitable* quality as implied either by the Constitution under Supreme Court's Unnikrishnan Judgment (1993) or even the much diluted 86<sup>th</sup> Constitutional Amendment (2002);

- Third, education is not aimed at building a conscious citizenship for a democratic, socialistic, egalitarian and secular society; instead, it is *synonymous with literacy-numeracy and life skills* (mostly confined to sexual behaviour) required for social manipulation, mind control and regimentation for advancing the market economy;

- Fourth, the school system may comprise parallel layers of inferior quality education for various sections of society, thereby becoming *a multi-layered school system*; this conception will directly amount to denial of quality education to the under-privileged masses lacking capacity to pay<sup>20</sup>; and

- Fifth, *education is a commodity* that can be traded in the global market and offered for WTO negotiations.

The Jomtien Declaration dominated policy formulation and educational planning in several developing countries throughout the 1990s. A decade later, the Dakar Framework (2000) further elaborated and reinforced the basic premises of the Jomtien Declaration. The Indian government kowtowed to continue the neo-liberal agenda. As the World Bank-sponsored District Primary Education Programme (DPEP), started in India in 1993, was about to end within the next 3-4 years, this implied that *the Indian government was ready to carry forward the DPEP package, along with its lacunae and failures, into the then emerging Sarva Shiksha Abhiyan (SSA)*, thereby ensuring that the neo-liberal framework will continue to determine the future policies (Sadgopal, 2010: 31).



### **Access, Equity and Quality: Critical problems**

The three areas of access, equity and quality are intertwined along with those of regions, caste/tribe rurality and gender. Therefore, while aggregated and disaggregated data shows inter and intra-sectoral disparities by state/district, the overlapping dimensions of context specific location. In other words, in spite of a vast expansion in enrolment, the handicaps of rural children, especially those belonging to SC/STs and of girls in specific states are far more acute than of others who do not belong to these social groups.

Access has two aspects, physical and social. Physical access has to do with whether there is a school or not. Whether adequate teachers and other facilities are provided or not i.e. if 20 per cent of the habitations are without schools they are denied access to primary schooling. This problem is compounded in the hilly areas or in difficult terrains where the official norms of one km distance may not actually be walkable especially for girls if they have to walk through thick forest, lonely or uninhabited areas or rivulets, etc. this makes the system more iniquitous. Moreover, even though is free, there is enough evidence to show that tuition fee is a source however small, of education revenue which proves that primary and elementary education is not really free (Chanana, 1996).

In addition to the discrimination in terms of State and household expenditure on girls the distinction between the production and reproduction function of education further complicates the situation because families reinforce this discrimination by using the daughters as domestic help thereby preventing them from enrolling in schools (Tilak 1996).

Moreover it is not merely a question of availability or non-availability of schools which is denied to at least one-fifth of rural habitations. The data on enrolment and dropout show that the disadvantaged sections in the rural areas suffer from cumulative handicaps. Therefore, the goal of social justice and equity seems quite unreal. They are not just denied access to education but the quality of education is also suspect.

The aspect of defining 'quality' is complicated by the fact that the dual system of private and publicly-funded schools is spreading from urban to the rural areas. The author's experience of fieldwork in Rajasthan shows that the complete failure of government schools in delivering the 'goods' has given rise to private schools as well as private tuitions. While the former replace the government schools the latter supplement the government schools i.e. the students enrol in government schools through which they take tutors who, in most cases, are government teachers. They undertake this activity at the cost of neglecting their duties for which they are paid by the government.

This also raises the question of teacher effectiveness i.e. while it may be all right to emphasize the provision of teachers as per prescribed norms under schemes such as Operation Blackboard, who is to ensure that teachers do the job for which they are hired. In this context the study on quality of primary education in Madhya Pradesh undertaken by Gobinda and Varghese lays stress on the accountability of the teachers as well as on the internal management of the system even in the absence of minimum infrastructural facilities (1993).

Educational Policies in India, seen to be addressing almost every issue that emerges in the sphere of education, but it is of great concern that these policies have seldom been able to treat the issues holistically. In quantity or access /enrolment is focussed then quality suffers or vice versa. Concerns like inequality in access, girl child education, curriculum reforms, child labour, wastage, stagnation and of course teachers' plights are still prevailing. Kumar (2006) points out that Indian state has failed to achieve the target set by Article 45. He argues that the recommendations of various committees and even the constitutional provisions began to get diluted as the notion of 'knowledge' and 'education' was transformed into 'literacy'. According to quality concerns have seldom been the agenda of these policies hence instead of providing every child sufficient facilities in form of a well equipped school, the state implemented the District Primary Education Programme (DPEP), collaboration with the World Bank. Even the alternative provision of Para-teachers in place of regular teacher, quality concerns remain in flux.

Numerous studies consistently put forth the arguments that certain sections are deprived of education. Even though there was an impressive expansion of the elementary school system in the country, a closer analysis of basic statistics reveals glaring disparities in the progress made towards equity. Certain sections of the population and certain geographical pockets in almost all states in the country continue to be educationally backward and have failed to benefit from the investments made in education. However NPE1986 review of 1992 stressed on equity and quality when it stated:

“To promote equality, it will be necessary to provide for equal opportunity to all not in access, but also in condition for success. Beside, awareness of the inherent equality of all will be created through the core curriculum. The purpose is to remove prejudices and complexes transmitted through the social environment and the accident of birth” (POA1992).

In order to implement this vision, it became the imperative of state to ensure equal opportunities of access and retention to various educationally disadvantaged groups such as women, SC/ST, minority and other special groups such as working and physically challenged children, those residing in slum and other inaccessible areas and disadvantaged groups. But the success has often been limited to various factors.

Kumar, (2006) suggests that these inequalities in education reflect sharply the structures. These structures according to him are driven by economic differentiation and corresponding cultural and social features and which create hurdles for many down the structures in accessing education. Undoubtedly such an analogy gets manifested on the one hand in the accessibility to formal schooling system due to lack of purchasing power, while on the other hand social and cultural norms reinforce them further (Kumar 2006). Jha and Jhingran (2002) also pointed out that caste, through its correlations with poverty and social marginalisation does have a role in aggravating educational deprivations among Dalits. They in their study found out that the scenario transforms with changes in economic opportunities, status, socio-political mobilisation, general governance and the functioning of schools. They highlight that situation is best at places where all three factors- school functioning, improvement in the families educational and economic status and the nature of political process- operate in

combination. They point out here is that educational policies which works virtually lay a social policy remain unsuccessful in extensive and effective implementation.

Velaskar, (2010) seems to have further analysed the policy failures and equality politics in the context neo-liberalism impact if NPE 1986 policy due to globalisation around that period she states:

‘The post Nehruvian period witnessed a serious setback to egalitarian ideology and socialist politics and was marked by rapid retreat from socialist goals. The reciprocally determining relation between the structure of state apparatus and nature of policies, turned redistributive ideas into rhetoric. An essentially capitalist state adopted partial dualist stances and made welfare policies favouring the disadvantaged. In the hands of upper caste-class politics bureaucratic and intellectual elites, including rightwing elements in the ruling congress, emerged and educational policy which was actually ranged against equality’ (2009:65, 66).

Educational policies continue to focus equity issue but the macro level changes and subsequently the impact of world powers on the polity and economy of the third world nations including India have left the equality goals of education as blatantly short changed as against elitist, modernisation goals. Financial allocation emerged as a new challenge in front of NPE, for which NPE laid the ground for external dependence. Velaskar, (2009) also argues that NPE allocations did not match the rhetoric and were inadequate for the huge backlog in provision. Resultantly, inadequate funds had a direct effect on the nature of infrastructural provisioning for the dalits an adivasis. There, with the upcoming new regimes and payers in the sphere of elementary education the most subordinated and poorest ethnic groups still experience gross focus of educational deprivation. Gender and class differentiations among them are sharp. Thus, the problem of access is mitigated only partially and in a restricted sense by the new policy interventions and increase in the size of the educational system.

#### **Towards RTE:**

Education, even after numerous provision and policies, is no longer viewed as a service provided effectively by the state, but a right of every individual/citizen that need to be safeguarded. Kothari commission stated that ‘in view of the immense difficulties

involved such as lack of adequate resources, tremendous increase in population, resistance to the education of the girls, larger number of the backward classes, general poverty of the people and the illiteracy and apathy of parents, it was not possible to make adequate progress in primary education and the constitutional Directives has remained unfulfilled' (cited in Mehendale, 2009: 04).

The new policy of education, 1986 gave 'a new thrust' to the achievement of universal enrolment and universal retention of children up to 14 years by 1995, but did not recognize education as a 'right' and a 'legal' obligation of the State to provide education to all children. The Acharya Ramamurti Committee, 1990 recommended that right to education should be examined for inclusion amongst the Fundamental Rights guaranteed under the Constitution of India. But the very next committee appointed by CABE in 1991, which reviewed both NPE 1986 and Ramamurti Committee, did not recommend inclusion of education as a fundamental right. Ignoring the recommendations of Ramamurti Committee revised policy stated 'it shall be ensured that free and compulsory education of satisfactory quality is provided to all the children up to 14 years before we enter the twenty- first century' (cited in Mehendale, 2009: 04).

The **Saikia** Committee was constituted in August 1996, "to examine and consider the legal, academic, administrative and financial implications of the proposal to amend the Constitution to make the right to free and compulsory elementary education a fundamental right and to suggest suitable statutory measures to enforce this fundamental right; and to suggest guidelines indicating facilities, which if not provided, would be justifiable."

A historic judgment by the Supreme Court of India in 1993 radically transformed the status of Article 45. In its Unnikrishnan Judgment (1993), the Supreme Court ruled that Article 45 in Part IV has to be read in 'harmonious construction' with Article 21 (Right to Life) in Part III of the Constitution, as Right to Life loses its significance without education. The apex Court made the following powerful interpretation: "It is thus well established by the decisions of this Court that the provisions of Part III and IV are supplementary and complementary to each other and that fundamental rights are but a

means to achieve the goal indicated in Part IV. It is also held that the fundamental right must be construed in the light of the directive principles” (Sadgopal, 2010:26)

This judgement thus transformed the perception from education being an obligation, created by Article 45 of the constitution into asserting itself as an enforceable right. The judgement transformed an incremental development goal set by the turn of the century –into an entitlement of all children up to the age of 14. By clearly rejecting arguments for elementary education based on economic capacity. It was with this in view that the Indian Constitution recognised education to be a fundamental right of all children up to the age of 14 such that participation of all children becomes a state and parent’s obligation as well as a legal requirement. It envisages area specific and population specific planning to ensure that enough attention is paid to educationally backward states but also throughout the country by a shift of emphasis from mere enrolment to retention and quality of education. Henceforth, ‘the Right of Children to Free and Compulsory Education Act 2009’ emerged. This Act seeks to give effect to the 86<sup>th</sup> Constitutional Amendment Act 2002 and implement the fundamental right to elementary education. It details the responsibilities of the centre and the state governments, teachers, parents, and community members in ensuring that all children between the age group of 6-14 receive free and compulsory education.

Mehendale, (2009) presented a historical narrative of the making of Fundamental Right to education in 2002, i.e. the constitutional (86<sup>th</sup> Amendment) Act of 2002 and traced the developments related to the constitutional amendment spanning ten years i.e. from 1993 to 2003. She identified these major actors, events and conditions in this history of making a fundamental right of education:

- **Judiciary Activism** (Unnikrishanan case 1993, and Judiciary upholding Unnikrishanan case 1994-2004).
- **International commitments** (EFE 1990, UNCRCR 1992, Delhi declaration on EFA 1993, Dakar Declaration on Education 2000)
- **Economic and Political context** (Economic Liberalisation, Globalisation, SAP 1991-92, Era of political Coalitions 1991-2003, United Front Govt. 1996, BJP-led NDA govt. 1999).

- **Intermediaries, advocacy coalition, NGOs, donors** (UNICEF emphasise the importance of primary education 1992-94, World bank supports the DPEP 1994, NGO's submit evidence before the Parliamentary Standing Committee 1997, Networks such as NAFRE formed to lobby for fundamental right to education 1998, Mobilisation of the grassroots and sensitization of parliamentarians on the issues 2000-2002).
- **Research** (Weiner's Child and the State in India 1991, Global research on primary education as the best economic investment 1992-1995, Research under DPEP 1992-95, Tilak's research on 'free' education 1996, Juneja's research on free and compulsory education law 1997, PROBE report on demand for education.

The Unnikrishnan Judgment empowered people with a legal claim to Free and Compulsory Education (FCE). This is evidenced by a spate of litigations that relied upon the principle of law laid down in the Unnikrishnan judgment. A Constitutional of forces from different quarters, viz, support from the judiciary, greater international attention and increased civil society and grass-roots level campaigns put forth tremendous pressure on the Government to introduce a fundamental right to education.

