

**REPORT OF THE**

**CABE COMMITTEE**

**ON**

**Free and Compulsory Education Bill and  
Other Issues Related to Elementary Education**

**Volume 3**

**Minutes of the Committee's Meetings  
and  
Written Submissions Made to the Committee**

**June 2005**

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**CABE COMMITTEE**

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Other Issues Related to Elementary Education**

**Volume 3**

**Part I : Minutes of the Committee's Meetings**

**June 2005**

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**CABE Committee**  
**on**  
**“Free and Compulsory Education Bill and Other**  
**Issues Related to**  
**Elementary Education”**

**Minutes of the First Meeting dated 22<sup>nd</sup> November, 2004, held**  
**at New Delhi**

First meeting of the above CABE Committee, constituted vide Order dated 8.9.04, read with Order dated 18.10.04, of the Ministry of HRD, Deptt. of Sec. & Higher Education, took place under the Chairmanship of Shri Kapil Sibal, Union Minister of State, Science & Technology and Ocean Dev., on 22.11.04 at 10 AM at the CSIR Science Centre, Lodhi Road, New Delhi. The following were present:

**Members**

1. Shri. Kapil Sibal - In the Chair  
Union Minister of State (Indep. Charge) for  
Science & Technology & Ocean Dev.
2. Smt. N. Rajyalakshmi  
Minister for School Education, Govt. of Andhra Pradesh
3. Shri Nagendra Kumar Pradhan  
Minister, School and Mass Education, Govt. of Orissa
4. Shri Ram Chandra Purve  
Minister, HRD Deptt., Govt. of Bihar
5. Dr. Mukul Sangma  
Minister, Education, Govt. of Meghalaya
6. Dr. Anil Sadgopal
7. Dr. Vinod Raina
8. Ms. Shantha Sinha
9. Smt. Kumud Bansal, Secy. EE&L, Govt. of India
10. Shri S. Chatterjee, Joint Secretary Nominee of the  
Ministry of Tribal Affairs, New Delhi Min. of Tribal Affairs

- |   |   |
|---|---|
| 11. Shri. D.R. Meena<br>Jt. Secretary & Legal Adviser,<br>Deptt. Of Legal Affairs | Nominee of the Min. of<br>Law & Justice |
| 12. Dr. C. Chandramohan<br>Advisor(Education), Planning Commission                | Nominee of<br>Plng. Comn.               |
| 13. Shri K.M. Acharya<br>Jt. Secretary, Min. of HRD                               | Member-Secretary                        |

**Non- Members Present to assist the Committee**

1. Ms. Sunita Singh *Prof. K.K. Varshni*  
Project Director, Ministry of Social Justice & Empowerment
2. Smt. Rugmini Parmar *Ms*  
Director, Deptt. of Expenditure, Ministry of Finance
3. Shri Amit Kaushik *Smt. Kalh to 2 P.S.*  
✓ Director, Min. of HRD, Deptt. of EE & L,
4. Dr. Nalini Juneja *Ms. Nalini Juneja*  
✓ Fellow, National Institute of Educational Planning and Administration

2. At the outset, **Member-Secretary** welcomed the Chairman and Members to the first meeting of the CABE Committee. He read out the Committee's terms of reference, stressed the urgency of the task before the Committee – especially of the draft legislation, and introduced the background papers circulated alongwith the notice of the meeting, as also the additional papers circulated on the morning of the meeting. He then requested the Chairman to make his opening remarks.

3. **Sh. Kapil Sibal , Chairman of the Committee,**

in his opening remarks, made the following points:

- The Committee has to produce a Bill which would work, learning from what has not worked in the past.
- Unless children are imparted education of good quality, the nation would not move forward.
- Whatever legislation is enacted, its implementation would have to be with State Governments.

- Experience of the past 55 years shows that education was often used as an instrument of political patronage.
- Irrational transfer and deployment policies regarding Teachers as well as Teacher absenteeism have adversely impacted elementary education, especially in rural areas.
- There has been a lack of uniform curricular standards.
- Over 95% of State expenditure has been going into teacher salaries with very little left for infrastructure, teaching-learning material, etc.
- The 86<sup>th</sup> Constitutional Amendment chose to defer the substance of the Right to Education to a law to be enacted subsequently.
- The **objectives** to be achieved are:
  - Every child must be educated;
  - Mandatory provision of Infrastructure and competent teachers based on universally-applicable norms for the above;
  - Adequate financial provision for the above;
  - Insulating politics from education to the extent possible, and eliminating arbitrary transfers, etc.
- Though children in the 0-6 years' age group are not, strictly speaking, within the ambit of this Committee, we would need to devote some thought to them as ECCE is an important support programme for UEE,
- The Committee needs to prepare a draft legislation which takes full account of the wide diversity prevailing among States.
- The Committee would need to consider both its terms of reference together as they are closely inter-related. However, while formulating recommendations, priority would have to be accorded to the Bill.
- We are the youngest nation in the world with 50 Crore persons less than 25 years old. In the years to come, other nations will have a shortage of young work force. India thus has the opportunity to prepare its young people with education to meet the global manpower needs of knowledge workers. The Bill can provide the foundation for this.

Chairman stressed the need for the Committee to start with a clean slate, and to endeavour to produce the draft legislation by February-March, 2005.

**4. Smt. Kumud Bansal, Secretary, Elementary Education & Literacy,**

made the following points:

- This is a crucial opportunity to put in place a system so that every child completes a minimum eight years of schooling by 2010;
- There is wide diversity of achievement among States in terms of UEE, and some States presented cause for concern, in the form of large numbers of out-of-school children, poor retention and quality;
- Teacher recruitment and posting problems. In some States, teacher vacancies were very high, and there was a disinclination to decentralize recruitment, and transfers. There continued to be large number of single-teacher schools as teachers' postings have not been rationalized by many States. There is also a serious need to deal with service conditions of teachers, and their accountability;
- Implementation of SSA rests almost entirely with States.
- Nearly 95% of the current public expenditure of both Central and State Governments of about Rs 44,000 Crores on Elementary Education goes into salaries. Imposition of the 2% Education Cess would help mitigate the problem of gaps in infrastructure and inputs for improving quality.

**5. Prof. Anil Sadgopal**

5.1 Prof Sadgopal first made the following observations on the background papers circulated for the meeting:

1. The complete set of papers sent by him to the Member-Secretary for the meeting should have been circulated to members rather than a very small portion. Likewise, the entire Convention on the Rights of the Child needs to be circulated rather than a small quotation from it.
2. Estimated yield of the Education Cess needs to be compared to the magnitude of the resources needed. The Tapas Majumdar Committee Report, which had estimated the amount needed for universalisation, should also be provided.
3. Dr. J.B.G.Tilak in a paper has shown how the norms on which the calculations of the Tapas Majumdar Committee had been based, had been diluted in SSA. This document also needed to be brought on board.

4. The Nagaland Communitisation Act is another important document which should be circulated.

5.2 Prof. Sadgopal then made the following points on the substantive and procedural issues before the Committee:

- The Committee's second term of reference (TOR) cannot be de-linked from the first TOR, and in fact there is a case for taking up the second TOR first.
- A broad framework of guidelines needs to be developed, before a sub-committee is entrusted with the task of preparing a new draft of the Bill.
- There is a tradition of public hearings, <sup>for CAPE Committees,</sup> and it would be fitting for any new draft to be also discussed with the public.
- It may also be useful to hold at least six regional workshops with at least one in the North-East to discuss the contents of the draft legislation.
- The Committee needs to look at data regarding Net Enrolment Ratios (NER) also, besides GERs. We also need to look at disaggregated data on education of SC, ST, minorities, and backward regions.

6. **Dr. Shantha Sinha**

made the following points:

- The Bill should be a dynamic document which can respond to changing circumstances, including the vastly increased number of children who would have to be provided satisfactory education in the event of universalisation.
- The 2004 version of the Bill was a half-hearted document. The Bill must be born out of a whole-hearted conviction that it is possible to give eight years of full-time education to every child, and that child labour needs to be completely abolished. Half measures like EGS/AIE should find no place in the Bill.
- Educational bureaucracy is at present only involved in three functions – recruitment, recognition of private schools, and conducting examinations. The Bill must lay down how Educational Administration will move away from this, and focus on out-of-school children and on the quality of their learning.



- The Bill should enable a child to enroll at any time, as in Andhra Pradesh, where government circulars have ensured that a child is accepted into a school at any time of the year that the child chooses to join school.
- School governance should be streamlined, and anything which discourages poor parents from sending their children to School (eg insistence on Income, Caste and other difficult-to-procure Certificates) should be done away with.
- Panchayati Raj and Municipal local bodies should be given the main responsibility for UEE, rather than VECs, PTAs, and SMCs.
- There appeared to be great pressure to show progress. As a result, States are under-estimating the number of children who are out-of-school. Reliable and valid data is a must, even if it is inconvenient.
- Central Government claims that the SSA Document is flexible while State Governments say it is not.

## 7. Dr. Vinod Raina

alluded to the historic nature of this occasion and to the fact that the Committee has been assigned the task of laying down the roadmap for a goal which the nation has not been able to achieve all these years. He made the following points:

- Genesis of Article 45 of the Constitution was not so much the need to educate every child, as a necessary supportive measure for universal adult franchise. As such, universal elementary education was seen as the foundation for the functioning of democracy in this country. Since, universal elementary education was to have been achieved by 1960, one may question the validity of every election since then, because of the uneducated nature of the population.
- The 86<sup>th</sup> Amendment is retrogressive vis-à-vis the Unnikrishnan judgement inasmuch as it puts compulsion on the parents rather than the State. The new Article 21A provides little more than justiciability which in fact had already been provided by the Unnikrishnan judgement read with the Convention on the Rights of the Child. Even otherwise, by merely providing justiciability, we are not necessarily any nearer to solving the problem. The 86<sup>th</sup> Constitutional Amendment should be reviewed, and the expression "State shall endeavour" in the original Art.45 should be replaced with "It shall be the bounden duty of the State to...".

- SSA is a flawed programme and does not meet the requirements of Art.45.
- We must be bold, and consider recommending "education" for being shifted to the Central List for, say, 15 years, till UEE is achieved.

Dr Raina said that if the Committee wished to go ahead with the exercise of drafting the Bill in terms of Art.21A despite the preliminary reservations expressed by him as above, he would have a lot to say on the contents of the Bill at a later stage.

**8. Shri Nagendra Kumar Pradhan, Minister, School and Mass Education, Govt. of Orissa,**

circulated a printed speech, and spoke of the need to involve local bodies, elected representatives, and people at large in educational governance. He regretted that planning and implementation of SSA and DPEP at present were entirely bureaucratic which was resulting in a lot of malpractices. He said that the problem was not so much of financial constraint as of teacher accountability.

**9. Dr. Mukul Sangma, Minister, Education, Govt. of Meghalaya,**

stressed the need to define the objectives of education and to synchronize the responsibility of the government with the responsibility of the community towards education. He said that in his State, community-run schools used to perform much better till they were taken over by the government. He also said that Education should be looked at holistically, rather than in a stage-wise compartmentalized fashion.

**10. Shri Ram Chandra Purve, Minister, HRD Deptt., Govt. of Bihar,**

made the following points:

- Only those children study in Govt. schools whose parents cannot purchase private education for them. State has a responsibility to provide good quality education, healthcare, etc. to the class which lacks purchasing power.
- The purpose of compulsory education should be to develop even children of Govt. schools into "knowledge workers", and not just into a literate or educated person.
- Role of education in breaking social stagnation is vital. Non-availability of Upper Primary Schools, especially for girls, is the main reason for high incidence of out-of-school children in the 11-14 years' age group.

- The importance of the pre-school years needs to be recognized. It is during the years from 'minus nine' to 'plus three years' that the brain of the child develops. For this and other reasons, there is a need to join the Aanganwadi to the School.
- Every Primary School must have at least five teachers and five classrooms. Nothing less would suffice. It is wrong to expect poor children to somehow learn in a multi-grade situation. It is important that the School has the right ambience and image.

11. **Smt. N. Rajyalakshmi, Minister for School Education, A.P.,**

spoke of the need to:

- recognize the right of every child to good quality education;
- ensure access to formal and full time education;
- eliminate child labour by making school far more attractive than the workplace;
- spell out the way in which schools should be governed and to ensure adherence to the law;
- ensure professional competence of teachers to ensure joyful schooling, and regard to the *individual* needs of learners, especially first generation learners;
- specify parents' duty to send their children to school;
- equitably share the financial burden between the Centre and the States.

12. **Shri S. Chatterjee, Joint Secretary, Ministry of Tribal Affairs,**

spoke of the need to ensure education of good quality and highlighted the following issues:

- In order to deal with the issue of absentee teachers in remote areas, teacher recruitment should be entrusted to the Gram Sabha.
- Disaggregated data should be collected for STs.
- There is a need to accommodate the 0-6 years' age group in the second Term of Reference.

- The community needs to have a greater say in education, and to ensure this, at least some part of the salary of the teachers should come from the community.
- There is a need to eliminate the role of the contractor in construction and it should be left to the community to construct the school.

**13. Shri D.R. Meena, Jt. Secretary & Legal Adviser, Deptt. of Legal Affairs**

said that both the Centre and the State are competent to enact the law envisaged in Art. 21A. However, "compulsion" may not be very meaningful without a corresponding punitive provision.

**14. Shri C. Chandramohan, Advisor (Education), Planning Commission**

made the following points:

- The proposed Central Bill should plug the loopholes of existing State legislations,
- The proposed legislation should confer a meaningful fundamental right to education, regardless of financial implications, and
- There should be norms but with necessary flexibility.

**15. Smt. Sunita Singh, Project Director, Ministry of Social Justice and Empowerment**

made the following points:

- The Persons with Disabilities (PWD) Act provides for free and compulsory education to the disabled up to the age of 18 years.
- Aids and appliances to children with disabilities must be supplied free in the same manner as textbooks are supplied free to children from weaker sections.
- Children with mild and moderate disabilities should be integrated. Only severely disabled children need be taught separately, incl. in a home-based manner, and through itinerant teachers.
- Children should be sensitised to inclusion from the Aanganwadi stage itself, that is, before prejudice sets in.
- There is a need for hands-on training of teachers of sufficient duration in inclusive education at the grass roots level.

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- Children should be sensitised to inclusion from the Aanganwadi stage itself, that is, before prejudice sets in.
- There is a need for hands-on training of teachers of sufficient duration in inclusive education at the grass roots level.

16. **Smt. Rugmini Parmar, Director, Deptt. Of Expenditure, Ministry of Finance**

said that no Central measure should dilute the States' leadership position in Elementary Education.

17. **Chairman's Concluding Remarks**

Chairman desired that additional documents as suggested by Prof. Anil Sadgopal may be circulated. He then went on to recapitulate the main points emerging from the day's discussion as follows:

1. Elementary Education should be local community-driven – through Panchayati Raj and other appropriate bodies. Government should not interfere with the community's right to impart appropriate education.
2. The Anganwadi must function in conjunction with the Elementary School.
3. We must think of education of the child not only between the ages of 6 to 14 but also as to what she would do with it at the end of the elementary stage. What is needed is not elementary education that leads nowhere but which leads to something worthwhile.
4. Elementary Education is not just an abstract fundamental right but is the underpinning for full and effective participation in the democratic process of the country. Financial constraints cannot be allowed to stand in the way of this.
5. If we have failed to achieve UEE in the past 55 years, the fault lies with the State and with governance.
6. What is needed is not just some hybrid form of education but education of equitable/comparable quality for all children. This would naturally include suitable physical and human infrastructure.
7. The mid-day meal should be looked upon as something necessary for its own sake, and not as an incentive for UEE.
8. Object of the legislation should not be to spawn litigation as that is not the way forward. The Bill need not itself provide for remedy through the Courts.

9. Besides teachers, we must also think of making optimal use of technology for achieving UEE.
10. In the next meeting, we shall try to arrive at a broad consensus regarding the essential features of the proposed legislation. Thereafter, a Sub-Committee could prepare its draft, which could then become the basis for wider consultations – both on the web as also through regional meetings.
18. It was decided that the next meeting of the Committee would be held on **Sunday, the 19<sup>th</sup> December, 2004, at 10.30 a.m. at the same venue.**
19. The meeting ended with thanks to the Chair.

" Sd/-  
(K.M.Acharya)

Jt. Secretary, Ministry of HRD,  
Deptt. of Ele. Education & Literacy, &  
Member-Secretary, CABE Committee on  
Free & Compulsory Education Bill and  
Other Issues relating to Ele. Education



**CABE Committee  
On  
“Free And Compulsory Education Bill And Other Issues  
Related To Elementary Education”**

**Minutes of the Second Meeting dated 24<sup>th</sup> December 2004,  
held at New Delhi**

The second meeting of the above CABE Committee took place under the chairmanship of Sh. Kapil Sibal, Union Minister of State, Science and Technology and Ocean Development, on 24.12.04 at 1130 hrs. at the CSIR Science Centre, Lodi Road, New Delhi. The following were present:

**Members**

- |   |   |
|---|---|
| 1. Shri Kapil Sibal<br>Union Minister of State (Indep. Charge) for<br>Science & Technology & Ocean Dev. | - In the Chair  |
| 2. Dr. Ram Chandra Purve<br>Minister, Education, Govt. of Bihar   |   |
| 3. Prof. Anil Sadgopal  |   |
| 4. Dr. Vinod Raina  |   |
| 5. Prof. Shantha Sinha  |   |
| 6. Dr. A.K. Sharma  |   |
| 7. Smt. Kumud Bansal, Secy., EE&L, Govt. of India   |   |
| 8. Smt. Rajwant Sandhu, Joint Secretary<br>Ministry of Social Justice & Empowerment                     | Nominee of the<br>Min. of Social Justice<br>& Empowerment |
| 9. Shri D.R. Meena<br>Jt. Secretary & Legal Advisor<br>Deptt. of Legal Affairs                          | Nominee of the<br>Min. of Law & Justice                   |
| 10. Dr. C. Chandramohan<br>Director (Education), Planning Commission                                    | Nominee of the<br>Plng. Comn.                             |
| 11. K.M. Acharya<br>Jt. Secretary, Min. of HRD  | Member-Secretary  |

## Non Members Present to assist the Committee

- |   |   |
|---|---|
| 1. Prof. K.K. Vashishtha<br>Head, DEE<br>N.C.E.R.T., New Delhi                                | Attended on behalf of<br>Director, NCERT  |
| 2. Smt. Rugmini Parmar<br>Director, Deptt. of Expenditure,<br>Ministry of Finance             | Attended on behalf of<br>Sh. Anurag Goel,<br>Addl. Secy., Min. of Finance       |
| 3. Smt. Kalpana Amar<br>Director, Min. of Tribal Affairs                                      | Attended on behalf of<br>Sh. S. Chatterji,<br>Jt. Secy., Min. of Tribal Affairs |
| 4. Sh. Amit Kaushik<br>Director, Min. of HRD, Deptt. of EE&L                                  |   |
| 5. Dr. Nalini Juneja<br>Fellow, National Institute of Educational Planning and Administration |   |

2. At the outset, the **Member - Secretary** welcomed the Chairman and members to the second meeting of the Committee. He enumerated the papers circulated since the last meeting, which included certain papers sent by members, and the revised scheme of Mid Day Meal. He said that the task before this meeting was to outline the broad framework that would serve as a foundation for the draft legislation. He then requested the Chairman to make his opening remarks.

### 3. **Shri Kapil Sibal, Chairman of the Committee,**

said in his opening remarks that today's meeting should attempt to lay down the 'road map' which could guide the work of the sub-committee which may be set up for drafting the Bill. He then invited members to offer their views in this regard.

### 4. **Prof. Anil Sadgopal**

made the following points:

- Subjects of four other CABE committees viz. those on (i) Common School System and Girls' Education, (ii) Universalisation of Sec. Education, (iii) Regulatory Mechanism for Text Books, and (iv) Culture and Education, partially overlap with that of this committee. This Committee, therefore, needs to keep abreast of the work of the above four committees. In this connection, he also placed on record the inaugural address by the Chief Minister of Assam delivered at the first meeting of the Committee on Common School System, in his capacity as Chairman of the Committee.
- The Bill itself need not be a long one if the intention behind it is clear and straightforward, as shown by the Compulsory Education Act of China, 1987, which too he placed on record. He drew pointed attention to Article 12 of this Act, which states, inter alia, that "State appropriations for compulsory education shall increase at a faster rate than State revenues from regular items, and the average expenditure on education per student shall also increase steadily."

- Many groups have expressed their views on free and compulsory education, e.g. in the background papers of a Convention on the Common School System held at the University of Delhi in 1997. He placed this document on record.
- Prevailing policy documents need to be examined for statements that are contrary to the spirit of the Constitutional mandate of free and compulsory education for every child – such as the Statement in the National Curricular Framework, 2000, which states on page 22 that open schooling will be made available for the 6-14 age group.
- Certain other groups are also trying to draft the Bill, e.g. T N Forces. Their work and recommendations also need to be taken into consideration.
- As for guidelines for the Sub-Committee, his ten point framework given at the end of his already circulated paper entitled "De-constructing Free and Compulsory Education Bill, 2004, contain his suggestions in this behalf.