For the inclusion of a fundamental right to education a Constitutional Amendment Bill was moved in the parliament amidst much criticism and debate regarding contents of the Bill. The said amendment proposed that Article 21- A (fundamental right to free and compulsory education for children in the age group of six to fourteen years) be introduced, former article 45 (the then existing directive principle on FCE ) be deleted and article 51-A(k) (fundamental duty on parents) be introduced (Raina, V. 2008:06). In November 2001 the Bill was re-numbered as the 93<sup>rd</sup> Bill and the 83<sup>rd</sup> Bill was withdrawn. The 93<sup>rd</sup> bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. Despite continued criticism against the altered version, the bill was passed in 2002 as the 86<sup>th</sup> Constitutional Amendment Act. The 86<sup>th</sup> Amendment of the Constitution that made education a fundamental right was passed in the year 2002. The new article 21A, which was inserted as part of the 86<sup>th</sup> amendment says that "the state shall provide free and compulsory education to all children between the ages 6 and 14 through a law that it

may determine.” Since prior to the 86<sup>th</sup> Amendment, the right actually exist through a Supreme Court ruling. In the famous Unnikrishnan judgement of 1993 the court had ruled that read together with Article 21 (Right to life), Article 45 of the directive principles establishes that the right to education exist and would not be hindered by the economic capacity of the state till age 14; the economic capacity would be factor only after age 14. The 86<sup>th</sup> Amendment not only removes the 0-6 age group from the right, but makes right contingent on a law that the state shall determine (Raina, V. 2008:06).

According to Sadgopal, (2010), The 86<sup>th</sup> Amendment of the Constitution was misconceived insofar it (a) *excluded* almost 17 crore children up to six years of age from the provision of Fundamental Right to *free* early childhood care and pre-primary education; (b) *restricted* the Fundamental Right of even the 6-14 year age group by placing a conditionality in the form of the phrase “*as the State may, by law, determine*” in Article 21A; this gave the State the instrumentality to arbitrarily restrict, dilute and distort the Fundamental Right given through Article 21A; (c) shifted the Constitutional obligation towards free and compulsory education from the State to the parents/guardians by making it their Fundamental Duty under Article 51A (k) to “*provide opportunities for education*” to their children in the 6-14 age group; and (d) *reduced*, as per the Financial Memorandum attached to the amendment Bill, the State’s financial commitment by almost 30 percent of what was estimated by the Tapas Majumdar Committee in 1999; this was achieved through dilution of norms.

There was widespread public criticism of the anti-people character of the above Bill. A rally of 40,000 people, drawn from different parts of the country, at Delhi’s Ramlila Grounds held on the day the Bill was discussed in the Lok Sabha (28 November 2001) demanded radical amendments in the Bill. Several Lok Sabha MPs, cutting across party lines, also criticized the Bill. In public mind, it was becoming clear that the hidden agenda of the Bill was not to accord the status of Fundamental Right to elementary education but to snatch away the comprehensive right that the children up to 14 years of age had gained through the Unnikrishnan Judgment. Ignoring the public outcry, however, a consensus was arrived at among all the political parties of varying ideological backgrounds and the Bill was passed in both Houses of the Parliament without even a single dissenting vote. The aforesaid four flaws in the 86<sup>th</sup> Constitutional Amendment Act (2002) have since provided the basis for legitimizing



the lacunae of the Sarva Shiksha Abhiyan (SSA, 2000) and later of the consequent RTE Act 2009 framed under the Article 21A (Sadgopal,2010:28).

This six year old journey of right to education is presented in the bellow table:

<b>The six-long –year journey of Right to Education</b>
<ul style="list-style-type: none"><li>• BJP- led NDA Government (1999-2004) drafted the Free and Compulsory Education for Children Bill, 2003.</li><li>• After NDA lost out in 2004, new HRD Minister Arjun Singh in UPA-I constituted a committee under the chairmanship of Kapil Sibal, then Science and Technology Minister, to suggest a draft legislation.</li><li>• CABE Committee submitted report in June 2005 and suggested a new draft of the Free and Compulsory Education Bill (Right to Education Bill).</li><li>• CABE committee estimated an expenditure burden of Rs.321,196-Rs.436,458 crore over six year.</li><li>• A high-level group set up by Cabinet met in January2006 to suggest the Centre to restrict itself to providing the State Governments with a model Bill instead of Central legislation.</li><li>• In June 2006, majority of state Governments opposed transfer of responsibility for provision of free and compulsory elementary education to children to State Governments and demanded a Central Law.</li><li>• In April 2007, PM referred the issue again to HGL, which met in November and recommended that a Central RTE Bill could be tabled in Parliament if the HRD Ministry cut down on its outlay. Accordingly, it was brought down from the initial Rs 53,500 crore per year to Rs. 38,112 crore per year to Rs.25,166 crore per year.</li><li>• In February 2008, PM called for the Central legislation to be introduced in the Budget session of Parliament, but could not be.</li><li>• Union Cabinet gave its nod in November 2008.</li><li>• In July 2009, Rights of Children to Free and Compulsory Education Bill 2008 was tabled in the Rajya Sabha by HRD Minister Kapil Sibal and passed subsequently</li><li>• Bill tabled in Lok Sabha in August 2009 and passed</li></ul>

The history of the bill that leads to become law in the form of Right to Education act 2009 is that the previous government did prepare a particularly inadequate bill in 2004, but lost power at the next election and could not introduce it. The present UPA government constituted the Central Advisory Board for Education (CABE) in 2004,

and one of its Committee was charged with the task of drafting the Right to Education Bill. The committee prepared a draft in August 2005 which was discussed by the full CABE in November 2005, and it was put on website of Ministry of Human Resources Development (MHRD) as a public document. While it was receiving comments, the Prime Minister decided to set up a High Level Group (HLG) to examine the financial and legal implications of the bill.

Strangely, the HLG concluded that there was no need for a central legislation and advised the MHRD to ask the states to bring in their respective legislations based on a model bill that the MHRD was asked to prepare. The MHRD circulate such a model bill to the states in 2006 with a covering letter suggesting that they ought to bring in such legislations and provide second priority to educational finance at the state level, after law and order (Raina, V. 2008:06).

It took the UPA government almost three and half years to be ready with a draft which it found convenient enough for its new liberal framework. The draft which was eventually placed in Rajya Sabha in December 2008 was the sixth draft of the UPA government, including the model bill (June 2006) sent to the State/UT governments with a decision to shelve the idea of a central Bill altogether. In the process, each and every word, phrase and sentence was examined, debated and modified or adjusted at the highest echelons of the government which included the empowered High Level Group of Ministers (Sadgopal, A. 2010:39).

Most of the states responded negatively on model bill, they were asking the centre to reconsider a central legislation with adequate central funding. The national knowledge commission also made such a recommendation to prime minister. A group of educationalist met the prime minister in august 2007 to urge him to consider the decision of a model bill. Subsequently, the prime minister directed in February 2008 that a central legislation should again be prepared and brought in during the budget 2008 session of the parliament. The MHRD quickly set up a working group to prepare a new draft, based on the august 2005 draft of the CABE. The draft was circulated to all the concerned ministries and after incorporating their comments was sent to the cabinet for its august 9, 2008 meeting (Raina, V. 2008:06).

Currently, under article 21-A of the Constitution, every child between the ages of six and fourteen has a fundamental right to 'free and compulsory' education, which the state shall provide 'in such manner as the state may, by law, determine.' Early childhood care and education (for children up to six years of age) is provided for as a directive principle of state Policy under Article 45 of the constitution. Furthermore, article 51-A (K) impose a 'fundamental duty' on parents to provide educational opportunities to their children in the age group of six to fourteen years. Finally on April 2010 elementary education became a fundamental right. 'Right of Children to Free and Compulsory education Act 2009', has been enforced with effect from April 2010. However the debates and issues persist which may be taken in the next chapter in greater detail.

## CHAPTER 4

### Politics of Making 'Right to Elementary Education':

#### Concerns and Contestations

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The Right to Education Act 2009 (for convenience, henceforth called the 'RTE Act' or simply the 'Act') had generated a lot of debate among various stakeholders like international agencies, education policy makers, state and private sector education providers, parents, activists, political parties, non-governmental organizations, the academia, and the specific target groups that are said to be marginalized. Each of these groups had contested or concurred with a particular dimension of the Right to Education Act. Many agreements and disagreements over the RTE Act constitute the entire process of 'making' the Act itself a complex process. This chapter deals with these multiple projects and interests which made the Right to Education in India a contested law while there should have been a general unanimity among all the stakeholders in such an Act in the entire society that continues to remain far from the universally literate society. Some of the disagreements continue to exist and haunt the implementation of the Act within its first year of enactment and may continue to complicate its implementation because of its contentious nature. The chapter brings out these contentions more clearly by placing them together and in one discussion. The issues on which disagreements prevail and which the chapter discusses are, for instance, complete neglect of concerns of issues of curriculum, pedagogy, education for disabled children; making provision for financing of education inadequate of total lack of concern of teacher's education and quality, their working conditions, etc; the age of admission into school (primary section), the role of government in the management of private schools; the controls exercised by the State on the private sector, closing down of unrecognized schools; the need for common school system, the language policy in school, etc.

It is generally accepted by one and all that the Right of Children to Free and Compulsory Education Act (RTE) as an essential foundation to ensure that all children

are in school and out of child labor. This ground-breaking Act provides the foundational building blocks to ensure that all children are in school and out of labor (Walker, 2009). The UNICEF has already hailed it as unmatched in the world in terms of targets it sets on access and quality of education and teachers' qualifications.

“India has a law that lets a child demand education as a right. Every state, local authority, school and parent must deliver or face penalty” (Tandon, 2010).

According to the UNICEF representative in India, “RTE will propel India to greater heights of prosperity and productivity for all guaranteeing children their right to a quality education and a brighter future” (Hulshof, 2010).

According to UNICEF data there are estimated eight million Indian children and young people between the ages of six to 14 out-of-schools, the majority of whom are girls. Without India, the world cannot reach the Millennium Development Goal (MDG) of having every child complete primary school by 2015. UNICEF has praised the RTE by saying that RTE provides a right platform to reach the unreached, with specific provisions for disadvantage group, such as child labor migrant children with special needs, or those who have a disadvantage owing to social, cultural economical, geographical, linguistic, gender or such other factor. UNICEF also thinks that Indian RTE act requires accelerated efforts and substantial reforms. Bringing eight million out-of-school children into classes at the age appropriate level with the support to stay in school and succeed poses a major challenge. On the other hand, International Labor Organization (ILO) sees Right to Education very positive development in recent times. ILO believe that RTE is a powerful tool to make sure that children are not working and in school where they belong.

“The new law is a tremendous step forward, but all depends on implementation. At least 50 million children are out of school in India, the vast majority of them belonging to low caste, religious minorities and tribal backgrounds” (ILO, 2010). In the view of United Nations Educational, Scientific and Cultural Organization (UNESCO), RTE, provides a platform to reach the unreached, with specific provisions for disadvantaged groups, such as child laborers, migrant children, children with special needs, or those

who have a disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor. According to UNESCO, ‘this act is an essential step towards improving each child's accessibility to secondary and higher education, bringing India closer to achieving national educational development goals, as well as the MDGs and Education for All (EFA)’ (Parsuramen, 2010).

However, it is important to note that there have been many contentions and concerns of various stakeholders on various aspects of the RTE 2009. The discussion that follows discusses some of these aspects and presents the politics of making RTE.

### **Neighbourhood Schools or Common Schools?**

Some experts argued to make education a fundamental right in the true sense, there must be implementation of the Neighbourhood School concept as envisaged by the Kothari Commission in 1966, which stipulated that only children living within a certain distance from the school be admitted there. It is contended that the RTE Act in its current form does not have a provision for an effective implementation of Common School System (CSS), which has been stressed by many educationists for decades to bridge the socio-economic gap. Back in 1966, the Kothari Commission on education recommended CSS with the objective *“to bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society”*. The Commission warned, *“instead of doing so, education itself is tending to increase social segregation and to perpetuate and widen class distinctions.”* It further noted that *“this is bad not only for the children of the poor but also for the children of the rich and the privileged groups”* since *“by segregating their children, such privileged parents prevent them from sharing the life and experiences of the children of the poor and coming into contact with the realities of life. . . . also render the education of their own children anemic and incomplete”* (cited in Sadagopal, 2005). The CSS does not imply a uniform school system, but instead it intimately ties the schools to the local community with provision of sufficient academic freedom to explore and innovate. *“Provision reserving 25% seats in private schools so that children are able to receive free education in a “neighbourhood school, is like charity. It will make students admitted on reserved seats feel diffident and discriminated”* (Zutshi, 2009). *“The spirit of the Government is appreciable but in practice, the government has officially ensured*

the 75 % reservation for the privileged children in the private schools and also legalized the dual education system and privatization of education” (Dungdung, 2010). “The concept of neighbourhood school, promised by the Act, is not the same as the one that is understood by educationists and argued by the Kothari Commission. Indeed the Act really misleads people on this issue” (Tilak, 2010). They further argued that there is a strong need to make the entire schooling system equally good, so that a child needs not travel far to receive quality education. Raina, (2009), argued that “unless children from different castes, poor and rich sat in the same classroom, social and class differentiations in society would be amplified by the schools,”

It is generally argued that the RTE Act is embedded in the framework of a multi-layered school system and is designed not only to sustain this system but also promote it. It recognizes four distinct categories of schools in Section 2 (n) viz. (i) government or local authority schools; (ii) privately managed but fully or partly government-aided schools; (iii) elite government schools of specific categories such as Central Schools, Navodaya Vidyalayas, Sainik Schools, XI Plan’s 6,000 model schools being set up by the central government and similar schools of the state/UT governments such as Sarvodaya and Pratibha Vikas Vidyalayas (Delhi State), Residential Schools (Andhra Pradesh) and Utkrishta Vidyalayas (Madhya Pradesh); and (iv) private unaided schools.

Within each of these four categories, there is going to be a whole range of schools – from (a) those government and private schools that barely fulfill the infrastructural norms as required by the Schedule in the Act to (b) those schools, again both government and private, which will be reasonably well-endowed (e.g. with Pupil-Teacher Ratios of 1:20 to 1:25 and teachers for fine arts, physical education and computers) and, finally, to (c) those which will arrogantly claim to be ‘over-endowed’ with air-conditioned class rooms, swimming pools, round the clock internet-coverage and International Baccalaureate affiliation! The Act will not only co-exist with this disparity-based multilayered school system but would also legitimize it in various ways (Sadgopal, 2010). For instance, this is precisely what the much-hyped provision of at least (or up to) 25 percent reservation for children of “weaker section and disadvantaged group” in the latter three categories of schools along with a provision to reimburse them (Section 12) is designed to do.

### **Implementation / Operationalization of the Act**

Some of the intellectuals argued that the mandatory rules or norms in the act are not clear as to enable to implement the act in its true sense. For example, the Act is meant to operationalise the 86<sup>th</sup> Amendment which made education a fundamental right, a justifiable right. According to Prof. Raina (2009) each state would also be required to prescribe rules for the act for implementation. The preparation of these rules would be critical in preserving the fundamental right nature of the act. However, according to the Act, it may not be possible for any person to approach the courts in this regard, as any prosecution requires prior sanction of the appropriate government, which in effect means prohibition of prosecution. Indeed the Right to Education Act clearly prohibits legal action against anyone in the government. For instance, the Act states:

“No suit or other legal proceedings shall lie against the Central government, the state government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority or the School Management Committee, or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made there under” (NCPCR, 2009).

Raina, (2009) argued that the bill does not explicitly spell out the quantum of punishment for violations – be it for denying admissions or violating the provisions regarding quality of access, teacher attendance and so on. For example, the bill explicitly says that admission cannot be denied for the lack of a birth certificate, transfer certificate or for seeking admission after the session has started. But who will monitor that?

On the issue of implementation, state governments have responded in many different ways. Some have welcomed it by calling a revolutionary and historic legislation while others saw it in a different perspective through which they can criticize the central government policy towards education. Most of the states have made a strong appeal to the center to incur the total expenditure to establish adequate infrastructure in schools and pointed to various shortfalls in the act which needed special attention. As far as the justifiability of the act is concerned for example in the case of violation of 3 provisions



relating to private schools, viz. charging capitation fee and using screening procedure for admissions (Section 13), seeking recognition (Section 18) and fulfilling norms and standards in the Schedule (Section 19), no prosecution is allowed “except with the previous sanction of an officer authorized in this behalf . . .” (Section 36). The Act is asking us to seek permission from an officer to institute prosecution against him for violating the provisions. Section 37 bars any legal proceedings against any authority from local body upwards to the centre in respect of any act “which is in good faith done or intended to be done...”. Here is an example. Suppose the Education Secretary of a state/UT violates Section 25 (Maintenance of Pupil-Teacher Ratio) and Section 26 (teacher vacancy in a school not to exceed 10 percent of the sanctioned strength) by not recruiting/ appointing teachers in the required numbers. A parent files prosecution. The State Secretary will have a legitimate defense by claiming that she/he did not appoint teachers as per requirement because properly trained teachers were not available due to shortage of good quality teacher education institutions. Clearly, she/he did not want to harm the children by appointing bad teachers – *act of violation but in good faith!* And such quality institutions can’t be established because SSA grants from the centre do not have adequate provisions for them!! And, of course, provision of adequate finances is not enforceable under the Act! Such restrictions on enforceability or justifiability mock at the concept of Fundamental Right itself, converting it into an ordinary right under the law.

Many states believe that additional infrastructure, including building; teachers and finance would be required to implement the RTE for which the centre must share a major part to help the state. According to some states, to implement the RTE Act, the centre should bear all expenses as states are not able to incur their share of burden in the ambitious project aimed at providing free education to children because a huge amount would be required for its execution. In the initial reaction towards its implementation, almost all state governments wanted the center to increase its proposed share from 55 percent to 75 and even 90 percent. Some states want the Centre to provide 100 percent funds. The union government at present has mooted a centre-state fund sharing pattern of 55:45 which was earlier in the ratio of 75:25. According to many states, they lack sufficient resources to implement the Act and it is the Centre’s responsibility to meet the expenditure.

States have listed out their requirements to provide the implementation of the Act.

- ❖ Nearly 7.8 lakh additional classrooms and seven lakh girls' toilets will have to be created. The government will need to spend Rs 1.71 lakh crore in the next five years for implementing the Act.
- ❖ Each child will be provided uniforms at Rs 400 per annum.
- ❖ Every child will be provided free textbooks while a child with special need will get Rs 3,000 per annum for inclusive education. Similarly, Rs 10,000 will be given for home-based education for severely disabled children.
- ❖ There will be a requirement of additional 5.1 lakh teachers to meet the pupils-teacher ratio of 30 for one as per the RTE Act.
- ❖ Rs 1.71 lakh crore will be spent on provision of access, infrastructure, training of untrained teachers and for intervention for out-of school children. The teachers' salary and civil work will have maximum financial requirements of 28 per cent and 24 per cent respectively.
- ❖ Nearly 17 per cent of the total estimate will be spent on child entitlement, while nine per cent will go to special training for out-of-school children. School facilities will require eight per cent of this money and inclusive education will need six per cent.
- ❖ The RTE stipulates barrier-free education for children with special needs and one classroom per teacher. About 7.8 lakh additional classrooms will be required. Majority of these classrooms will be Uttar Pradesh and Bihar (2.5 lakh each) followed by West Bengal (1.3 lakh) and Assam (30,000).
- ❖ There are nearly 27,000 'kuchcha' school buildings which will have to be upgraded. Nearly seven lakh toilets for girls will be required, including 90,000 in Bihar, 63,000

in Madhya Pradesh and 54,000 in Orissa. About 3.4 lakh schools will require drinking water facility.

There are arguments that suggest that not only the governments, but the communities and parents are also equally accountable. According to Pratham, an NGO, people in communities should be mobilized and prepared to not only take this as a 'right' but also to send their children to school, as in most cases parents violate the rights of the child but preventing them from schooling. Therefore social workers must play the part of a change agent, advocating the 'rights of the child', working at micro and macro levels - with parents and government in tandem. Some other organizations such as National Coalition for Education (NCE) have asked for the community monitoring system on education.

Individual scholars like Sadgopal discuss at length the possibilities of conflicts in terms of monitoring of the Act and those who needed to be accountable for such a monitoring instrument. According to him, 'if you take a careful look at Section 36 & 37, in the case of violation of 3 provisions relating to private schools, viz. charging capitation fee and using screening procedure for admissions (Section 13), seeking recognition (Section 18) and fulfilling norms and standards in the Schedule (Section 19), no prosecution is allowed "except with the previous sanction of an officer authorized in this behalf . . . ." (Section 36). Ironically, the Act asks the masses to seek permission from an officer to institute prosecution against him for violating the provisions! (Sadgopal, 2010). Moreover, Section 37 bars any legal proceedings against any authority from local body upwards to the centre in respect of any act "which is in good faith done or intended to be done".

Here is an example: Suppose the Education Secretary of a state/UT violates Section 25 (Maintenance of Pupil-Teacher Ratio) and Section 26 (teacher vacancy in a school not to exceed 10 percent of the sanctioned strength) by not recruiting/appointing teachers in the required numbers. A parent files a case in the court and in response the State Secretary will have a legitimate defense by claiming that she/he did not appoint teachers as per requirement because properly trained teachers were not available due to shortage of good quality teacher education institutions. Clearly, she/he did not want to harm the children by appointing bad teachers – act of violation but in good faith. And

such quality institutions cannot be established because SSA grants from the centre do not have adequate provisions for them. Such restrictions on enforceability or justifiability mock at the concept of Fundamental Right itself, converting it into an ordinary right under the law (Sadgopal, 2010).

There is another issue regarding the autonomy or administration in the Act. The RTE Act provides for different layers of administration starting from the Central, state, and local governments and school management committees to manage the primary-upper primary system. School management committees have been given the main responsibility of monitoring free and compulsory education. Although the Act provides partial autonomy to School Management Committees (SMCs) in managing schools, the state retains the power to determine and provide school requirements such as, location, infrastructural needs, teachers etc. This adds many layers and powers to the existing bureaucracy in education sector.

“RTE maintains layers to the current tightly coupled hierarchical education sector, thus breeding delays, corruption and inefficiency at every level” (Jolad.S, 2009:8).

Some of the experts strongly recommended that the RTE should decentralize the administrative structure of elementary education. It is argued that the Act should provide more structural and financial autonomy to local bodies. In addition, it is demanded that the administrative structure should create a ‘government funded locally managed autonomous neighborhood schools’. Degree of autonomy and distribution of power has to be based on expertise of the local bodies in handling the issues. There is mixed evidence on the ability of SMCs in improving quality of schools and learning outcomes of children. While one could assert that SMCs can make decisions on infrastructure and teacher requirement, they might not be able to decide best curriculum practices, learning assessment methods. In the words of Anil Sadgopal,

“SMCs is just another name for the present Parent- Teacher Associations (PTAs) or equivalent bodies existing in most states/UTs” (2010.43).

Section 21 makes it clear that SMCs, like their previous PTA *avatar*, would not have any real powers to decide or take any action that will make a difference to the functioning of the schools. The power will continue to rest in the hands of the political leadership and bureaucracy. In such cases power has to be granted to taluk (a group of about 100 villages) or districts as per their evidence of credibility in making good decisions. District bodies should have the power to appoint teachers, since in a district one can easily find people with the expertise to teach at the elementary school level.

The National Advisory Council (NAC: 2005) has given its suggestions for better framework and implementation of RTE Act.

1. The Government of India should, within the next three month, come up with a road map to increasing expenditure on education to at least 6% of GDP over the next plan period.
2. The 86<sup>th</sup> amendment requires the state to determine by law the manner in which the Right to free and compulsory education shall be provided to the children. A broad, guiding union legislation, which provides a basic non-negotiable framework, should be enacted without delays. This legislation, among other things, could address the following:
  - i. Broad measurable outcomes of education in terms of skills or reading, writing, arithmetic, comprehension, analysis, etc.
  - ii. Regular performance measurement of different levels of the education system based on outcomes against expenditure.
  - iii. Pre-child expenditure on different components of education at the school level should become the cornerstone of budgeting, accounting and performance measurement. Union and state government should clearly spell out their per-child norms annually for budgeting purposes.
  - iv. Registration of all schools rather than 'recognition' but all schools to be monitored for curriculum delivery.
  - v. Setting up of National Testing Standards, this can be used to assess children at different levels. Independent testing agencies to be set up at the national and state levels.

- vi. The union and the state government should mandatorily bring out an annual status of education report at the beginning of every academic year. This activity could be outsourced to an independent agency based on agreed terms of reference.

NAC (2005) also suggested that laws relating to children, especially child labor and children at risk/in conflict with law should be modified to conform to the fundamental right to education. The Council observed that the Integrated Child Development Scheme (ICDS) program should be strengthened to make effective the pre-school education component already included in it with specific measurable outcomes defined for children in the 3-5 age groups. It suggests that the government begin the process of widening the fundamental right to education so that on fulfillment of basic SSA goals in 2010, the right to education may be expanded by 2015. According to the NAC, the Right needs to be extended on the one hand to include the 0 - 6 age group currently covered by the modified Article 45 and also the 14 – 18 age groups, which needs to be provided education in broad social and economic interests of the society.