#### 5. Dr. Vinod Raina

flagged the following issues:-

- i. How detailed should the Bill be?
- ii. Bill should be strong in its intent, and not tepid or lukewarm.
- iii. The Bill should lay down the modality for proper use of funds, though this would make it long.
- iv. The Bill should define minimum norms for physical and human infrastructure. These should not be utopian, but realistic yet challenging.
- v. The Bill should regulate private schooling - especially content and process of education in them. All schools must promote integration, secularism and equality.
- vi. By over-legislating, we may in effect be transferring all powers to the judiciary. A careful balance between a detailed and a skeletal draft would have to be struck.

#### 6. Dr. Shantha Sinha

made the following points:

- Spirit of the 86<sup>th</sup> Constitutional amendment, which makes education compulsory for children between the ages of 6-14, should also be reflected in laws such as the Child Labour (Prohibition and Regulation) Act, which should be amended to abolish child labour altogether, rather than only in hazardous industries, as at present. The second National Labour Commission had also recommended this, and we should endorse it.
- Since Government school system caters to 90 per cent of the children in schools, it has a major role to play in bringing out-of-school children into the school. The issue before us is how to galvanize govt. schools so that they are able to act as instruments of harmonisation, integration, poverty alleviation and societal transformation, besides being centres of learning.

**7. Dr. A.K. Sharma**

stressed the need to:

- Spell out clearly the concepts of a 'teacher' and a 'school'.
- Provide comparable conditions for success for children with disabilities.

**8. Dr. Ram Chandra Purve, Minister of Primary & Mass Education, Bihar,**

was of the view that with a law for compulsory education in place, child labour would be automatically eliminated. The proposed Bill should concentrate on practical modalities, including regarding financial support to be given to State Governments for implementation of free and compulsory education. He felt that the Bill should put compulsion on all – the State, Parents and Children, and a Sub-Committee should be constituted to work out details.

**9. Prof. K.K. Vashishtha, NCERT,**

said that the Bill should out-law teacher-less schools and clearly define responsibilities of Government, parents and society.

**10. Smt. Rugmini Parmar, Director, Ministry of Finance,**

pointed out that financial implications of the proposed provisions will have to be kept in view, as also the fact that Sarva Shiksha Abhiyan is already being implemented.

**11. Smt. Rajwant Sandhu, Jt. Secretary, Ministry of Social Justice & Empowerment,**

pointed out that:

- Checking wastage of resources e.g. caused by teacher absenteeism, should be first priority. This can be done by making teachers accountable to Panchayati Raj bodies, and paying them salaries through such bodies. Additional financial allocations will be effective only if leakages are plugged first.
- Most children with disabilities can be integrated into ordinary schools by orienting the teacher. Number of disabled children in 5-18 years age group (about 49 lakhs) is not very large. Most of them suffer from locomotor disability, very few from visual disability, and a somewhat larger number, from aural disability. Special Support Schools should be developed at cluster-level to provide academic support to all teachers/schools in the cluster for inclusive education.
- Private schools should not be over-regulated to the extent that private initiative in education is destroyed. Parents are best judge of which school their child should attend.

**12. Smt. Kalpana Amar, Director, Ministry of Tribal Affairs,**

spoke of the need for the legislation to take care of the interests of the children in tribal areas by:

- giving over-riding priority to establishment of school infrastructure in tribal areas, and
- training teachers specially for such areas.

**13. Dr. C. Chandramohan, Director (Education), Planning Commission,**

made the following points:

- The Bill should adopt different approaches for different States. Seven States account for 95% of out-of-school children. There should be separate provision for such States.
- Access and quality go together. Quality can be improved even with imperfect infrastructure.
- The Bill should support, strengthen and synergise with 73<sup>rd</sup> & 74<sup>th</sup> Constitutional Amendments, and should recognise the legitimate role of the private sector.
- Early Childhood Care and Education should be built into the legislation.

**14. Dr. Vinod Raina**

said that:

- Aim of the Bill should be to ensure minimum eight years of schooling for every child, regardless of age.
- To attribute poor progress towards UEE largely to teacher absenteeism tantamounts to undesirable reductionism, while reality is much more complex.
- Eight States have used 73<sup>rd</sup> and 74<sup>th</sup> Amendments to replace 'teachers' with 'para teachers', which needs to be checked.

**15. Shri Ramachandra Purve, Minister, Primary and Mass Education, Bihar,**

interjected to say that experience with Panchayat Shiksha Mitras (PSMs) in Bihar has been good.

**16. Chairman's Concluding Remarks**

The Chairman said that a 'road map' for the legislation needs to be prepared by addressing certain basic questions, like:

- 1) How do we bring all children of 6-14 years' age group into school, and ensure minimum 8 years of education for them?
- 2) What kind of school do we bring the children into? To what extent should private schools (recognised/un-recognised) be regulated?
- 3) What minimum standards in terms of physical infrastructure and human resources, should a school imparting free and compulsory education conform to?
- 4) How will compliance with the legislation be monitored and violations addressed? How can technology be harnessed for better monitoring?


- 5) How should quality of teaching-learning be improved? What provisions should be made regarding remuneration, service conditions and morale of teachers?
- 6) What should be relative roles of government and non-government schools in achieving UEE?

Chairman announced constitution of the following sub-committee, to prepare within four weeks, 'a road map' or essential features of the Bill for the consideration of the full Committee addressing, inter alia, the above issues, (based on which drafting of the detailed legislation would be taken up):-

- |   |     |          |
|---|-----|----------|
| 1. Prof. A.K. Sharma  | ... | Chairman |
| 2. Dr. Vinod Raina  |     |          |
| 3. Prof. Shantha Sinha  |     |          |
| 4. Director, NCERT, or his nominee  |     |          |
| 5. Sh. Anurag Goel, Additional Secretary or his nominee, Ministry of Finance                |     |          |
| 6. Smt. Rajwant Sandhu, Jt. Secretary, Ministry of Social Justice and Empowerment           |     |          |
| 7. Dr. Chandramohan, Director (Education), Planning Commission                              |     |          |
| 8. Jt. Secretary (EE-1), Deptt. of Elementary Education & Literacy                          |     |          |
| 9. Dr. Nalini Juneja, Fellow, National Institute of Educational Planning and Administration | ... | Convenor |

[Chairman also subsequently approved that two State Education Secretaries, viz. of U.P. and Maharashtra, be also invited to participate in the work of the Sub-Committee.]

17. The meeting ended with thanks to the Chair.

  
 (K.M. Acharya)  
 Jt. Secretary, Ministry of HRD,  
 Deptt. of Ele. Education & Literacy. &  
 Member-Secretary, CABE Committee on  
 Free & Compulsory Education Bill and  
 Other Issues relating to Ele. Education

**CABE Committee**  
**On**  
**“Free and Compulsory Education Bill And Other Issues**  
**Related To Elementary Education”**

**Minutes of the Third Meeting dated 12<sup>th</sup> March, 2005,**  
**held at New Delhi**

Third meeting of the above CABE Committee took place on 12.03.05 at 1100 hrs. at the CSIR Science Centre, Lodi Road, New Delhi. As Shri Kapil Sibal, Union Minister of State, Science and Technology and Ocean Development, and Chairman of the Committee, could not attend the meeting on account of indisposition, Shri . Dhal Singh Bisen, Minister for School Education, Government of Madhya Pradesh, chaired the meeting. The following were present:

**Members**

1. Shri . Dhal Singh Bisen,  
Minister for School Education,  
Government of Madhya Pradesh, In the Chair
2. Smt. N. Rajyalaxmi  
Minister for School Education,  
Govt. of Andhra Pradesh
3. Shri Nagendra Kumar Pradhan  
Minister of School & Mass Education  
Government of Orissa
4. Prof. Anil Sadgopal
5. Dr. Vinod Raina
6. Prof. Shantha Sinha
7. Dr. A.K. Sharma
8. Prof. Tapas Majumdar
9. Prof. Krishna Kumar

10. Prof. R. Govinda
11. Dr. Archana Mehendale
12. Smt. Kumud Bansal, Secy. EE& L, Govt. of India
13. Smt. Jayati Chandra, Joint Secretary,  
Ministry of Social Justice & Empowerment
14. Shri K.M. Acharya  
Jt. Secretary, Min. of HRD
- Nominee of the  
Min. of Social Justice  
& Empowerment
- Member-Secretary

**Non-Members present to assist the Committee**

1. Ms. Vrinda Sarup,  
Joint Secretary, (EE I) Min. Of HRD.
2. Smt. Anshu Vaish,  
Principal Secretary, School Education, Govt. Of M.P.
3. Smt. Rugmini Parmar  
Director, Deptt. of Expenditure, Ministry of Finance
4. Sh. M. K. Sharma,  
Deputy Legal Advisor, Ministry of Law and Justice
5. Sh. B. Bhushan,  
Director (Education), Planning Commission
6. Sh. S.K. Gupta,  
Deputy Secretary, Ministry of Tribal Affairs
7. Ms. Richa Sharma  
Deputy Secretary, MHRD
8. Dr. Nalini Juneja  
Fellow, National Institute of Educational Planning and Administration

At the outset, the **Member- Secretary** welcomed the members – in particular, the three new members who had been nominated to the **Committee** recently and were participating in its meeting for the first time, viz.



Prof. Tapas Majumdar, Prof. R. Govinda and Dr. Archana Mehendale. He recalled that copies of two Notifications of December, 2004, and January, 2005, constituting the Governing Council and Executive Committee of the National Mission of Sarva Shiksha Abhiyan, and minutes of the last meeting of the Committee had already been circulated to members in the interim. The Sub-Committee set up in the last meeting of the Committee to work out essential features of the proposed Bill, held over a dozen meetings between mid January and end of February, and has produced <sup>a paper containing</sup> ~~of the~~ essential features of the Bill, a copy of which was sent to Members along with the Notice for today's meeting. This draft is the main agenda for today's meeting.

The Member-Secretary then sought permission of the Chair to request Prof. A.K. Sharma, the Chairman of the Sub-Committee, and one or two other members to make a short presentation on the draft of Essential Features, and to explain the rationale behind it.

#### 1. Prof. A.K. Sharma

said in his opening remarks that the Sub-Committee had met about fourteen times in pursuit of consensus on the numerous complex issues involved. Even so, the document was still an 'open' one, subject to change, completion, and deliberation on a number of issues including those related to financial implications, regulation of unaided institutions, administrative reforms etc. The core concerns which guided the development of the document were:

- The law should guarantee the right of the child to education and therefore the child had to be at the 'centre' of all concerns.
- In guaranteeing the right, the task is not merely one of making available school places, but of implementing the spirit of the Constitution, keeping equity and quality on par with considerations of quantity.
- Grassroots – level agencies, in particular the Panchayati Raj institutions, would have to play a critical role in implementing the Act..