The National Commission for Protection of Child Rights (NCPCR, 2010) appreciates the enactment of the Right of Children to Free and Compulsory Education Act that guarantees education as a fundamental right to each and every child. According to the Commission this ground-breaking Act provides the foundational building blocks to ensure that all children are in school and out of labor (NCPCR, 2010). There are currently an estimated 8.1 million children and young people out-of-school in India. They are at risk of not only child labor, but also trafficking, child marriage and other abuses. Some children are more vulnerable to labor than others. For example, girls are still less likely to enroll in school than boys, with even higher gender gaps for girls from Scheduled Tribes (ST) and Scheduled Castes (SC). The Commission argued that India's Mid-Decade Assessment of Education For All highlights the fact that close to half of children left school before reaching Grade 8 with higher drop-out rates for SC children (55 out of 100) and the highest for ST children (63 out of 100).

According to the Commission, RTE provides a platform to reach the unreached, with specific provisions for child laborers and other disadvantaged groups, such as migrant

children, children with special needs, or those who have a “disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factors” (NCPCR, 2009).

### **Fee Regulation in Private Schools**

As far as providing better fee regulation in the private schools is concerned the Act does not have any provision under which the authorities can regulate the fee structure (Section 8 & 9). The Minister for HRD has declared that the private schools shall be free to hike fees and under-pay teachers (TOI, 2010). All existing provisions in the state/UT Acts empowering the respective governments to regulate fees shall become ‘infructuous’ since, in view of the concurrent status of education, the Central Act shall prevail wherever there is a contradiction. Further, the ban on charging of capitation fees under Section 13 is a smokescreen (TOI, 2010). The Act in practice permits private schools charge capitation fee as long as it is included in the fee being notified at the time of admission. “Nowhere does the Act say that all children will be provided *completely* free education? (Sadgopal, 2010). On the contrary, the Act reserves the right to levy charges as long as, in the ‘wisdom’ of the prescribed authority, it shall not “prevent him or her from pursuing and completing the elementary education”

Bhargava, (2010) the former vice chairman of national knowledge commission, stated that the Act places no restriction on the fees that may be charged by unaided private schools ostensibly set up as a Society or Trust but, de facto set up to make money for the investors, just like a corporate company. If they are truly set up not to make any profit they should not be charging any fees, and the fees paid by the children should be reimbursed by the government. They could then function as a part of the common school system in which children of the neighbourhood would have to go irrespective of their class or status. He further argued that there is nothing in the Act that will prevent unaided private schools from charging students for activities that are not mentioned in the Act. Examples would be laboratory fee, computer fee, building fee, sports fee, fee for stationery, fee for school uniform, fee for extra-curricular activities such as music, painting, pottery, and so on.

### **Age of Access / Entry into School**

Questions are raised about the age limit set in the Right to education. On the one hand, many educationists have raised an objection for not including 0 to 6 year age children. They argued that early childhood care is also very important to facilitate a strong foundation for children subsequently in the primary school. On the other hand, it also excludes those between 16 – 18 years. The exclusion of 0-6 years and 14- 18 years from RTE means neglecting the interests of 17 million children and contradicting the norms of UN Convention on Rights of Child, of which India is a signatory (Deepa 2005). It is also argued,

“It is very unfortunate that the government has mulled the RTE Act to play only on the age group of six to fourteen years when more than 50% of children, five year old, are enrolled in regular schools” (Banerji 2010:05).

Tyagi, (2006:07) of National Alliance for the Fundamental Right to Education (NAFRE) points out that the 0-6 age group is very important from the preschool point of view particularly for the marginalized and vulnerable sections of the society, ignoring it may lead to the promotion of child labor. Research has shown that 75% of brain development occurs by the age of 6 years (NAFRE). During this period, if children fail to have adequate health care, nutrition and stimulation, they are likely to have cognitive disadvantages that are not easily compensated for in adulthood. Thus, early childhood care and education form the solid foundation that supports and enhances subsequent educational participation and achievement. The Section 11 of the Act interestingly leaves the decision to ‘make necessary arrangement for providing free pre-school education’ to the state/UT governments as has been the case since independence.

The provision of early childhood care and education in the school’s vicinity is critical if children, in general, and girls, in particular, have to access and complete their schooling. The studies such as 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 were 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 (IAMR) 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 centers.

It is also important to note that the goals for elementary education in the Tenth Plan (2002-07) include *'all children in the 3-6 age groups must have access to early childhood care and education centres'* (p. 32). 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. We need to think once again that our education system grants an official entry to children before six years of age but none of the policies or plans seems to consider that.

On the issue of access of disabled children Alur, (2009) says that the bulk of schools under Sarva Shiksha Abhiyan (SSA) are not accessible for disabled children. Physical inaccessibility is the major barrier to the schools because schools are narrow and children with mobility difficulty find it difficult to go to schools. Lack of infrastructure support and improper ventilation, light, furniture in the classroom would affect their access. She further argued that a lack of infrastructural support and funding has ensured a micro level coverage of 2 per cent and a macro level exclusion from the government programme showing institutionalized discrimination and now exclusion from the Act.

With 14 years of education, a child would not have completed even 8th grade of education, without passing 12th grade a child would not be eligible even for low paying jobs. From the perspective of financial gains and value addition, Sadgopal (2010) argued that the education till the 12th grade is highly desirable in order to invest more in the human capital and thereby creating more active citizens playing a dominant role in economy and democracy. Many experts like Sadgopal, Mehendale feels that, if the guarantee limit of education is raised up to the age of 18 years then the act will definitely attract and motivate students to complete even their secondary and higher secondary education.

There is one more issue regarding the access / entry into the school as the lottery system, which has been recommended under the RTE Act, has been severely criticized by both schools and parents who have been arguing that the 100-point system is a more transparent and fair way of granting admission. Most schools are in favor of continuing the 100-point system, which also has the support of many parents who have been lobbying for it on online forums.

“The child's interest is of paramount concern to us but at the same time if the lottery gives rise to a situation where two children of the same parents study in two schools at two corners of the city, that is hardly acceptable”  
CM Delhi (TOI, (14 Dec 2010).

This is where the situation becomes little debatable as RTE Act prohibits any kind of screening for admission till class VIII, there for the point system cannot be get a green signal from the government. However, schools say the system has fallen in place well in the last three years and should be continued at least for admissions in the general category. The 100-point system was introduced in 2007 on the recommendation of the Ganguly Committee. Under it, a nursery admission candidate was awarded points on different parameters like distance from school, sibling, alumni, linguistic and religious minorities, and even parents' qualification and occupation.

Child Right and You (CRY), an NGO, has expressed the opinion that the Act really need some change in order to make education access to all. They had list out a three

point agenda. In their first argument they say that for the act to hold true to its meaning, it should make the clause applicable to all children instead of children age group of six to fourteen. According to them there is a huge demand for quality schools in every habitation of the country and government need to allot 10 percent of the GDP to education. According to them,

“Education up to middle school is not enough for a child's growth. Let us remember that this is the right to education bill and not the right to literacy alone. This selection of 6-14 age group is arbitrary and contradicts India's promise to its children, of making education available, accessible and acceptable” (Majumdar, 2010).

Interestingly, this view-point is contested by the private education providers who argue that it is impractical as well as undesirable to admit over-age children in the lower/entry levels of the primary school. For them, there is a mismatch in socialization and responses of children of various age groups even within 6 – 14 years.

Many states have also argued that the Act has ignored important issues such as free education for children below six and above 14 up to 18 years. According to them, they would not even have passed 10<sup>th</sup> standard at that stage. The 0-6 age group is very important from the pre-school point of view particularly for marginalized and vulnerable sections of society. Exclusion of this age group would mainly affect the poor strata and ignoring the under six age group could lead to promotion of child labor.

Many state governments have also raised the question of less infrastructure and resources for implementing the RTE. State governments like Karnataka, Haryana and Punjab reported a few challenges. According to these governments they need more infrastructures to set the Act in motion. Data provided by the state governments reveal that 5.1 lakh teachers are required to meet the Pupil Teacher Ratio (PTR) provided under the RTE Act. For example Karnataka needs to recruit 20,000 to 50,000 teachers, which is the same for Haryana and Punjab. Basic amenities are another issue that states needs to look at. For instance, in the case of Karnataka state, it requires 35,000 to 50,000 toilets only for girls. Overall, 7 lakh toilets for girls are required. The highest requirement is in Bihar with 90,000, followed by Madhya Pradesh with 63,000, and

Odessa 54,000. Another is providing adequate drinking water in schools. Nearly 4.3 lakh schools require drinking water in the country.

### **Equity and Quality of Schooling**

RTE Act includes 'provision of equitable quality of education' as one of its objectives. A major criticism of this is that the Act has failed to define the term 'equitable' unequivocally. Moreover, the term 'equitable' quality is equally or more ambiguous. What it may mean, according to Anil Sadgopal, (2005) is that the education system must fulfill certain minimum infrastructural (including those relating to teachers, library), financial, curricular, pedagogic, linguistic and socio-cultural norms. The Act specifies norms for physical infrastructure (number of rooms, teachers, toilets etc) but does not outline expectations on learning outcomes (Madhavan and Manghnani, 2005). Some of the mandates like "*A child cannot be held back in any grade or expelled from a school till Grade 8<sup>th</sup>*" contradict its objectives of ensuring that child is learning well. A recent nation-wide survey, ASER-2005 (Annual Status of Education Report), conducted by Pratham, an NGO, along with an alliance of about 500 NGOs nationwide) reports that 60% of the students aged 7 – 14 years could not read a story at grade 2, about 41% of children could not do basic subtraction and division. The surprising finding is that some states such as Jharkhand, Uttar Pradesh, Bihar, with high enrollment and literacy had poor learning level (ASER, 2005). National Advisory Council (2005) comments:

“Basic reading, writing, arithmetic, comprehension, and analytical skills as an essential outcome of elementary education: It is necessary to lay down in the law that basic reading, writing, and arithmetic skills including comprehension and analysis independent of textbooks, with defined levels at the end of primary and elementary level should be essential minimum outcomes of education” (2005:11).

Sadgopal, (2009) argued that the norms specified in the Schedule are, by and large, within the SSA framework. This implies that the present inferior infrastructural conditions are likely to be maintained and the government will not be required to make any greater investments other than what it was already making for SSA in the XI Plan.

For instance, computations based upon DISE data reveal that, when the Act is fully implemented, almost 67 percent of the primary schools shall continue to be denied a separate teacher/ classroom per class; 75 percent of primary schools shall not have a Head Teacher; more than half of the upper primary schools shall be without a Head Teacher and the same proportion shall be without even a part-time teacher for art, health & physical education and work-based education. None of the schools are guaranteed access to electricity, computers or teachers for computers.

Further it is argued that RTE does not formally include learning level assessment and improvement schemes; it leaves it to the states to define it and is not obligatory. Ramchandran, (2009), says the right to education should ideally guarantee all children 'equal' rights and creating schools with lower investment goes against the spirit of equality for two well known reasons. First substituting government primary schools with AS/AIE will affect the poor. The middle class and the rich continue to access regular schools with qualified teachers for their children thereby further reducing the chance of the poor ever competing with them in any sphere. Second as of now we do not have a clear picture of the nature and spread of private schools in rural and remote areas and even in urban/ peri-urban slums. Private schools in these areas are little more than poor resourced teaching shops, where children learn little and the schools themselves are ramshackle, and in many areas, unsafe ( Ramchandran 2009:155,157).

NIRANTAR, an organization working on gender issues and the right to education, expressed that the government has produced an incomplete law after such a long time which has no use for the needy sections of the society. The RTE Act has also been criticized by many NGOs (which work for disability rights), for not giving attention to the disabled children. NGOs like Action for Ability Development and Inclusion (AADI), National Centre for Promotion of Employment for Disabled People (NCPEDP. According to these NGOs, handicapped persons need to be given a special mention in the most sought Acts in the country. They criticized the Act, because it jeopardized the chances of 20 million children with physical and other disabilities to get the right to education as the Right to Education Bill, which was tabled in the Lok Sabha, exclude them. The Bill did not talk of children covered by the Disability Act of 1995, and as a result, it excludes children with mental and learning disabilities covered by the National Trust Act. Chapter 2 of the RTE Bill states,

"Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act".

The implications of this are children with disabilities are excluded from the Right to Education Act (Abidi, 2009). Activists argue that it proves the point that the disabled are low priority for the government. Further, according to the disability activists the main problem with the bill is that it does not provide for disabled-friendly infrastructure in schools. The Schedule to the Bill sets up the "norms and standards" that all schools must compulsorily adhere to, such as "playgrounds", "separate toilets for boys and girls", and "safe drinking water". But there is no mention of special facilities for disabled children such as ramps and trained teachers. They argue that there is nothing in the bill for special children on which it can be said that this Act makes it possible for the disabled to access such schools. The RTE, in fact, have no meaning for these children.

On the definition and right of disable/differently able RTE Act is not giving us a clear picture. Alur ,(2009), argued that under this act 30 million children who are differently-abled remain uncertain they are not explicitly characterized as 'disadvantaged' children in the act, and so will not have the right to 25 percent reservation in private schools. RTE had not included them in the key definition. According to her the other problem with the right to education act is the definition of 'disability' HRD Minister Kapil Sibal mentioned in the parliament that the all disabled children as defined by the Person with Disability (PWD) Act, would get free and compulsory education. But the PWD's mandate does not give children with disability the fundamental right to free and compulsory education as does the RTE Act. The right to education is specifically required for children with disability, who suffer from abysmal enrollment in schools.

The other criticism that disability activists have with the RTE is that the disabled children are not categorized as "disadvantaged." "Disadvantaged" children such as Scheduled Castes, Tribes and Other Backward Classes (along with economically "weaker sections") are entitled to 25 percent reservations in all schools. The 2008 draft

included disabled children in the definition of “disadvantaged children”, but the final form of the Act has deleted “disability” from this definition.

According to Mahendale, (2010), Children with disabilities, children from internally displaced communities and migrant families and children coming under the juvenile justice system need to be specifically included in the model rules so as to protect their right to non-discriminatory treatment and their right to receive education in mainstream schools.

So far as minorities are concerned, the All India Muslim Personal Law Board (AIMPLB) oppose right to education on several grounds. According to them, the Act first of all can be seen as violating the right to set up minority institutions under Article 30 of the Constitution. Second, it stipulates that parents should make up 75 per cent of a school’s administrators. This violates another Constitutional guarantee that gives minority institutions a virtual free hand in running their affairs. They have argued that the Act recognizes only one type of school and only one type of education. It can be used to outlaw madrasas,” (Madani, 2010).

The Jamiat-Ulema-i-Hind has also expressed serious concern at some provisions in the Right to Education Act (RTE), citing apprehension that the Act may affect the madrasa education system. They describe the Act as against fundamental rights and demanded exemption of schools run by religious and linguistic minorities from its provisions. (Farooqui, TOI, 14 Nov 2010). According to the organization under the Article 30 of the Indian Constitution minority educational institutes have the freedom to run according their own system and laws but clause 3 of this Act, the local administration will have the right to forcibly act against Madrasas which are imparting education to the children aged between 6 -14. “It clearly indicates that the government is trying to penetrate into madras system through the backdoor,” (JUH, 2010).

Further, HIV/AIDS-infected children and sex workers had no mention in the act. The Child Rights Trust, Bangalore argue that the act is discriminatory and biased against disabled children, children with HIV/AIDS and children of devadasis and sex workers.

“RTE Act ignores children from minority groups. The act is almost silent about children who belong to various minority groups. That way a large

portion of the children have been left out from the preview of the act,”  
(Padmini, 2010).

### **Financing of Right to Education Act Implementation**

The Steering Committee of the Planning Commission in its latest report (2006) says, “The Centre and the States should jointly share the responsibility of providing necessary financial resources for implementing such a guaranteed right to elementary education” (Planning Commission, 2007). According to the Planning Commission, for the implementation of the right to education in its said form huge amount of financial money is required. According to commission estimate the total expenditure on elementary education will be to the tune of Rs 30,000-Rs 35,000 crore per annum for the next five years. The current allocation for Centre and states combined is Rs 18,000 crore - leaving a gap of Rs 10-12,000 crore. “If the Centre is serious about RTE, it will have to find a way to bridge this gap” (Mehrotra, 2009).

There is no clarity on who will take the lead in financing the Act. Ideally, the Central government ought to be shouldering this duty in the light of the poor fiscal situation in most of the States. Acknowledging this reality, the Act notes that the States may seek a predetermined Percentage of expenditure as grants-in-aid from the Central Government based on recommendations of the Finance Commission on assessment of additional resource requirements to any State. Be that as it may, the Act reveals the obvious contradiction when on the one hand, it suggests both the Union and State Governments have concurrent responsibility to finance the Act, with the Centre preparing estimates of capital and recurring expenditure under the Act, on the other, it unequivocally holds the State governments responsible to provide funds for implementation of the Act. Spending on education by the Union government in 2009-10 (BE) stood at Rs.44,528 crore (around 0.76 percent of GDP) while the State governments in 2008-09 (BE) were provisioning Rs.1.3 lakh crore (around 2.3 percent of GDP). Despite reiterating the same commitment in the past 40 years, spending on education by Union and State governments as a proportion of GDP remains at 3.7 percent (2007-08). The CABE Committee had estimated that in the six year period of 2006-07 to 2011-12, Rs.4.36 lakh crore (with teacher’s salary at Kendriya Vidyalaya norms) and Rs.3.93 lakh crore (with teacher’s salary at prevalent scales) would have to be allocated to universalize



elementary education. Sticking to the lower level of CAGE projections, the additional required outlays are Rs.3.93 lakh crore for a five-year period. In this regard, reports in the media suggesting the required additional outlays anywhere in between Rs.1.78 to Rs.2.32 lakh crore, spread over a period of five years, as estimated by the MHRD, for implementing Right to Education Act seem extremely disturbing, if not mysterious. (Jha, 2010:02).

According to Tilak provision of good quality elementary education to all children as a right would mean a lot of finances. “The act makes no compulsion on the part of the Union government to provide funds to the state governments. In the absence of any clear provision, the Union government may be let off the hook by providing a small token share” (Tilak, 2010). Tilak focused on the sad fact that since 1951 – 52, share of education in the GNP in the percentage wise is slowly and reluctantly increasing and falling and never reached 6% of the GNP since last five decades. Sakia Committee, Tapas Mujandar Committee, tenth five year plan, working group, Government of India under SSA and Government of India in National Plan of Action, followed by CAGE Committee on Right to Education had given financial calculation. (Tilak, 2007). Committee chaired by Tapas Majumdar (1999) was set up, which considered several parameters for providing good quality education to all children in India and in 1999 estimated that it would additionally require around Rs.137, 000 crore (in real prices) for a 10- year period – Rs.13,700 crore on average per annum (about 0.7 percent of GDP, assuming that GDP would increase at a growth rate of five percent per annum). But the estimate was found to be astonishingly high and several attempts were made in the subsequent period to rework the estimates, essentially attempting to lower it. Given the fiscal situation of many state governments, it would be desirable, as recommended by the Tapas Majumdar Committee, for the union government to share the total additional responsibly of financing free and compulsory education, until the goal is achieved, rather than proposing a distribution of responsibilities between the union and the states in the ratio of 85:15 in the first five years, 75:25 in the next five years and 50:50 thereafter, as provided in the Sarva Shiksha Abhiyan.

However, many states have also argued that the RTE made State and local bodies accountable for the implementation, even though neither have the financial capacity. Some states like Uttar Pradesh charged that since the central government takes all the

credit for the legislation it should also ensure that funds are available. Bordia Committee (2010) set up by the ministry in 2009-10 to harmonise the Sarva Shiksha Abhiyan and the RTE also argued for a higher financial burden for the centre. It said that sharing ratio of 55:45 (for the current year) and 50:50 (in 2011-12) would be unfavorable to the states as they would have to practically double their allocation.

The Act stipulates that the appropriate Government would prescribe expenses that the child would be free from incurring which may prevent the child from participating and completing elementary education. Nowhere does the Act say that all children will be provided '*completely*' free education. On the contrary, the Act reserves the right to levy charges as long as, in the 'wisdom' of the prescribed authority, it shall not "prevent him or her from pursuing and completing the elementary education" [Section.3 (2)]. 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).

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 (1996) 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 Parliamentary Standing Committee on Human Resource Development had noted, 'free education should include provision of text-books, stationery, uniform, one meal and transport...' Thus, the Act and prescribed rules from the states may actually dilute this notion of 'free education' before even bringing it into reality.

Others such as NCE<sup>1</sup> ask the Government to ensure a minimum of 6% GDP allocation for education with subsequent increase. Communist Party of India has also expressed the view that that the RTE Act could never become a reality, as the State governments had to bear a huge financial burden while implementing the Act. According to them government's expenditure in education should be increased to 6% of the GDP. Blaming the Finance Commission for failing to realize that the State governments were in a difficult position to implement the Act, party believes that privatization and withdrawal of government from the education sector seemed to be the defining feature of the Centre's policy in the educational sector.

Students Federation of India (SFI), student wing of the Communist Party of India (Marxist), though supports the bill; it demands that the entire expenditure for the implementation of the Right to Education should be borne by the central Government. Education of children of 0 to 6 and 14-18 has to be brought into the purview of the Act, thereby universalizing both primary and secondary education. It further asks the State to ensure that required number of government / aided schools is opened, with hostel facilities particularly in tribal areas, in course of time for ensuring universal enrolment. Every habitat must have a school up to class XII level within the prescribed distance limits. For admission of children belonging to weaker sections to 25 percent of the seats in unaided school, no subsidy should be given.

According to SFI, 'special' schools like Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools, etc. should be treated on par with other Government/aided schools. Teacher-pupil ratio should be brought to appropriate levels; qualified teachers should be appointed and periodical training given to them, adequate infrastructure should be provided in every school to ensure quality of education imparted and mid-day meal should be extended to all school students, the achievement of relevant learning

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<sup>1</sup> National Coalition for Education (NCE) is a conglomeration of India's five largest networks working on ensuring the right to education, represented by 168 MPs, from all major political parties, All India Primary Teachers' Federations (AIPTF), Bachpan Bachao Andolan (BBA), All India Federation of Teachers' Organization (AIFTO), All India Association for Christian Higher Education (AIACHE) and South Asian Coalition on Child Servitude (SACCS).

outcomes via pedagogical support, teaching aids, curriculum changes, remedial classes and other such mechanisms through the adoption of suitable legislative measure should be ensured and there should be strong social monitoring mechanism in every school involving parents and the local community as well.

### **Issue of Teachers**

According to the Left parties, there is no national concern over the mechanisms built into the RTE Act to pauperise the teaching labour force. It provides sufficient ground, through its Section 23, to appoint teachers who would continue to follow the parameters of what has become known as Para-teachers. While great duties are expected out of the teachers there is no provision which would define their wages or working conditions. And may be the notion of teachers as non-workers, and as 'messengers of god' obliterates any possibility of their consideration as workers howsoever much they are integrated into the market and prone to the vagaries of capital (Kumar, 2009). As far as the issue of raise status and quality of teacher are concerned Sadgopal, (2009) argued that this matter has been deliberately left ambiguous and to be prescribed later. Analyzing Section 23 in the perspective of the DPEP and SSA policy framework of the past 20 years shows that the prevailing neo-liberal policy of appointing Para-teachers shall continue, unless some state governments act otherwise with unprecedented political will. If the intention was to ensure well-qualified and trained teachers, the Act would have included specific provisions to reverse the present trend. Ironically, the reference to NCTE in the previous Draft has been removed. The budget allocations approved by the Planning Commission also provide for salaries which are in the framework of Para-teachers, rather than regular teachers with pay scales. No evidence anywhere that there would be any major programme for overhauling the quality of the disastrous teacher education system. This leaves the private sector free to provide inferior teacher education with unregulated profits under PPP, while the State continues to abdicate its responsibility to give good teachers to the school system.

Jain and Dholakia, (2009) argued that there are only three ways in which the government can pay all teachers a salary recommended by the sixth pay commission. First way is that the education budget can be raised much beyond the 6 % of GDP; to

above 15% of GDP on a sustained basis but this is neither feasible nor practicable in Indian economic and fiscal constraints. Second way is that government can keep the budget allocation at 6% of GDP, but then cover much less than the universal coverage of children under primary and secondary school but the provision of right to education will rule out this option. In our country the political leadership will rule out the possibility of reducing the government school teachers' salary significantly below the levels recommended by the sixth pay commission either hiring on ad hoc basis or denying them the benefits available to permanent regular teachers for a longer time. Therefore to the only option is to pursue the goal of universal school coverage through Public Private Partnership (PPP) in which low cost private provider of school education, who pay much lower teacher salary, cover a significant part of school education. They argued that many studies like Pankaj Jain 1997, Tooley et al: Vachani and Smith 2007 shows that private and non-government schools can supply a reasonable quality of school education at almost 25% to 35% of the cost of government education. They are arguing that this happened because the salary of school teacher in the private sector is almost 25% to 35% of government salary. Under the educational guarantee scheme (EGS) in Madhya Pradesh and Shiksha Karmi programme in Rajasthan and alternative schools in (AS)/ Centre under Sarva Shiksha Abhiyan has been funded by government to provide education for disadvantaged community in spite of very low teacher salary and low per child budgetary allocation they are still manage to provide quality education than that in the regular government schools in some cases. They advocated for these kind of alternative and innovative education.