- Achieving free and compulsory education is a joint responsibility of the State and the Society.
- An independent body is needed to monitor implementation of the Act.
- Role of the teacher being central, it is necessary to ensure that teachers are not detracted from their work due to non-educational responsibilities.
- While plurality of approaches in providing elementary education is welcome, it is necessary to avoid creation of sub<sup>h</sup>standard delivery mechanisms. Essential features have therefore been worked out on the premise that all children must be provided full-time formal schooling for at least eight years.

Prof. Sharma then sought the permission of the Chair to request Dr. Vinod Raina, a member of the Sub Committee, to explain its recommendations in greater detail.

## 2. Dr. Vinod Raina

§aid that the document drawn up by the Sub Committee was a tentative one based on broad consensus, and did not mean that every member agreed with every statement contained <sup>therein.</sup> He then made the following points:

- The Sub Committee worked within the ambit of Article 21A of the Constitution. Since this Article is confined to children in the 6-14 years age group, the Sub Committee felt handicapped in making appropriate provisions for children in the 0-6 and 14+ age groups.
- Though the Sub-Committee was informed that legislations these days do not have Preambles, it has still thought it desirable to draft a Preamble to the Bill which is based essentially on the Preamble to the Constitution.
- The term 'compulsory education' has been defined in terms of universal elementary education (UEE) being an obligation on the State.

- 'Free Education' has been defined in terms of removal of all **economic barriers** which prevent a child from participating in Elementary Education. Instead of providing a list of items to be made available free, the open-ended definition has been suggested in order to account for items that may need to be added in various regions and various categories of children, in course of time.
- Social, gender and cultural prejudices act as strong barriers to UEE. Accordingly, it was made a responsibility of the State to ensure that these barriers do not prevent children, particularly from weaker sections, from participating in schools.
- As the usual approach of equating "participation" with regular attendance is inadequate, 'Participation' has been defined in a more comprehensive manner.
- Whether free education should be provided only in Government schools, absolving private schools of all responsibility came in, expectedly, for intense debate. One view was that the freedom to run private schools should not be compromised by bringing such schools into the ambit of the Bill. The other view was that school education, which is expected to bring in social integration, is actually promoting class and social segregation by separating children of elite classes through different set of schools. Such a situation was clearly against the spirit of Equality and Social Justice referred to in the Preamble to the Constitution. There was even a suggestion to call for the nationalisation of private schools on this count, as also, on the count that quality would not become uniform across schools till private schools were promoted, particularly at the elementary stage. In the end, it was agreed that for purposes of access, the 'Neighbourhood School' concept, as envisaged in the Kothari Commission Report of 1966 should be invoked, using the child's residence as the reference point.

There were divergent views regarding obligation of schools like Kendriya Vidyalayas, Navodaya Vidyalayas, etc. which, though set up by the Government, are meant for specific categories of children, and are not open to all. One view was that as schools of the government, they must admit all children from their neighbourhood, otherwise they would become 'private schools run by the Government'; the other was that they should either be left alone or at the most their obligation of providing free education to children from the neighbourhood should be restricted to 25% of their capacity, as in the case of unaided schools so that the main purpose for which they were set up is not defeated. Since the issue could not be resolved in the Sub-Committee, both the alternatives have been provided in the draft, for resolution by the full Committee.

- 'School' has been defined as one that is recognised by a competent authority, and conforms to physical infrastructure and teacher strength defined in the Schedule. Non-formal schools, EGS Centres and other varieties of schools would also have to conform to these standards in order to be called Schools.
- As per the Schedule, 'Teacher' in a school would have to possess qualifications approved by the NCTE.
- A separate chapter (Chapter II) has been devoted to the 'Right of the Child' with separate sub-clauses for children in general, for out-of-school children of age 7-9 and 9-14 age group, and for children who, though nominally-enrolled, are <sup>not</sup> able to <sup>effectively</sup> participate in elementary education.
- Chapter III spells out the responsibilities of the State in view of child's rights defined in Chapter II. It includes the responsibility to provide ECCE for all children below age 6 years in proximity to every free school, and to <sup>enable</sup> children enrolled at an age higher than age 6 to complete elementary education up to 18 years of age, *if necessary*.

- Chapter III also lays down financial responsibilities of various tiers (i.e. Central, State and Local) of the State, with provisions of “back-stopping” arrangements by the State Governments vis-à-vis Local Authorities, and by the Central Govt. vis-à-vis State Govts. The Sub-Committee felt that conferral of Right on children and casting of obligation/compulsion on the State, without making specific and adequate provision regarding finances, would be meaningless.
- Definition of ‘Local Authority’ includes, besides Panchayati Raj and Municipal bodies, “other authorities” specified by the appropriate government also, because, as per Articles 243G and 243W of the Constitution (inserted by the 73<sup>rd</sup> and 74<sup>th</sup> Amendments), extent of devolution of powers and functions to PRIs and Municipal bodies is a matter which only the State legislature can provide through a law..
- Planning and monitoring functions at the local level have been made the responsibility of the local authority. Every School would have a Management Committee consisting of representatives of stakeholders, of which half would be parents.
- The draft prohibits (i) charging of capitation fees and adopting screening procedures for admission (interviews, tests etc) for all schools, and also (ii) deployment of teachers for non-educational purposes, except elections, census and disaster relief duties.
- A major issue considered by the Sub-Committee was the manner in which concern for **quality** should be reflected in the Bill. After a lot of deliberation, the Committee chose to avoid expressing quality aspects in the Bill in terms of attainment of ‘minimum’ or ‘essential’ levels of learning by children. Instead, the view taken was that if various pre-requisites of quality such as physical infrastructure, adequate number of qualified teachers, proper academic support to teachers, etc, are ensured, quality would necessarily follow.
- The draft includes a chapter (Chapter V) on Content and Process of Elementary Education, and also envisages (in Chapter VI)

Commissions for Elementary Education at national and State levels (with the latter having district-level Units) for monitoring implementation of the Act, and to perform Ombudsman functions. The main idea behind this was that the State, which has responsibility for implementation, should not be the only one monitoring progress of implementation, and that Legislatures should get feedback on implementation from an independent Commission. For the same reason, it was also thought appropriate that the function of maintaining an up-to-date, nation-wide, on-line database on children of 0-14 years age group, which is both vital and achievable with India's IT capability, should also be assigned to these Commissions .

- The Sub-Committee has also identified some vital issues which remain to be addressed, e.g. financial implications of its recommendations, composition of Education Commissions, regulation of unaided schools, necessary administrative reforms etc.

Dr Raina concluded by expressing the hope that deficiencies in the present draft would get rectified as it evolves with deliberations in the full Committee, feedback from the people at large, and finally, consideration in the CABE.

#### 4. Prof. Tapas Majumdar

made the following points:

- Child should be defined as a person up to 18 years of age, in keeping with international conventions.
- The Supreme Court, in the Unnikrishnan judgment, had declared free and compulsory education upto 14 years of age a fundamental right. Legal opinion should be taken regarding whether the 86<sup>th</sup> amendment can be taken to have abridged it to the age group of 6-14 years.

**5. Prof. Anil Sadgopal**

at this stage, raised a point of order regarding a series of recent Press reports on the tentative recommendations of the Sub-Committee while they are meant only for discussion within the Committee, and are not meant for the public domain.

Smt. Kumud Bansal, Dr Vinod Raina and Dr A.K.Sharma shared Dr Sadgopal's concern in this regard.

**6. Shri Nagendra Kumar Pradhan, Minister of School & Mass Education, Government of Orissa**

said it was very important to pay attention to (i) States' financial position, and (ii) implementation aspects. He said that financial implications of the Bill, especially for State Governments, would have to be carefully examined. Even otherwise, the Bill needs to be discussed thoroughly at the State and regional levels.

**7. Smt. N. Rajyalaxmi, Minister for School Education, Govt. of Andhra Pradesh**

said that:

- Residential schools would be necessary for working children whose number is 16 lakh in Andhra Pradesh.
- Separate toilets are a must to universalise girls' participation.
- Education at the primary stage should be in the mother tongue.

**8. Prof. Krishna Kumar**

made the following points:

- Press leakages about the Sub-Committee's recommendations are disturbing. One way of dealing with the situation would be to co-opt representatives of private schools in our deliberations so that their case is also duly heard. Representatives of Progressive Schools' Association, Head Masters' Conference, and Prof Kanti Vajpeyi, Head

Master, Doon School (who used to be a Professor at JNU) could be considered for being associated in the deliberations.

- This draft represents a considerable improvement on the earlier drafts of the Bill, but needs fine-tuning.
- If this draft proposes to legitimize deployment of govt. teachers for elections and such-like duties, then it should provide, in the interest of equity, that teachers of private schools shall also be similarly drafted.
- 25 per cent of the seats in private schools, which are meant to be filled up with children from weaker sections, should not be filled up on any selection basis (like merit).
- The Schedule attached to the present draft goes into un-necessary detail about building and equipment norms, which are liable to change depending on time and place. The task of specifying and periodically revising these norms should be entrusted to a body like the NCERT or the Commission envisaged in the draft. Also, it is anomalous that Central Government has one set of norms for the Central Schools meant for its own employees' children, and a different set for other children who are not lucky enough to be born to central government employees. The Bill could simply say that KVS norms will apply.
- In regard to ECCE, the proposed clause 4B could start with " Given that pre - school education influences the child's capacities to participate in and benefit from elementary education .....". so as to



clearly indicate that successful implementation of this Bill depends on making early childhood education a reality.

- The expression 'by whatever name called' appearing at the end of the definition of "teacher" [Clause 2(1)(cc)] should be deleted because it would legitimise undesirable variants like 'shiksha karmis'. [At this point, Dr Vinod Raina clarified that the expression had been used in relation to the Head Teacher, and not the Teacher.]
- NCERT should also be given a role in the in-service training of teachers, by providing for mandatory consultation with it on policy matters in this behalf.

#### 9. Prof. Tapas Majumdar

interjected to suggest that the Bill should, in fact, specify that a Teacher shall have to be a whole-time teacher.

#### 10. Prof. R. Govinda

said that he had already actively associated himself with the deliberations of the Sub-Committee, but would like to flag the following issues:

- The age group of 6-14 years implies a period of nine – and not eight – years for which free and compulsory is to be provided. This has substantial financial implications, and the term 'elementary education' becomes inapplicable as it covers a maximum of eight years of education. It is therefore necessary to clearly define entry and exit points (in terms of age) for purposes of provision of free and compulsory education.
- The Bill should say more clearly that full time compulsory schooling shall be the instrumentality of providing free and compulsory education in terms of Art. 21-A.

- For children in 0-6 and 14-18 years age groups, the law may provide for 'free' but not 'compulsory' education. Provision may be made for a 'reception class' from which children would enter class one in a full-time formal school upon reaching the age of six years. This would help in universalizing enrolment in Class One at the correct entry age.
- It may perhaps not be appropriate to prescribe the cost-sharing formula among central and state governments and local authorities in the Act itself, because there is a great deal of diversity in the financial position of different State Governments and local authorities.
- Minimum School norms do need to be specified in the Act. Furthermore, differential norms may need to be specified for differential contexts e.g. for a school in a remote area with lesser number of teachers and pupils.
- The Bill should suitably reflect Teacher support systems such as Block and Cluster Resource Centres that have emerged lately.

#### 11. Dr. Shantha Sinha .

pointed out that:

- The core of the draft Bill consists of the centrality of the child's right to (i) full-time day school, and (ii) completion of elementary education without disruption. The latter should receive greater stress among the responsibilities of the State than is the case at present.
- The Bill should spell out in greater detail how the huge backlog of out-of-school children shall be dealt with. In this context, provisioning of bridge courses and residential schools, as stated by the Minister from Andhra Pradesh, should be emphasized.
- Mid-day Meal should be made a part of "free education".

- The Bill should also provide for universal coverage of pre-school education, as also for education upto 18 years of age, so that the child is equipped to face the world with dignity and confidence.
- The Ombudsman proposed in the draft should not become one more parallel structure/bureaucracy. It should strengthen the system without taking on any implementation responsibilities.

## 12. Prof. Anil Sadgopal

*(included at Pg 198-201 of this volume)*

requested that a four page note sent by him to the Chairman of the Sub-Committee on an earlier draft should be circulated to all members. He said that he would soon send a more detailed note on the latest draft, and that for the present his comments on it are as follows:

- The purpose of the Bill should not merely be to address all implementation issues. Its more important purpose is to give a right to the people - and thus provide an instrument in their hands to build pressure on the State - even if the State is unable to fully find the resources needed to fulfil the right, immediately. Thus even if ECCE and education for those in the 14-18 age group cannot be universalized for the present, at least the right to them should be provided for in the Bill. The Unnikrishnan judgment states "while directive principles of state policy provide the goals for the state, the fundamental rights provide the means to the goals". This basic principle stands and continues to give the right to the below six age

group. In any case, UEE can never be achieved without ensuring health and nutrition for the 0-6, and pre-school education for the 3-6 age group.

- The Sub-Committee deserves to be congratulated for defining “compulsory education” in terms of compulsion on the State in clause 2(1)(f), though the words ‘if necessary through special steps’ occurring in its sub-clause (ii) in respect of out-of-school children should be deleted since it can be misinterpreted to provide non-formal sub-standard education.
- The Bill should treat separately ‘free education’ as a right and ‘compulsory education’ as the State's responsibility, rather than always referring to them together.
- Prof. Krishna Kumar's suggestion to involve private schools in the deliberations of the Committee is very welcome. Representatives of teachers' associations should also be similarly involved.
- A cumulative gap in educational investment has got built up over the 40 years since the Kothari Commission Report envisaged expenditure of 6% of GDP on Education, which now shows up in the form of vast under-provision in terms of teachers, classrooms, blackboards, textbooks, science kits, training institutions, etc. That is why NPE, 1986, envisaged outlay on education to “uniformly exceed 6% of GDP” in future, and the NPE, 1992, set the year 2000 as the target date for doing so.

The Tapas Majumdar Committee's estimates were reflective, though inadequately, of the cumulative gap. Viewed in this light, the present formulation, which takes per student expenditure of the last five years as the base, falls way short of taking care of the cumulative gap as it suffers from the distortions of the structural adjustments made in recent years under IMF/World Bank advice, which resulted in para teachers, alternate education, etc..

- Apart from the fact that right to education to children in the 14-18 age group has to be given as a result of India being a signatory to the Convention on the Rights of the Child (CRC), it is necessary to do so also because (i) practically no career option becomes available to a person with less than Higher Secondary qualification, and (ii) SC/ST children are unable to avail of reservations. Besides, eight years of education may have been adequate as a minimum in 1950, but not in 2005.
- The National/ State Commissions should be quasi-judicial bodies, and should not be encumbered with executive functions like devolution of funds. Also, they should be constituted by the Legislatures.
- The Bill should provide for School Complexes as envisaged in NPE, rather than BRCs/ CRCs.
- The Neighbourhood School concept proposed in the draft is incomplete unless placed in the context of the Common School System without which UEE can never be achieved.

- The Bill should not prescribe uniform and inflexible financial and other norms.

**13. Ms. Jayati Chandra, Jt. Secretary, Ministry of Social Justice & Empowerment,**

flagged the following concerns:

- The Bill should recognize that In the case of mentally impaired children, “age appropriate class” would depend on the child’s mental – rather than physical – age.
- Pre-school education is especially necessary for disabled children.
- The Bill should provide for a special strategy for children with severe and profound disabilities, including (i) home-based – rather than school-based – education, and (ii) necessary support staff (e.g. physiotherapist, audiologist, etc.), where necessary.
- Children with disabilities may need more time to complete elementary education than other children, and therefore the Bill should provide for an upper age limit of 18 years in their case for this purpose.
- The Schedule should include necessary provisions for disabled children like (i) appropriate TLM, and (ii) facilities for teaching in sign language for the hearing impaired..

**14. Ms. Rugmini Parmar, Director, Ministry of Finance.**

pointed out that Government has already decided to universalize ICDS, and has also provided substantial funds in recent years for expansion of elementary

education facilities under SSA. These should be suitably factored in while working out financial implications of the proposed Bill.

**15. Shri S.K. Gupta, Ministry of Tribal Affairs,**

said that the draft still does not address the following concerns raised by his Ministry in earlier meetings, and that this should be done now:

- Responsibility of recruiting teachers, and paying them salary should be given to the Gram Sabha in tribal areas to curb the problem of teacher absenteeism.
- Data on children belonging to scheduled tribes should be available separately.
- There should be suitable representation of STs in the Commissions proposed to be set up.

**16. Sh. M.K. Sharma, Ministry of Law and Justice,**

made the following points:

- While it is indeed no longer the practice to have a Preamble to legislations, there is no bar also.
- Since the Committee's terms of reference are restricted to Article 21A of the Constitution, the Committee should limit the scope of its work accordingly.
- The Bill should appropriately reflect Article 350-A of the Constitution ("Facilities for instruction in mother tongue at the primary stage").
- As Parliament is not competent to legislate in respect of J&K, "Extent" of the Bill would have to be defined accordingly.

**17. Smt. Anshu Vaish, Principal Secretary, School Education, Govt. of Madhya Pradesh,**

said that a written statement on behalf of the Minister of School Education, Madhya Pradesh, was being separately circulated, and that she would like to highlight the following issues:

- Madhya Pradesh already has a Jan Shiksha Adhiniyam, with detailed rules framed thereunder. It needs to be clarified as to what will become of this Act after enactment of the central legislation, and whether State governments would be able to frame their own rules under the central Act.
- The expressions 'weaker sections' and 'disadvantaged groups' used in the draft need to be defined.
- The Bill should have some provision for imposition of penalty on defaulting parents by the community, as the MP Jan Shiksha Adhiniyam already has.
- The MP Jan Shiksha Adhiniyam has a provision that no tuition fee will be charged, but a development fee as decided by the Parent-Teacher Association of the school may be charged. This may be a more appropriate formulation for incorporation in the central Bill rather than the prescription of 'no fee or other payment whatsoever'.
- Madhya Pradesh has public examinations at the end of classes five and eight, and these should not be barred as they are an important monitoring mechanism to determine the quality of teaching – learning.



- The Madhya Pradesh experience has been that, besides their higher salary bill, absenteeism is also higher among regular teachers than among para teachers. However, if the central Bill so requires, State Govt. would switch to recruitment of regular teachers.

#### 17. The Member-Secretary of the Committee

at this stage clarified the status of the proposed Central legislation vis-a-vis existing (and future) state legislations on the subject. He said that education being a concurrent subject, Parliament as well as State legislatures are competent to legislate on free and compulsory education. But once a central law is enacted, State laws, to the extent they are inconsistent with the central law, would be void, unless such State law or a State amendment to the central law, after being enacted by the State legislature, has been assented to by the President. He also said that the practice of enacting State (or, "local") amendments to central laws is common in the case of many sectors like Labour, and can be adopted in the case of the proposed central Act also, as long as the State amendment does not go against the essence of the central law.

#### 18. Sh. B. Bhushan, Planning Commission

suggested following changes in the draft:

- Goals and objectives sought to be achieved through the Bill should be clearly stated.

- The draft does not adequately address the economic barriers which prevent children from participating in education, and does not even mention religious barriers.
- The Schedule should include a school library.
- The Act should prohibit private tuition by teachers. Also, it should have a separate chapter on duties and responsibilities of parents, and disincentives for defaulting parents.

- **Dr. Archana Mehendale**

made the following points:

- **The new draft looks refreshingly different from the earlier versions but its framework needs to be looked at more closely, and it needs to be discussed widely.**
- **The Bill should recognize that families will send children to school if schools are functional.**
- **The manner in which State will remove various barriers to children's participation in elementary education should be thought through, e.g. in the case of:**
  - **Girls in societies where gender discrimination is serious,**
  - **Homeless and migrant children,**
  - **Children whose income is critical to the family's survival.**
- **The Committee should decide consciously as to how detailed the Central legislation should be, and how much should be left to Rules.**

For example, children's entitlements under 'free education' should not be left to rules, as has been done at present.

- Duties and responsibilities, especially financial obligations, of various tiers of the State should be laid down in more detailed and specific terms.
- The Committee also needs to consciously decide whether it wishes to suggest an over-arching/'hold-all' kind of legislation, or one which focuses on free and compulsory education for children in the 6-14 year age group. It should include provisions on issues like admissions, donations, teacher training etc. only if the Committee consciously decides in favour of the former alternative, and should in that case, flesh them out much more. The risk in this alternative is that when it goes through the political process, provisions on such issues may jeopardize the Bill as a whole, besides resulting in loss of focus on the core. Hence it is important to take a conscious view on the desirability of extensiveness vis-à-vis the need to concentrate on the core concerns.
- What does 'equitable quality' mean? Does it mean that we are equating elite private schools with 'quality'? Equity and quality should be looked at separately, and norms evolved for quality.
- A framework for right to education has been provided by the UN Special Rapporteur on Right to Education in terms of four 'A's, viz.
  - Availability,

- Accessibility,
- Acceptability (to the local community, e.g. in terms of relevance and being culturally appropriate), and
- Adaptability (of the school system to the needs of the child, and not vice' versa)

The draft should take care of the above four 'A's.