On the response to this study Sarangapani, (2009), said that in their study 'Jain and Dholakia have provocatively argued that the fundamental right to education, which may be read as a fundamental right to "quality" education, can be achieved in an economically viable manner, only if the State systematically partners with private providers in the elementary education segment and focuses more of its efforts in the area of secondary education to meet the impending scenario of universal secondary education.' They calculated the costs of schooling which are based on realistic estimates that discount all "management costs". This calculation suggests that "something must give" to manage the task within the agreed budgetary allocation of 6% of gross domestic product (GDP). The chosen sacrificial lamb is the teacher, and

the teacher's salary. They then draw upon some recent studies to claim that budget private schools have demonstrated their ability to provide quality education at considerably low teacher salary levels. The argument is provocative because it is not Milton Friedman's "in principle" argument that contests the need for the State to monopolise education provisioning, which is better served by the market. It attempts to demonstrate that there is no argument; this is the "hard truth, based on evidence", and therefore, best accepted (Sarangpani, 2009:67).

She said that this study could lead one to conclude that, therefore, a larger proportion of the GDP must be allocated for education, and in particular, for *elementary* education, which is the fundamental right. However, Jain and Dholakia follow an international trend of targeting the teacher's salary, by first calculating the "feasible" pay for teachers, Elementary school starting salary of Rs 5,739 as opposed to the Sixth Pay Commission figure of Rs 13,042 and secondary school starting salary of Rs 6,887 as opposed to the Commission's norm of Rs 15,996 taken for 80% coverage by government schools and pupil-teacher ratio of 40:1.

On teachers involvement in non formal education centers Sarangpani, (2009) explains that 'this is not to doubt the sincerity and well meaning intent of those involved, or that children enjoy these spaces more than those of regular schools. At the risk of sounding trite, schools need to provide for holistic all-round development of children; this requires adequate space and facilities, time to be spent at school, a sound curriculum, and qualified teachers who can ensure that children have worthwhile learning and development experiences and opportunities.' She further argued that 'a cynical bureaucracy is making it increasingly difficult to do this in the government schools, and that we do not have enough inter-sectoral efforts between ministries to ensure that the opportunity costs of such a "full experience" of schooling for children is minimized for poor parents' (Sarangpani, 2009:68).

### **Recognition to the Unrecognized Schools:**

According to the State Governments, there are many schools functioning without having obtained the mandatory recognition from the education department, which is one common malpractice. Thousands of these unrecognized schools have been operating in the state for decades. Survey conducted in 1996 in five states namely UP, Bihar, Himachal Pradesh, Rajasthan and Madhya Pradesh by the Public Report on Basic Education in India (PROBE) found that 63 percent of the existing private schools in 188 villages were unrecognized. Prof. Yash Aggarwal on the basis of his 2000 report on Haryana estimated that in every five years the number of unrecognized schools was doubling and if the pace continued, unrecognized schools in India will be 1.5 to 2 times more the number of government-run primary schools.

Prof. Arun Mehta, (2005) surveyed seven districts of Punjab in 2005 and found that the state had 3,000-plus private schools with around 3.5 lakhs children studying in them and out of these 3,000 schools around 86 percent were unrecognized. Similarly according to another report in 2000, there were 2,000 private schools in Haryana and 850 schools were unrecognized out of them.

At present Andhra Pradesh has 10,000 unrecognized schools and Delhi, has around 1,500 to 10,000 unrecognized schools with over six lakhs children enrolled in them. The government is unaware about the exact number of private run unrecognized schools in the capital (kulkarni, 2010).

The RTE Act stipulates that all unrecognized schools will have to apply for recognition and seek approval within three years, failing which they will be fined Rs 1 lakh (RTE Act, 2009). If they still continue to function, they will be fined Rs 10,000 per day. State government argued that they do not even know where or how many such unrecognized schools exist, how they (state governments) can ensure regularization of these schools.

An article "The Right to Education Act: a critical analysis"(2010), said that the RTE Act mandates that unrecognized institutions which fail to meet the set criteria will have to close down after a period of about 3 years. However, apart from mandating that the

students in these schools will have a right to seek transfer to other schools within the area, the Act does not specify how and on what basis these students will be given admission in other schools. With recognized schools already straining under the burden of having to support free education for all students who approach them (till their capacity), the room for accommodating more students will be scarce. This itself will create uncertainty for students studying in these unrecognized institutions, and will also create a strain on recognized institutions to accommodate them later.

Mehendale, (2010) said that prescribing norms and standards for recognition of schools has been the mandate of the state governments but as per the act, the central government has been given the power to amend the schedule. Given this, the model rules should take on board the existing norms and standards that state governments have prescribed and insist that higher standards be adopted in the interests of ensuring higher quality of education. For instance, most of the states insist that schools seeking recognition must hire teachers with minimum qualifications. They also have infrastructural norms such as size and ownership of land belonging to the school, physical space available per child, fire certification of schools and laboratories. But these are completely absent from the schedule (Mehendale, 2010:11).

Now the problems for the state governments are that the RTE Act may now force the state government to make some effort to curb the mushrooming of such schools. If they do crack down on unrecognized schools now, the innocent victims will be many thousand students who study in these schools and who will have to find alternative schools in a notoriously overcrowded sector.

#### **RESPONSE OF THE PRIVATE SECTOR TO RTE: Making RTE for Profit?**

The Associations of Unaided Educational Institutions (Private Schools) have challenged the Right to free and compulsory education act by filed petitions in the Supreme Court and argue that the act is "unconstitutional" and violative of fundamental rights. Under the Act, free and compulsory education was made a fundamental right for children between 6 to 14 years of age and it mandate that even private educational institutions have to reserve 25 percent of the seats for children from poor families. The



Association has argued that the Act violated the rights of private educational institutions under Article 19(1) (g) which mandated maximum autonomy to private managements to run their institutions without governmental interference.

Although these schools may be criticized for being 'elitist and snobby', but they insist they are "not against the legislation per se". "We are against the Government dictating terms to us - whom should we admit and whom not. We despise its attempts to curtail our freedom," (George 2009).

"Laws and Bills don't make children go to school. Initially, there will be problems because while everyone must understand their social responsibility, what matters is whether the right children will have access to this programme. They say the fee component will be given by the government, but it's not fair to put that cost on others" (Vaidyanthan, 2010).

Private schools however feel this reimbursement is too meager for the quality they offer. "We spend around Rs 25,000 per child every year. We support the Act but we must know where the money to teach 25 per cent students will come from?" says Ameeta Wattal of Springdales School, Delhi.

The private schools have raised many concerned issues regarding RTE to implement it their schools, the important among them were like they do not have provision to accommodate 25% students and government should open separate schools for such students, The children who are likely to find their way in to schools under this quota would spoil the 'other' children as they are from 'such' background. Their argument is when you do not have someone at home to take care of their learning on a daily basis, how we will be able to push them to excel in their studies, according to Section 29 of the RTE, the academic management will come under Academic Authority. This will require bringing about uniformity between state syllabus and central syllabus, which in turn will affect the quality of education.

Further, the corporate sector through Confederation of Indian Industry (CII) though welcome the initiative of the government to bring the right to education, they argue that there is a need for more clarity in the policy. The Constitutional Amendment conferring right to education is flawed in 3 important ways:

- 1) Exclusion of 3-6 age groups as well as 14-16 age groups.
- 2) It compels children to receive education; this is a defective formulation of a right because law cannot compel citizens to exercise rights.
- 3) In regard to quality of education the amendment leaves says: “as the state may determine”.

Lack of policy clarity is coming in the way not only of implementation of Right to Education but is preventing delivery of good quality elementary education to all children of the country.

“The most critical challenge for India is to tackle the issue of elementary education at the grass – roots level where the numbers are in the millions and the problems are acute. The real challenge is to provide quality – primary education to millions of disadvantaged children remembering that 600 million people live in the rural areas and 500 million people in India are under 25 to 30 years of age. So, we are a “young” nation but if we don’t take care of providing education then a Potential demographic dividend will turn into a demographic disaster” (CII, 2007:13).

According to CII, there is an urgent need to change the demographic dilemma into a demographic dividend by accelerating actions to make to Right to Education a reality for every Indian. They highlighted the importance of public institutions delivering education and primary health and the fact that nowhere in the world has education been universalized without government, without state schools. Therefore creating a parallel infrastructure through private intervention is not going to work beyond a certain extent. CII argue that there is an urgent need for States to intervene to support and enrich existing State supported institutions for teacher education and increase their number in remote and backward locations. Simultaneously, they suggest that efforts are to be made to upgrade elementary teacher education programme by enhancing its status in the academic hierarchy and create appropriate linkage with the higher education system.

Centre for Civil Society, an NGO, that operates to promote the neo-liberal agenda on behalf of the market forces, believe that the Free and Compulsory Education Bill, does not address the two most critical criteria for education reforms—competition and choice. Instead it creates several layers of new bureaucracies. The fundamental assumption of the Bill that education can be improved by anointing more ‘babus’ to tighten controls over private schools defies common sense and general experience. They argued that it is time to promote and implement an education policy that fosters competition and choice which the Bill does not. They criticized the bill on many grounds as following;

1. No more Freedom and Choice: - According to Centre for Civil Society, the Act does serious damage to areas of education where some degree of competition and choice exist. The Bill takes what is already a sad situation and makes it far worse. It does not empower the parents to choose. Instead it empowers government and other third party officials to impose arbitrary and vague directives. It does not transfer scarce taxpayer resources meant for education to poor parents. Yet it continues to pour money into failed government schools. To add insult to injury, it puts the same inept government education officials, who are responsible for the current state of government schools, in control of private school resources. The Bill will ensure the beginning of the end of better quality of private education.
2. Rampant Corruption: - This Bill has so many holes and loopholes to drive a fleet of school buses filled with extortionist government officials through it. The government, after having retreated from the lesser commanding heights of running bakeries and steel mills, is now clawing its way back to the higher heights of more complex tasks, like micro-managing private educational institutions. Private educational institutions are held in high esteem in India. Competition, sense of higher purpose among the founders and administrators of these school and parental preference and choice are among the main reasons for their success. But a very important reason that is often overlooked is the relative autonomy of these private educational institutions. This Bill is a direct assault on that autonomy and integrity.

3. Politicization of Education: - There is another very pernicious certainty that should not be overlooked. This Bill has put government literally in control of upto 25% of seats in private schools. This would surely worsen the problem of politicization of education. Governments already control the curriculum in private schools. Putting the government in charge of the physical resources of private schools is a very unwise move. Would the vote bank politics, as in other government-controlled services, determine admissions to schools?
4. Overburdening Private Schools: - They argue that the act will now force the school to take away the admission from existing students to make room for the BPL students. This means that almost overnight schools would have to expand their capacity in terms of funds, space, and teachers. In practice, the schools would most likely learn a few days before the academic year about the proportion of BPL children they need to take for that year. In short the government would have a huge problem on its head. It does not address in any way the rot that exists in government run school systems and to make matters worse, puts the same government officials, who manage the existing decrepit schools, in charge of a large portion of private schools. Such a bill will not achieve the noble goal of educating every child. It will also guarantee further politicization and corruption of our education system. They believe that the bill will seriously damage the purpose of quality education for all children.

### **Summary**

Various debates around right to education are trying to captured in the present chapter, which creates both confusions and curiosity. The debate on Right to Education which was initiated by Mahatma Jotirao Phule almost 125 years ago when a substantial part of the memorandum presented by him to the Indian Education Commission (i.e. the Hunter Commission) in 1882 dwelt upon how the British government's funding of education has taken entirely a new dimension but still resolve around the same kind of issues as one of which is fund sharing between centre and state to implement RTE act. The Act, 2009 has extensively been debated in the media, civil society and academic debates. There are lots of issues which are questionable and debatable like 25%

reservation for weaker sections of the society in private schools, norms to raise quality etc. The right to basic education is central to the concept of human rights. The right to basic education is most fundamental of all fundamental rights only after the right to food because without it human life with even iota of dignity is inconceivable. Therefore, the right to basic education is clearly a facet of human rights, and thus does not depend on citizenship in view of its sheer universal dimension and deserve very serious concerns in terms of debates.

## CHAPTER 5

### Summary and Conclusions

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The study aimed to examine the dynamics and debates around the making of the Right to Education in India. It tried to discuss the circumstances that have led to the making of the Right to Education (RTE) Act 2009 in 2010 and the agreements and disagreements among various stakeholders over different aspects of the Act. What the study brought out in the end is that a number of forces worked to make it possible and an equal number of groups and individuals have worked for its non-introduction in the Parliament. It is evident from the long wait that the country had to put up with for seeing the RTE Act.

First and foremost, the study established the inference that the RTE Act emerged not simply because of the internal or domestic forces or pressures. In other words, it must be kept in mind that the RTE Act was an outcome of the international commitment that the country had made in the wake of many conventions and declarations. For instance, United Nations (UN) has been promoting and codifying human rights for 62 years. Human Rights have been promoted through the Universal Declaration of human rights and associated resolutions, covenant, fact finding commissions, and monitoring and reporting mechanisms. That means, 'Human Rights' as a philosophical concept refers to the reasonable demands for personal security and basic well being that all individuals can make on the rest of humanity by virtue of their being members of the species, homo-sapiens. Building on a foundation of nature, law, political principles, national and international legal instruments and humanitarian agreements, the UN concept of human rights acknowledges that in all times and places, reasonable people, regardless of political affiliation, demand certain minimum standards of behavior by government toward their own citizens

Philosophically, as discussed in the chapter two, human rights are based on respect for the dignity and worth of each person both as individuals as well as the members of society as a whole, a community or a group. Every human being should have a

dignified life and should be respected regardless of age, gender, race, religion, caste nationality, or any other factor; everyone is entitled with quality of life. National governments and international institutions both have responsibility to make sure that rights are respected and protected. Human rights encompass those values which can be found in all cultures and religious and ethical traditions. The Magna Carta in England, the American Declaration of Independence, the French Declaration on the Rights of Man, Bolschevik Revolution in Russia were the important landmarks in the development of the concept of human rights. According to legal theory of rights, rights spring from state. The state defines *what rights are* and *what are not*. State provides the list of basic and fundamental rights. The state makes laws to uphold rights and also sets up machinery to enforce law and upholds rights. At the other side socialist theorist believe that *rights are created by society for social welfare* (Naseema, 2002:07). Rights had a long history which sets the grounds for human rights.

Education is one of the Rights which was formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1981). These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to provide basic education for individuals who have not completed primary education. They suggest that the aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance. Thus, the right to education has been recognized as encompassing access to educational provision, as well as the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. In addition, education is necessary for the fulfillment of any other civil, political, economic or social right (UNICEF 2007: 07).

In India, the Right to Free and Compulsory Education Bill, 2009, was enacted into law after it was passed by both the Houses of the Indian Parliament and signed by the President of India. Its main purpose is to provide free and compulsory education for children in the age group of 6 to 14 years. There have been extensive debates on the extent to which this Act will help in implementing the Right to Education as provided in Article 21-A of the Indian Constitution. Although there are various arguments against and in favor of the Act, it can be said that the Act has added a new dimension to the Indian school education. The Act stipulates the following:

1. Every child from 6 to 14 years of age has a right to free and compulsory education in a neighborhood school till completion of elementary education.
2. Private schools must take in a quarter of their class strength from 'weaker sections and disadvantaged groups', sponsored by the government.
3. All schools except private unaided schools are to be managed by School Management Committees with 75 per cent parents and guardians as members.
4. All schools except government schools are required to be recognized by meeting specified norms and standards within 3 years to avoid closure.  
It makes provisions for a non-admitted child to be admitted to an age appropriate class.
5. It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
6. It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school working days, teacher working hours.
7. It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state



legislatures and parliament, and disaster relief.

8. It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications;
9. It prohibits (i) physical punishment and mental harassment, (ii) screening procedures for admission of children, (iii) capitation fees, (iv) private tuition by teachers, (v) running of schools without recognition,
10. It provides for the following penalties :
  - a) For charging capitation fee : fine upto 10 times the capitation fee charged,
  - b) For resorting to screening during admission : Rs 25,000 for first contravention; Rs 50,000 for each subsequent contravention,
11. It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning.
12. It provides for protection and monitoring of the child's right to free and compulsory education and redressed of grievances by the National and State Commissions for Protection of Child Rights, which shall have the powers of a civil court.

As discussed in the previous chapters, the Right to Education Act has generated many debates among the stakeholders. They had contested or concurred with a particular dimension of the Right to Education Act. These agreements and disagreements over the Act have made the entire process of 'making' the Act a complex process. The issues on which disagreements prevail even today are, for example, complete neglect of issues of curriculum, pedagogy, education for disabled children; provision for financing , total lack of concern for teacher's education and quality, their working conditions, the age of admission into school (primary section), the role of government in the management of

private schools; the controls exercised by the State on the private sector, closing down of unrecognized schools; the need for common school system, etc.

Firstly, the RTE Act in its current form does not have a provision for an effective implementation of Common School System (CSS). The detractors of the RTE argue that CSS does not imply a uniform school system, but instead it intimately ties the schools to the local community with provision of sufficient academic freedom to explore and innovate. According to them, this is beneficial not only for the children of the poor but also for the children of the rich and the privileged groups since by segregating their children, such privileged parents prevent them from sharing the life and experiences of the children of the poor and coming into contact with the realities of life. Such an education of exclusivity would rather render the education of privileged classes' children anemic and incomplete. It is also argued that the Act will not only co-exist with this disparity-based multilayered school system but would also legitimize it in various ways. For instance, this is precisely what the much-hyped provision of at least (or up to) 25 percent reservation for children of "weaker and disadvantaged groups". For some protagonists of the RTE, the Act facilitates common school of a kind by implementing 25 % reservation in the private schools which, though it is like a charity. Some others would argue that the quota will make students admitted feel diffident and discriminated.

It is argued that the mandatory rules or norms in the act are not clear as to enable to implement the Act in its true sense. Activists like Vinod Raina, (2009) argued that the Bill does not explicitly spell out the quantum of punishment for violations – be it for denying admissions or for violating the provisions regarding quality of access, teacher attendance and so on. For example, the Bill explicitly says that admission cannot be denied for the lack of a birth certificate, transfer certificate or for seeking admission after the session has started. But who will monitor that? State governments also pointed towards the shortfalls of implementation particularly regarding financing, provision of adequate infrastructure, private schools' screening process, fee structure, recognition process and many more.

The union government at present has mooted a centre-state fund sharing pattern of 55:45 which was earlier in the ratio of 75: 25. According to many states, they lack

sufficient resources to implement the Act and it is the Centre's responsibility to meet the expenditure. Scholar – Activist, Anil Sadgopal, presents the possibilities of conflicts in terms of monitoring of the Act and those who needed to be accountable for such a monitoring instrument. According to him, 'if you take a careful look at Section 36 & 37, in the case of violation of 3 provisions relating to private schools, viz. charging capitation fee and using screening procedure for admissions (Section 13), seeking recognition (Section 18) and fulfilling norms and standards in the Schedule (Section 19), no prosecution is allowed "except with the previous sanction of an officer authorized in this behalf . . . ." (Section 36). Ironically, the Act asks the masses to seek permission from an officer to institute prosecution against him for violating the provisions! Moreover, Section 37 bars any legal proceedings against any authority from local body upwards to the centre in respect of any act "which is in good faith done or intended to be done.

There is another issue regarding the autonomy or administration in the Act. The RTE Act provides for different layers of administration starting from the Central, state, and local governments and school management committees to manage the primary-upper primary system. School management committees have been given the main responsibility of monitoring free and compulsory education. Although the Act provides partial autonomy to School Management Committees (SMCs) in managing schools, the state retains the power to determine and provide school requirements such as, location, infrastructural needs, teachers etc. This adds many layers and powers to the existing bureaucracy in education sector. Some of the experts strongly recommended that the RTE should decentralize the administrative structure of elementary education. It is argued that the Act should provide more structural and financial autonomy to local bodies.

Questions are also raised about the age limit set in the Right to Education Act. On the one hand, many have raised an objection for not including 0 to 6 years of age children. They argued that early childhood care is also very important to facilitate a strong foundation for children subsequently in the primary school. On the other hand, it also excludes those between 16 – 18 years. The exclusion of 0-6 years and 14- 18 years from RTE means neglecting the interests of 17 million children and contradicting the norms of UN Convention on Rights of Child, of which India is a signatory. It has been

argued that with 14 years of age, a child would not have completed even 8th grade of education, without passing the 12th grade a child would not be eligible even for low paying jobs. From the perspective of financial gains and value addition, Sadgopal (2010) argued that the education till the 12th grade is highly desirable in order to invest more in the human capital and thereby creating more active citizens playing a dominant role in economy and democracy. Many other experts also contend that if the guarantee limit of education is raised up to the age of 18 years then the Act will definitely attract and motivate students to complete even their secondary and higher secondary education. Education up to middle school is not enough for a child's growth. Let us remember that this is the right to education bill and not the right to literacy alone. This selection of 6-14 age group is arbitrary and contradicts India's promise to its children, of making education available, accessible and acceptable (Majumdar, 2010).

On the issue of access of disabled children, Alur, (2009) says that the bulk of schools under Sarva Shiksha Abhiyan (SSA) are not accessible for disabled children. Physical inaccessibility is the major barrier to the schools because schools are narrow and children with mobility difficulty find it difficult to go to schools. Lack of infrastructure support and improper ventilation, light, furniture in the classroom would affect their access. She further argued that a lack of infrastructural support and funding has ensured a micro level coverage of 2 per cent and a macro level exclusion from the government programme showing institutionalized discrimination and now exclusion from the Act. Further, HIV/AIDS-infected children and children of the sex workers had no mention in the Act. The Child Rights Trust, Bangalore, argue that the act is discriminatory and biased against disabled children, children with HIV/AIDS and children of devadasis, sex workers and other disadvantaged children.

RTE Act includes 'provision of equitable quality of education' as one of its objectives. A major criticism of this is that the Act has failed to define the term 'equitable' unequivocally. Moreover, the term 'equitable' quality is equally or more ambiguous. The Act specifies norms for physical infrastructure (number of rooms, teachers, toilets etc) but does not outline expectations on learning outcomes. Some of the mandates like "a child cannot be held back in any grade or expelled from a school till Grade 8<sup>th</sup>" contradict its objectives of ensuring that child is learning well.

Some other minority groups like Jamiat-Ulema-i-Hind have also expressed serious concern at some provisions in the Right to Education Act (RTE), citing apprehension that the Act may affect the Madrasas education system. They describe the Act as against fundamental rights and demanded exemption of schools run by religious and linguistic minorities from its provisions.. According to the organization under the Article 30 of the Indian Constitution minority educational institutes have the freedom to run according to their own system and laws but clause 3 of this Act, the local administration will have the right to forcibly act against Madrasas which are imparting education to the children aged between 6 and 14. It clearly indicates that the government is trying to penetrate into madras system through the backdoor.

A much debated issue is of the issue of financing education for fulfilling the goal of right to education. It is an issue of conflict between state and center governments - *whose responsibility is it to fund RTE?* According to the Planning Commission (2007), for the implementation of the right to education in its said form huge amount of financial money is required. There is no clarity as to who will take the lead in financing the Act. Ideally, the Central Government ought to be shouldering this duty in the light of the poor fiscal situation in most of the States. According to Tilak, (2010) provision of good quality elementary education to all children as a right would mean a lot of finances. According to him, the act makes no compulsion on the part of the Union government to provide funds to the state governments. In the absence of any clear provision, the Union government may be let off the hook by providing a small token share.

However, many states have also argued that the RTE made State and local bodies accountable for the implementation, even though neither have the financial capacity. Some states like Uttar Pradesh charged that since the central government takes all the credit for the legislation it should also ensure that funds are available. Bordia Committee, (2010) set up by the ministry in 2009-10 to harmonise Sarva Shiksha Abhiyan and the RTE also argued for a higher financial burden for the centre. It said that sharing ratio of 55:45 (for the current year) and 50:50 (in 2011-12) would be unfavorable to the states as they would have to practically double their allocation.

As far as the issue of raise status and quality of teacher are concerned, it is often argued that this matter has been deliberately left ambiguous and to be prescribed later. Analyzing Section 23 in the perspective of the DPEP and SSA policy framework of the past 20 years, some scholars have shown that the prevailing neo-liberal policy of appointing Para-teachers shall continue, unless some state governments act otherwise with unprecedented political will. If the intention was to ensure well-qualified and trained teachers, the Act would have included specific provisions to reverse the present trend. Ironically, the reference to NCTE in the previous Draft has been removed. The budget allocations approved by the Planning Commission also provide for salaries which are in the framework of Para-teachers, rather than regular teachers with pay scales. This leaves the private sector free to provide inferior teacher education with unregulated profits under Public Private Partnership, while the State continues to abdicate its responsibility to give good teachers to the school system. Ironically, neo-liberals like Jain and Dholakia, (2009) in their study calculated the costs of schooling which are based on realistic estimates that discount all “management costs”. The chosen sacrificial lamb is the teacher, and the teacher’s salary. They contest the need for the State to monopolise education provisioning, which is better served by the market. On the contrary, Sarangpani, (2009) commenting on the Jain and Dholakia’s study said that this study could lead one to conclude that a larger proportion of the GDP must be allocated for education, and in particular, for elementary education, which is the fundamental right. However, according to Sarangapani, Jain and Dholakia follow an international trend of targeting the teacher’s salary, by first calculating the “feasible” pay for teachers (elementary school starting salary of Rs 5,739 as opposed to the Sixth Pay Commission figure of Rs 13,042 and secondary school starting salary of Rs 6,887 as opposed to the Commission’s norm of Rs 15,996 taken for 80% coverage by government schools and pupil-teacher ratio of 40:1.