- School should be made a vital institution of the community - with appropriate linkages to other similar institutions.

**19. Ms Vrinda Sarup, Jt. Secretary, Deptt. of Elementary Education,**

raised the following issues:

- The Bill has to tread the sensitive area of Centre-State relations, and must do so very carefully. It must reflect the spirit of partnership between the Centre and the States, as articulated in the NPE, and should recognize the fact that (i) provision and management of elementary education rests almost entirely with State Governments, and (ii) ours is a federal system in which State Governments are accountable to their own legislatures. Clause 5(5) of the draft which empowers the Centre to take "corrective steps" vis-à-vis "defaulting States" is especially repugnant to the principles of federalism and partnership. The Bill should be enabling, and not lead to confrontation.
- VECs/ SMCs should be made accountable to PRIs and Municipal bodies, which in turn should be enabled and empowered to provide

additional inputs required for free and compulsory education within their jurisdiction.

- Besides making provisions regarding responsibilities of the State, the Bill should also define responsibilities of the teachers.
- Need for National and State Commissions for Elementary Education should be carefully re-examined in the light of the fact that the executive is already accountable to the legislature and the judiciary. An independent body for a specific purpose like testing and evaluation may be o.k. but not necessarily commissions with omnibus powers.

**20. Ms Shashi Kochar, Planning Commission,**

suggested that the Bill should contain specific provisions regarding:

- children of construction workers, and
- the manner in which participation of nominally-enrolled children would be ensured.

**21. Prof. Anil Sadgopal**

said that:

- Enumeration of certain categories of disadvantaged children in clause 4(6) is un-desirable, as it can never be an exhaustive list, and inadvertent omission of a category may have adverse consequences for it.
- Title of the Bill should be 'The Right to Education (With Equitable Quality, Social Justice and Dignity for All) Bill 2005' so as to adequately convey the intent of the Act in the title itself.

**22. Smt. Kumud Bansal, Secretary, Elementary Education & Literacy,**

said that the task of the Committee and the Sub-Committee is a difficult one, and expressed appreciation for the hard work done and ground covered by the Sub Committee. She stressed the need to stick to the terms of reference, as also the time limit given to the Committee in view of the fact that its final draft would have to be placed before the next meeting of CABE, after which there would be formal consultation on it with States. She said that while the Sub Committee would look into the comments expressed today, she herself would brief the Chairperson about today's deliberations, and discuss the way forward.

**22. The Member- Secretary**

at this <sup>stage</sup> informed the Committee that the original order constituting the committee had set a time limit of six months, which expired on 8<sup>th</sup> March. Therefore, with the approval of the Chairperson, an extension upto 30<sup>th</sup> June has been sought in the Committee's term. Even so, the Committee needs to work backwards and plan its work schedule, so that it accomplishes its tasks at least by 30<sup>th</sup> June.

**24. Shri Dhal Singh Bisen, Minister, School Education Madhya Pradesh,**

made the following concluding remarks from the Chair:

- The M.P. Jan Shiksha Adhinyam is being successfully implemented in Madhya Pradesh. A n intensive enrolment campaign ("Pravesh Parva") is observed at the beginning of each academic session which has resulted in <sup>red</sup> the number of out-of-school children from 14 lakhs to 3.25 lakhs

- Parent Teacher Associations, which are working effectively in MP as per the above Act, should be provided as the main institutional mechanism in the Central Bill also.
- State Governments, Private Schools' organizations, etc. should be fully consulted on the proposed Bill. The Bill should give adequate flexibility as well as financial support to States.
- There is no need for a State-level Commission as proposed in the draft.
- Work Education should receive adequate focus, as should residential schools for children of migrant families, and the problem of teacher absenteeism.
- Banning Board Examinations and Screening Tests for admissions would not be appropriate.
- Provisions in the Bill should be clear, simple and adequate, leaving no room for ambiguity. The term "Disadvantaged group" should be defined.
- The Bill must provide for convergence of the Elementary School and the Anganwadi.

Shri Bisen also thanked all participants for their valuable comments and suggestions.

25. The meeting ended with thanks to the Chair.

Sd/-  
(K.M.Acharya)

Jt. Secretary, Ministry of HRD, Deptt. of EE & L,  
and Member-Secretary, CABE Committee

*For Discussion within the CABE Committee:*  
**Essential Features of the Bill on Free and Compulsory Education:**

*(As recommended by the sub committee of the CABE committee)*

28<sup>th</sup> February 2005

**Right to Education Bill 2005**

**Or**

**The Free and Compulsory Education Bill 2005**

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**A List of Some Important Issues that Remain to be Addressed**

***For Discussion within the CABE Committee:***  
***Essential Features of the Bill on Free and Compulsory Education:***  
***(As recommended by the sub committee of the CABE committee)***  
28<sup>th</sup> February 2005

**Right to Education Bill 2005**

**Or**

**The Free and Compulsory Education Bill 2005**

*An Act to put into effect the right to free and compulsory education to  
all children in the age group of six to fourteen years*

**PREAMBLE**

Whereas the Preamble to the Constitution resolves to secure to all citizens of India JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation;

And whereas, despite the original Article 45 of directive principles of the Constitution having made it the duty of the State to provide free and compulsory education to all children up to age fourteen in ten years (1960), the number of out of school children particularly from the weaker sections and those engaged in labour, and those receiving poor quality education has remained very large;

And whereas, to remedy this situation, the 86<sup>th</sup> Constitutional Amendment Act 2002 has provided for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right under Article 21A of the Constitution;

And whereas the above Act also provides under Article 45 that the State shall endeavour to provide early childhood care and education to all children up to the age of six years;

And whereas the above Act further provides under Article 51-A (k) that it shall be a fundamental duty of every citizen of India who is a parent or guardian to facilitate the education of his child/ward between the age of six and fourteen years;

And whereas it is considered important and essential to create a humane and equitable society that incorporates the secular values and the ethnic, religious and cultural diversities of India;

And whereas it is recognized that the objectives of democracy, social justice, and equity can be achieved only through the provision of equitable quality elementary education to all,

Be it enacted by Parliament in the fifty-sixth year of the Republic...

# CHAPTER I

## PRELIMINARY

### 1. Short Title, Extent and Commencement

(1) This Act may be called the Right to Education Bill 2005

Or

The Free and Compulsory Education Bill 2005

(2) It shall extend to the whole of India.

(3) It shall come into effect from the date of its notification in the Gazette of India

### 2. Definitions

(1) In this Act, unless the context otherwise requires:-

(a) "Appropriate government"

means

i) the state government in the case of territory comprised in a State,

ii) the Government of a Union Territory, in the case of a Union Territory having its own legislature,

iii) the Central Government, in the case of other Union Territories;

provided that in relation to schools and institutions run or substantially funded by the Central Government, the appropriate government will be the Central Government regardless of their location.

(b) "Capitation fee"

means any fee, donation or contribution other than a fee that a fee charging school publicly notifies at the time of announcement for admission as being payable by all children in the event of admission to the school.

(c) "Child"

means a person who is not less than six years and not more than fourteen years of age.

**(d) "Child in need of care and protection"**

shall have the meaning assigned to it in clause (d), of section 2 of the Juvenile Justice [Care and Protection of Children] Act, 2000 [56 of 2000]

**(e) "Child with special needs"**

means a child with a disability

**(f) "Compulsory education"**

means an obligation on the State to take all necessary steps in terms of this Act to ensure that:

- (i) every child of the age of six years enrolls in a school, participates in it, and completes elementary education.
- (ii) every child over six years, but less than 14 years, who was not enrolled in a school at the commencement of this Act, is enrolled in a school; participates in it, and completes elementary education, if necessary, through special steps.

**(g) "Disability"**

shall have the meaning assigned to it in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and shall include such other conditions as may be notified by the competent authority as a disability for the purposes of this Act

**(h) "Elementary education"**

means education at the elementary stage in a school

**(i) "Elementary stage"**

means the stage of school education corresponding to Classes I to VIII as per courses of study prescribed by the competent authority;

**(j) "Equitable quality" in relation to elementary education**

means providing all children with education such that all children have comparable opportunities of access, participation and conditions of success

**(k) "Fee-charging school"**

means a school which is not obliged under this Act to provide free education to all children studying therein.

**(l) "Free education"**

means freedom for the parent/guardian from liability to:

- i) pay any fee or charges to the school where his child/ ward is studying, or to any examining body which may be conducting public examinations for the elementary stage or for any sub-stage thereof, or to any other external body providing any service through the school.
- ii) incur such other expenses, as may be prescribed, which are likely to prevent the child from participating in and completing elementary education

**(m) "Free school"**

means a school that is obliged under Clause 11 of this Act to provide free education to all children studying therein.

**(n) "First generation learner"**

means a child, neither of whose parents has completed elementary education.

**(o) "Guardian", in relation to a child**

means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority.

**(p) "Juvenile in conflict with law"**

means a person who has not completed eighteenth year of age and is alleged to have committed an offence.

**(q) "Local area", in relation to a local authority,**

means the area comprised within the territorial jurisdiction of the authority

**(r) "Local authority"**

means

- i) a Panchayat in respect of rural areas,
- ii) a Municipality in respect of an urban area, and
- iii) such other authorities as the appropriate government may, by notification, specify for the areas mentioned therein

**(s) "Migrant family"**

means a family that does not reside at any one location for at least such number of days in the calendar year as may be prescribed.

**(t) "Neighbourhood school", in relation to a child,**

means any school located within such area around the child's residence as may be prescribed.

**(u) "Non-educational purpose"**

means any purpose not connected with elementary education, or with children's access to, or participation in such education.

**(v) "Out of school child"**

means a child who is either not currently enrolled in a school or, though enrolled, is not able to participate therein.

**(w) "Parent"**

means the father or the mother of a child and includes an adoptive father or mother;

**(x) "Participation" in elementary education, in relation to a child,**

means her:

- i) regular attendance in school, and,
- ii) effective participation in curricular and co-curricular activities of the school for the full duration of the day she attends school.

**(y) "Prescribed"**

means prescribed by rules made under this Act;

**(z) "School"**

means an institution or part of an institution, which imparts instruction at the elementary stage, or any part of such stage, and is recognised by the competent authority.

**(aa) "Screening procedure for admission to a school"**

means any procedure that is used to select one child in preference to another, except in a random manner, for admission to elementary school.



**(bb) "Substantially funded", in relation to a school**

means a school which receives more than fifty percent of its annual expenditure through funds received as loan or grant either individually from the Central Government or a state government or a local authority, or collectively from two or all of them;

**(cc) "Teacher"**

means a person who teaches in a school and includes the head teacher of such school, by whatever name called.