The private sector which is one of the stakeholders in the debate has raised many concerns regarding RTE. One of their arguments is that they do not have provision to accommodate 25% of students and government should open separate schools for such students. They also stated things like “children who are likely to find their way into schools under this quota would spoil the ‘other’ children as they are from ‘such’ background”. In response to the Section 29 of the RTE, where responsibility to take

care these children comes under the academic management and academic Authority, their argument is that when these children do not have someone at home to take care of their learning on a daily basis, how we will be able to push them to excel in their studies. This will require bringing about uniformity between state syllabus and central syllabus, which in turn will affect the quality of education.

The study also brought to the fore many other issues of RTE on which debate are going on today. Some of these issues are:

- Need to bring Common school system as Neighborhood School concept promised by the Act, is not the same as the one that is understood by educationists and argued by the Kothari Commission.
- Implementation of the act is not seem to be easy as mandatory rules or norms in the act are not clear as to enable to implement the act in its true sense. Group of intellectuals have argued that there is strong requirement to prescribe rules for the act for implementation.
- The RTE Act provides for different layers of administration starting from the Central, state, and local governments and school management committees to manage the primary-upper primary system. There are arguments found in the study that RTE maintains layers to the current tightly coupled hierarchical education sector, thus breeding delays, corruption and inefficiency at every level.
- There is long debate on age group as the act covered only 6 to 14 years of age group children. Many organization such as Notional Council for Protection of Child Right and National Advisory Council as well as many educationists and intellectual argued that Right needs to be extended on the one hand to include the 0 - 6 age group currently covered by the modified Article 45 and also the 14 – 18 age groups, which needs to be provided education in broad social and economic interests of the society
- Debate on financial responsibility as there is no clarity on who will take the lead in financing the Act. The act makes no compulsion on the part of the Union government to provide funds to the State Governments. On the other hand many states have already showed their lack of financial capacity to implement the act.

- Violations of freedom of private educational institutions and Overburdening Private Schools. There is also a long debate going on in which the private institutes argue that the act violate their freedom and force to make room for the Below Poverty Line students beyond their capacity. According to them this will almost overburdening schools. Overnight schools would have to expand their capacity in terms of funds, space, and teachers. They believe that the bill will seriously damage the purpose of quality education for all children.

Such a wide variety of divergences make the implementation of the Act really and practically very complicated. However, it must be accepted that the RTE is no doubt a step in the right direction and the contentions would slowly and surely be addressed through the design of rules to implement the RTE Act. Various contentions that made the process of making the Right to education act will only help it refining the aspects of application of the Act rather than its dissipation and subsequent collapse.

The coverage of the study has been rather limited. It must be said in conclusion that as the Act gets implemented it would offer greater relevance to visit the field and see how the Act is implemented and as to how the beneficiaries and the other stakeholders perceive its implementation. The researcher would try and attempt to see the divergences in the way different states have enacted a set of rules to implement the RTE besides the set of draft guidelines issued by the Central Government a couple of months back. As it is still to be seen, as of today, any future study will have to capture answers for the questions: how the central and state rules tend to implement RTE 2009, what politics make these rules work and which ones don't make it work; how do different stakeholders perceive the implementation of these rules, etc. However, in conclusion, it must be clearly said that the debates and politics around the RTE have only made the making of the RTE a more meaningful and a feasible exercise. It will only help us achieve the much eluded universal access and retention to elementary education in India.



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# **APPNEDIX**



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section I

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 39]

नई दिल्ली, बृहस्पतिवार, अगस्त 27, 2009/भाद्र 5, 1931

No. 39]

NEW DELHI, THURSDAY, AUGUST 27, 2009 / BHADRA 5, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 27th August, 2009/Bhadra 5, 1931(Saka)

The following Act of Parliament received the assent of the President on the 26th August, 2009, and is hereby published for general information:—

### THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

No. 35 of 2009

[26th August, 2009.]

An Act to provide for free and compulsory education to all children of the age of six to fourteen years.

Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Right of Children to Free and Compulsory Education Act, 2009.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,  
extent and  
commence-  
ment.

## Definitions

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means—

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

(b) "capitation fee" means any kind of donation or contribution or payment other than the fee notified by the school;

(c) "child" means a male or female child of the age of six to fourteen years;

(d) "child belonging to disadvantaged group" means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

(e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

(f) "elementary education" means the education from first class to eighth class;

(g) "guardian", in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute;

(h) "local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

(i) "National Commission for Protection of Child Rights" means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005;

4 of 2006.

(j) "notification" means a notification published in the Official Gazette;

(k) "parent" means either the natural or step or adoptive father or mother of a child;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Schedule" means the Schedule annexed to this Act;

(n) "school" means any recognised school imparting elementary education and includes—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

(o) "screening procedure" means the method of selection for admission of a child, in preference over another, other than a random method;



(p) "specified category", in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government;

(q) "State Commission for Protection of Child Rights" means the State Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005.

4 of 2006.

## CHAPTER II

## RIGHT TO FREE AND COMPULSORY EDUCATION

3. (1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Right of child to free and compulsory education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

1 of 1996.

4. Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Special provisions for children not admitted to, or who have not completed, elementary education.

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

5. (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.

Right of transfer to other school.

(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.

(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her.

## CHAPTER III

## DUTIES OF APPROPRIATE GOVERNMENT, LOCAL AUTHORITY AND PARENTS

6. For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

Duty of appropriate Government and local authority to establish school.

Sharing of financial and other responsibilities.

7. (1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall—

(a) develop a framework of national curriculum with the help of academic authority specified under section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

8. The appropriate Government shall—

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

*Explanation.*—The term "compulsory education" means obligation of the appropriate Government to—

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

Duties of appropriate Government.

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers.

9. Every local authority shall—

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

(f) provide infrastructure including school building, teaching staff and learning material;

(g) provide special training facility specified in section 4;

(h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(j) provide training facility for teachers;

(k) ensure admission of children of migrant families;

(l) monitor functioning of schools within its jurisdiction; and

(m) decide the academic calendar.

Duties of local authority.

10. It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

Duty of parents and guardian.

11. With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Appropriate Government to provide for pre-school education.

#### CHAPTER IV

##### RESPONSIBILITIES OF SCHOOLS AND TEACHERS

12. (1) For the purposes of this Act, a school,—

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the

Extent of school's responsibility for free and compulsory education.



neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

No capitation fee and screening procedure for admission.

13. (1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),—

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.

Proof of age for admission.

14. (1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed.

(2) No child shall be denied admission in a school for lack of age proof.

6 of 1886.

No denial of admission.

15. A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

Prohibition of holding back and expulsion.

16. No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

Prohibition of physical punishment and mental harassment to child.

17. (1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

No School to be established without obtaining certificate of recognition.

18. (1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. (1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

Norms and standards for school.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

20. The Central Government may, by notification, amend the Schedule by adding to, or omitting therefrom, any norms and standards.

Power to amend Schedule.

21. (1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

School Management Committee.

Provided that atleast three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent. of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:—

- (a) monitor the working of the school;
- (b) prepare and recommend school development plan;
- (c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and
- (d) perform such other functions as may be prescribed.

22. (1) Every School Management Committee, constituted under sub-section (1) of section 21, shall prepare a School Development Plan, in such manner as may be prescribed.

School Development Plan.

(2) The School Development Plan so prepared under sub-section (1) shall be the basis for the plans and grants to be made by the appropriate Government or local authority, as the case may be.



Qualifications for appointment and terms and conditions of service of teachers.

23. (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

Duties of teachers and redressal of grievances.

24. (1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:—

(a) maintain regularity and punctuality in attending school;

(b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;

(c) complete entire curriculum within the specified time;

(d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;

(e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.

Pupil-Teacher Ratio.

25. (1) Within six months from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

Filling up vacancies of teachers.

26. The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that vacancy of teacher in a school under its control shall not exceed ten per cent. of the total sanctioned strength.

Prohibition of deployment of teachers for non-educational purposes.

27. No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

Prohibition of private tuition by teacher.

28. No teacher shall engage himself or herself in private tuition or private teaching activity.

## CHAPTER V

## CURRICULUM AND COMPLETION OF ELEMENTARY EDUCATION

29. (1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification. Curriculum and evaluation procedure

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

30. (1) No child shall be required to pass any Board examination till completion of elementary education. Examination and completion certificate.

(2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.

## CHAPTER VI

## PROTECTION OF RIGHT OF CHILDREN

31. (1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:— Monitoring of child's right to education.

(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

(b) inquire into complaints relating to child's right to free and compulsory education; and

(c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (e) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

32. (1) Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction. Redressal of grievances.

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.



(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31.

Constitution of National Advisory Council.

33. (1) The Central Government shall constitute, by notification, a National Advisory Council, consisting of such number of Members, not exceeding fifteen, as the Central Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.

(2) The functions of the National Advisory Council shall be to advise the Central Government on implementation of the provisions of the Act in an effective manner.

(3) The allowances and other terms and conditions of the appointment of Members of the National Advisory Council shall be such as may be prescribed.

Constitution of State Advisory Council.

34. (1) The State Government shall constitute, by notification, a State Advisory Council consisting of such number of Members, not exceeding fifteen, as the State Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.

(2) The functions of the State Advisory Council shall be to advise the State Government on implementation of the provisions of the Act in an effective manner.

(3) The allowances and other terms and conditions of appointment of Members of the State Advisory Council shall be such as may be prescribed.

## CHAPTER VII

### MISCELLANEOUS

Power to issue directions.

35. (1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.

(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.

Previous sanction for prosecution.

36. No prosecution for offences punishable under sub-section (2) of section 13, sub-section (5) of section 18 and sub-section (5) of section 19 shall be instituted except with the previous sanction of an officer authorised in this behalf, by the appropriate Government, by notification.

Protection of action taken in good faith.

37. No suit or other legal proceeding shall lie against the Central Government, the State Government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority, the School Management Committee or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made thereunder.

Power of appropriate Government to make rules.

38. (1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;



(b) the area or limits for establishment of a neighbourhood school, under section 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;

(e) any other document for determining the age of child under sub-section (1) of section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, under section 15;

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of section 18;

(h) the form, the period, the manner and the conditions for issuing certificate of recognition, under sub-section (2) of section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;

(j) the other functions to be performed by School Management Committee under clause (a) of sub-section (2) of section 21.

(k) the manner of preparing School Development Plan under sub-section (1) of section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of section 24;

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of section 34.

(3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislatures.

**THE SCHEDULE**  
(See sections 19 and 25)  
**NORMS AND STANDARDS FOR A SCHOOL**

Sl. No.	Item	Norms and Standards
1.	Number of teachers:	
	(a) For first class to fifth class	<p>Admitted children      Number of teachers</p> <p>Up to Sixty              Two</p> <p>Between sixty-one to ninety              Three</p> <p>Between Ninety-one to one hundred and twenty              Four</p> <p>Between One hundred and twenty-one to two hundred              Five</p> <p>Above One hundred and fifty children              Five plus one Head-teacher</p> <p>Above Two hundred children              Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.</p>
	(b) For sixth class to eighth class	<p>(1) At least one teacher per class so that there shall be at least one teacher each for—</p> <p style="padding-left: 20px;">(i) Science and Mathematics;</p> <p style="padding-left: 20px;">(ii) Social Studies;</p> <p style="padding-left: 20px;">(iii) Languages.</p> <p>(2) At least one teacher for every thirty-five children.</p> <p>(3) Where admission of children is above one hundred—</p> <p style="padding-left: 20px;">(i) a full time head-teacher;</p> <p style="padding-left: 20px;">(ii) part time instructors for—</p> <p style="padding-left: 40px;">(A) Art Education;</p> <p style="padding-left: 40px;">(B) Health and Physical Education;</p> <p style="padding-left: 40px;">(C) Work Education.</p>
2.	Building	<p>All-weather building consisting of—</p> <p>(i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;</p> <p>(ii) barrier-free access;</p> <p>(iii) separate toilets for boys and girls;</p> <p>(iv) safe and adequate drinking water facility to all children;</p> <p>(v) a kitchen where mid-day meal is cooked in the school;</p> <p>(vi) Playground;</p>

Sl. No.	Item	Norms and Standards
		(vii) arrangements for securing the school building by boundary wall or fencing.
3.	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	forty-five teaching including preparation hours.
5.	Teaching learning equipment	Shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7.	Play material, games and sports equipment	Shall be provided to each class as required.

T.K. VISWANATHAN,  
*Secretary to the Govt. of India.*