**(dd) "Ward", in relation to a child**

means a child who is under the guardianship of someone other than a parent;

**(ee) "Working child"**

means a child who:

- i) works for wages, whether in cash or in kind, or
- ii) works for her own family in a manner which prevents her from participation in elementary education.

(2) The female gender, wherever used in pronouns in relation to a child, includes the male.

(3) Words and expressions used but not defined in this Act, and defined in the Constitution, shall have the meaning assigned to them in the Constitution.

## **CHAPTER II**

### **CHILD'S RIGHT TO FREE AND COMPULSORY EDUCATION OF EQUITABLE QUALITY**

#### **3. Child's Right to Free and Compulsory Education of Equitable Quality**

- (1) Every child who has attained the age of 6 years shall have the right to participate in full time elementary education and to complete it, and towards that end shall have the right to:
  - i) be admitted to a neighbourhood school, and
  - ii) be provided free and compulsory education in such school, in the manner provided in this Act.
- (2) A non-enrolled child who is in the age group 7-9 years, at the commencement of this Act, shall, in addition to the right specified in sub-clause (1), have the right to be admitted to an age appropriate grade in a neighbourhood school within one year from the commencement of this Act.
- (3) A non-enrolled child who is in the age group 9-14 years, at the commencement of this Act, shall in addition to the right specified in sub-clause (1), have the right to be provided special programmes within the neighbourhood school to enable her to join, as early as possible, but in any case within three years from the commencement of this Act, the age appropriate grade.
- (4) A child who, though enrolled, is not able to participate in elementary education, shall, in addition to the right specified in sub clause (1), have the right to be provided with necessary facilities and to have appropriate conditions created to enable her participation.

## **CHAPTER III**

### **RESPONSIBILITY OF THE STATE**

#### **Part A: General**

#### **4. General Responsibility of the State**

- (1) To ensure the availability of a neighbourhood school for every child;
- (2) To ensure that every child is provided free education in a neighbourhood school. In case only a privately managed unaided school is available and a free school is not available within the prescribed distance, the State would be required to get the child admitted for "free education" in the privately managed school. Wherever necessary, the State shall ensure that children from areas without schools are provided free education through transportation arrangements to the nearest school or by providing residential schools/ facilities.
- (3) Parents/guardians who choose to admit their children to fee- charging schools, even when a free school is available within the prescribed distance shall not have any claim on the State for providing free education to their children.
- (4) To institute and implement a mechanism for regular monitoring of enrolment, participation and attainment status of every child, and for taking corrective steps wherever necessary.
- (5) To ensure that children in schools receive education (i) of equitable quality, and (ii) conforming to values enshrined in the Constitution.
- (6) To ensure that social, cultural, linguistic, gender, administrative, locational and other barriers do not prevent children, in particular:
  - i) Girls
  - ii) First generation learners
  - iii) Working children
  - iv) Children from migrant families
  - v) Children belonging to SC, ST, OBC and minorities
  - vi) Children in need of care and protection,
  - vii) Juveniles in conflict with the law, and
  - viii) Children with disabilities

from participation in, and completion of elementary education.

#### **4A. Responsibility of the State towards the Non-enrolled Child**

The appropriate government shall take necessary steps to ensure that: -

- i) All non-enrolled children in the 7-9 age group at the commencement of this Act are enrolled in a neighbourhood school within one year of the commencement of this Act.
- ii) All non-enrolled children in the 9-14 age group at the commencement of this Act: -
  - (a) are enrolled in special programmes in a neighborhood school, or
  - (b) where such children do not live within the neighbourhood of a school, they are enrolled in a residential bridge course in a school/residential school

to enable them to be admitted to an age appropriate grade as early as possible, but in any case within three years of the commencement of this Act.

#### **4B. Provision of Facilities for ECCE**

The appropriate government shall, as far as possible, provide facilities for early childhood care and education for all children below the age of six years in proximity to every free school.

#### **4C. Provision of Facilities to Young Persons to Complete Elementary Education**

If a young person has, for whatever reason, been unable to complete elementary education by the age of fourteen years but is continuing her education in a school at that age, she shall continue to be provided free education in such school till she completes elementary education or attains the age of eighteen years, whichever is earlier

#### **5. Responsibility of the Central Government**

Providing Free and Compulsory education will be the concurrent responsibility of the central and appropriate governments, with the Central Government responsibility consisting of the following:

- i) Provision of financial support, as per Clauses 8 and 9.
- ii) Take action through appropriate bodies to develop a national curriculum framework, develop and enforce standards for training and qualification of teachers for elementary education in a participatory and consultative manner

- iii) Provide resource support to the State governments, through appropriate institutions, for promotion of innovations and dissemination of best practices in the field of elementary education and for related research, planning and capacity building
- iv) Monitoring progress of implementation of various interventions, schemes and programmes for achieving the objectives of this Act
- v) Taking corrective steps where an appropriate government commits serious default in the discharge of its responsibilities
- vi) Taking such other steps as the President may by order specify

## **6. Responsibility of the Appropriate Government**

- (1) Responsibilities in connection with provision of free and compulsory education, except those of the Central Government as defined in Clause 5, shall be that of the appropriate government
- (2) Without prejudice to the generality of sub clause (1), the appropriate government shall ensure that:
  - i) An exercise is carried out every year to determine the requirement of schools, facilities and their appropriate locations for the implementation of this Act,
  - ii) The additional schools required are established and made functional,
  - iii) Teachers are appointed in schools in accordance with the prescribed norms,
  - iv) The curriculum for elementary education and courses of study for each grade thereof are prescribed and revised periodically,
  - v) Every state funded school is provided with a building, teaching aids and learning material of the prescribed specifications,
  - vi) Elements of free entitlement as defined shall be provided in a timely manner as prescribed.
  - vii) A comprehensive data base is developed and maintained to facilitate the implementation of this Act
  - viii) Adequate facilities are available /created for training of teachers and other personnel to meet the human resource requirement for the implementation of this Act

- ix) Functioning of non-state supported schools is regulated so that they conform to the norms as laid down in or under this Act.

## **7. Responsibility of Local Authorities**

- (1) Subject to the responsibility of the appropriate government as laid down in Clause 6 the local authority shall, if empowered by law, perform the following functions:-
- i) maintain the record of all children in its area, who are in the age group of 0-14 years, in such manner as may be prescribed with special reference to the categories defined in Clause 4 (6).
  - ii) ensure that every child in the age group of 6-14 years residing within its jurisdiction is enrolled in an elementary school, participates in it, and is enabled to complete elementary education.
  - iii) plan and budget for additional schools that may be required as a result of the gaps identified through the school mapping exercise for ensuring free and compulsory elementary education,
  - iv) monitor the provisioning of all schools in its area imparting elementary education with prescribed infrastructure, teachers and supporting facilities for free and compulsory education,
- (2) To the extent that the above functions have not been devolved upon local authorities by law, the appropriate government will by rules determine the authorities at various levels which will perform the above functions for implementation of this Act till such time as such functions are assigned by law.

## **Part B: Financial**

### **8. Financial Responsibility of the State**

Annual expenditure on elementary education by Central government, every appropriate government and local authority as from the financial year following the commencement of this Act shall satisfy the following conditions:

- i) The level of per student expenditure on elementary education shall not be less than the highest of the last five years preceding the commencement of this Act
- ii) The rate of growth in per student expenditure on elementary education will be at least equal to the rate of growth in revenue, and
- iii) The share of expenditure on elementary education in the total expenditure will not be less than the highest of the last five years

## **Explanation**

- (1) *For purposes of this section, per student expenditure will be calculated on the basis of enrolment in free schools.*
- (3) *the expenditure in any year, shall be deemed to include expenditures which were due but not incurred due to (a) non filling up sanctioned posts of teachers, and (b) filling up of posts sanctioned in regular pay scales with persons appointed on lower remuneration, and (c) abolition of posts sanctioned in regular pay scales and appointment of persons on lower remuneration in lieu of such posts.*

## **9. Responsibility of Central Government to Provide Financial Support to Appropriate Governments**

- (1) Subject to the appropriate government fulfilling its obligations as per Clause 8, Central Government shall, besides fulfilling its obligations under clause 8, provide financial assistance to the appropriate government to the extent needed by it to discharge its obligations under this Act.
- (2)\* The liability of Central Government in respect to an appropriate government in any financial year, in terms of sub clause (1), shall be determined by the National Commission.

## **10. Responsibility of the Appropriate Government to Provide Financial Support to Local Authorities**

- (1) Subject to the local authority fulfilling its obligations as per Clause 8, the appropriate government shall, besides fulfilling its obligations under clause 8, provide financial assistance to the local authority to the extent needed for it to discharge its obligations under this Act.
- (2)\* The liability of an appropriate government in respect to a local authority in any financial year, in terms of sub Clause (1), shall be determined by the State Commission.

## **CHAPTER IV**

### **THE SCHOOL**

#### **11. Responsibility of Neighbourhood Schools**

All neighbourhood schools shall provide free and compulsory elementary education to children entitled under section 4 in the following manner:

- i) Schools wholly or substantially funded by the State, to all admitted children,
- ii) All schools, not covered under sub clause i), to at least 25% children admitted after the commencement of this Act, from among children belonging to disadvantaged groups and residing within the neighbourhood, selected in such manner as may be prescribed.

#### **Alternate Formulation**

All neighbourhood schools shall admit and provide free and compulsory elementary education to children entitled under section 4 in the following manner:

- i) Schools wholly or substantially funded by the State, except schools of specified categories, to all admitted children,
- iii) All schools, not covered under sub clause i), to at least 25% children admitted after the commencement of this Act, from among children belonging to disadvantaged groups and residing within the neighbourhood, selected in such manner as may be prescribed.

*(Explanation: "Specified category" means such categories of state-funded schools as may be notified by the appropriate government.)*

#### **12 Prohibition of Screening Procedures and Capitation Fees**

No child or her family shall be subjected to any screening procedure by a school while deciding about admission at the elementary stage, nor shall the family be required to make any payment in the nature of capitation fee.



### **13. Norms and Standards for a School**

- (1) After the commencement of this Act, no school shall be recognised by the competent authority unless it fulfils the norms prescribed in the Schedule.
- (2) All schools which were already recognised at the commencement of this Act, and do not already fulfill the norms prescribed in the schedule, shall do so within a period of three years, from the commencement of this Act.
- (3) Responsibility for compliance with the provisions of sub section (2), shall be as follows;
  - i) In case of schools wholly or substantially funded by government or local authority - of the concerned government /local authority (subject to the provisions of clauses regarding financial responsibility)
  - ii) In case of other schools: - of the management of such schools

### **14. Prohibition of Deployment of Teachers for Non-educational Purpose**

No teacher of a school wholly or substantially funded by the State shall be deployed for any non-educational purpose except for decennial population census, election to local authorities, State Legislatures and Parliament, and disaster relief duties

### **15. Constitution of School Management Committees**

- (1) A School Management Committee shall be constituted for every free elementary school, with such representation of parents, teachers and community and local authority members, and which shall exercise such powers and perform such functions, as may be prescribed.
- (2) Composition of the School Management Committee shall be so prescribed that:
  - i) it has adequate representation of all sections of the community, including parents, teachers, scheduled castes, scheduled tribes, other backward classes, and persons/bodies working for UEE, and,
  - ii) at least half of its members are parents.

## **CHAPTER V**

### **CONTENT AND PROCESS OF EDUCATION**

#### **16. Values, Content and Transaction of Elementary Education**

Competent academic authorities while prescribing curriculum and evaluation procedures and schools while transacting them shall adhere to the following principles:

- i) They shall conform to the values enshrined in the Constitution,
- ii) All schools shall function in a child friendly and child centred manner, and in particular,
  - a) Allow the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, and allow the views of the child to be given due weight in accordance with the age and maturity of the child.
  - b) Would build on the child's knowledge, environment and cultural identity, particularly linguistic, and develop the child's personality, talents and mental and physical abilities to their fullest potential.
  - c) Would rely on activity, discovery, understanding and problem solving.
  - d) Would be free of fear, trauma and anxiety to the child
  - e) Evaluation processes shall be continuous and comprehensive and test the understanding and ability to apply knowledge rather than rote learning.

#### **17. Completion of Elementary Education to be Certified by the School**

- (1) No child shall be required to appear at a public examination at the elementary stage.
- (2) Every child who completes elementary education shall be awarded a certificate to that effect by the school where she completes it.

#### **18. Prohibition of Physical Punishment**

- (1) No child shall be awarded physical punishment in any form in a school.

- (2) Violation of sub-section (1) by a teacher shall amount to professional misconduct, and such teacher shall be liable to be punished in accordance with the disciplinary rules applicable.

#### **19. Teacher Training and Innovation**

- (1) NCTE while laying down norms, standards and guidelines in respect of pre-service training programmes for elementary school teachers shall be guided by the principles laid down in Clause 16.
- (2) The appropriate government in respect of teachers in free schools, and managements in respect of teachers in fee-charging schools, shall take all necessary steps, to ensure suitable in-service training and regular academic support, including through ICT, to teachers to enable them to implement the principles laid down in Clause 16. In particular, all teachers shall be provided opportunities for peer interaction and encouraged to engage in innovation.

## CHAPTER VI

### MONITORING OF THE IMPLEMENTATION OF THE ACT

#### 20. Commissions for Elementary Education

- (1) Central Government and every appropriate government shall constitute a Commission to continuously monitor implementation of this Act, recommend corrective measures wherever necessary, and perform other functions specified in sub clause 3 below.
- (2) Every State/UT Commission will have a unit in every District/Metropolitan area of the State/UT.
- (3) The Commission/Units will perform the following functions at their respective levels:-

LEVEL	FUNCTIONS
1. National Commission for Universal Elementary Education	1. To develop and maintain a comprehensive online database for all children up to 14 years of age, containing all relevant indicators for promoting their universal participation in ECCE and ensuring their universal participation in elementary education. 2. Monitoring quality of elementary education imparted in schools. 3. To redress grievances of parents/ citizens/ civil society members relating to Universal Elementary Education, and to act as Ombudsman for the purposes of this Act.
2. State Commission for Universal Elementary Education	4. To decide the quantum of devolution of funds from Central to appropriate government; from appropriate government to district/metropolitan body; from district/metropolitan body to local body. 5. To report to the Parliament/State legislature/ District Panchayat/Metropolitan Authority on the status of implementation of this Act and such other relevant issues pertaining to UEE as may be prescribed.
3. District/Metropolitan Unit of the State Commission for Universal Elementary Education	6. Make recommendations to GOI/ Appropriate Government/ Metropolitan authority/ local authorities regarding effective implementation of this Act. 7. To commission surveys, studies and research as may be required from time to time. 8. To direct the appropriate government or a local authority to pay suitable compensation to a child or group of children towards whom it has defaulted in the performance of its obligations under this Act.

## **CHAPTER VII**

### **MISCELLANEOUS**

#### **21. Prohibition of Causing Obstruction to Participation in Elementary Education**

No person shall prevent a child from participating in school;

Provided that notwithstanding anything contained in the Child Labour (Prohibition and Regulation) Act, 1986 (No.61 of 1986), no person shall employ or otherwise engage a child in a manner which renders her a working child.

#### **22. Procedure for Computing Age of a Child**

- (1) The age of a child for the purpose of this Act shall be computed in terms of years completed by the child on or before the first day of the academic year;

Provided that where the birthday of a child falls on a day not later than sixty days from the first day of the academic year, the birthday shall be deemed to fall on the first day of the academic year for the purpose of computing the age of the child.

- (2) Ordinarily the birth certificate and, in its absence, a declaration by the parent or guardian shall be treated as prima facie proof of the age of a child, unless the admitting authority has reason to disbelieve it. In case it is disbelieved, the authority shall determine the child's age after making an enquiry in such manner as may be prescribed.

#### **23. Responsibility of the Parent / Guardian**

It shall be the responsibility of every parent/guardian to enroll his child or ward, who has attained the age of 6 years and above in a school, and to facilitate her completion of elementary education

#### **24. Act to be in Addition to, and not in Derogation of Certain Other Laws**

Provisions of this Act in relation to (i) children with disabilities, and (ii) children in need of care and protection, shall be in addition to, and not in derogation of the provisions, respectively, of (i) the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 [1 of 1996], and (ii) Juvenile Justice [Care and Protection of Children] Act, 2000 [56 of 2000].

9.	Play material, games and sports equipment	As may be prescribed
10*	Boundary wall or fencing	
11*	Playground / space (with e.g. slides, swings, see saw, gymnastic bars, sand pit etc.)	
<b>B. Desirable</b>		
1.	Arrangements for early childhood care and education of children below 6 years - either within or in the vicinity of the school premises.	

\* Exemptions may be permitted in appropriate cases

28<sup>th</sup> final/March 01/05

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## **A List of Some Important Issues that Remain to be Addressed**

1. Financial implication of the recommendations
2. Amendments to:
  - i) Child Labour Act
  - ii) NCTE Act
  - iii) PWD Act
  - iv) JJ Act
3. Composition of Commissions
4. Regulation of Unaided Schools
5. Special measures necessary for focus groups mentioned in Clause 4 (6).

**General Comments on the Emerging Draft of 19 February 2005  
Prepared by the Prof. AK Sharma Sub-Committee\***

1. This Bill should be drafted with the aim of giving the people of India an instrument in their hands for fighting for their educational rights in a dynamic and incremental manner and compelling the State to fulfill its Constitutional obligations. The emerging draft does not reflect this perspective. Instead, it has features that empower the State at the cost of the people, thereby permitting the State to impose its authority arbitrarily. For instance, there are no punitive provisions which the people can utilize when the Central or the Appropriate Governments or the Local Bodies fail to fulfill their Constitutional obligations. Each provision needs to be scrutinized from this perspective. The perception of the kind of data to be collected and reporting issues is also State-centric (clause 16). So are the mechanically prescribed PTR norms and other parameters in the Schedule which do not envision a dynamic role for Gram Sabhas, PRIs and other local bodies in evolving the idea of a well-functioning school, contributing their knowledge and skills and managing educational institutions with a sense of social accountability.
2. The brightest (if not the only one) spot in the draft output of 17 February was the unambiguous and bold definition of 'Compulsory Education' for which the sub-committee deserved compliments. However, there is an attempt (see the red lettered formulation for clause 2.5) to replace this with the conventional definition which does not empower the people. Is the sub-committee not aware of the Saikia Committee and Law Commission's observations? Or the observations in Supreme Court's Unnikrishnan Judgment (1993)? All these hold the view that the failure of the State to fulfill its obligation under the original Article 45 for almost 40 years has made the provision of elementary education a matter of "compulsion on the State", rather than on the people. This is precisely what your original formulation in 17 February draft said. Why is the sub-committee getting ready to take a retrogressive step when the entire credibility of CABE is at stake?
3. The previous draft of January 2004 (as prepared by the NDA government) attempted to by-pass the PRIs by proposing a range of extra-Constitutional alternative parallel bodies. The draft was widely criticised for this. The emerging draft too has provisions which end up leaving it to the Appropriate Governments to arbitrarily decide whether to violate 73<sup>rd</sup> and 74<sup>th</sup> amendments or not. Like the 2004 draft, this new draft will also allow the Appropriate Governments to by-pass PRIs and constitute parallel bodies

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\*These comments are *in addition* to the letter dated 19.02.2005 sent to Prof. A.K. Sharma and other members of the sub-committee along with a detailed clause-wise feedback on the then emerging draft output of 17 February 2005.



(combined effect of clauses 7.2, 10 and sub-clauses of the Sandhu draft provision). Why is there no clear reference to the 73<sup>rd</sup> and 74<sup>th</sup> amendments? We also must reflect with sensitivity on the Constitutional provisions under Schedules V and VI in this context (refer to our commitment to India's diversity in the Preamble to the emerging Draft Bill). Another matter relates to the need to provide for Managing Committees for the Government and Local Body schools as well in order to institute autonomy with accountability wherein the PRIs and DIETs will have a legitimate role, along the lines of the private schools' Managing Committees. Please consider this if you wish to break the stranglehold of centralized administration which is identified as the prime cause of the deterioration of the quality of government schools. This will be a revolutionary contribution of CAFE in building up a genuine well-functioning Common School System.

4. The definition of the child as given in clause 2.2 violates the amended Article 45 (for the 0-6 age group; read Unnikrishnan Judgment) and the commitment India has given under the UN Convention on the Rights of the Child for all persons upto the age of 18 years, 86<sup>th</sup> Amendment notwithstanding. This is apart from the fact that there is a universal consensus among the educationists that ECCE during the first six years of the child is critical for child development and her access to elementary education (also held by 1986 policy). Denial of this guarantee implies denial of educational rights to almost 17 crore children in this age group. Also, the subcommittee has access to documents which contend that, without guaranteeing secondary education to the 14-18 age group, even the elementary education loses its relevance in the changed socio-economic conditions. Fortunately, CAFE has recognized the significance of this contention by constituting a committee for universalizing secondary education. The sub-committee may take note of this fact.
5. The definitions of 'child with special needs' and 'disability' are highly restrictive (as was the January 2004 Draft Bill) and ignore the emerging international discourse on this subject (these documents have also been made available to the sub-committee in the Background Papers). These definitions do great injustice to the physically and mentally disabled children (at least 6-8% of the 6-14 age group) and entirely ignore the issue of special needs arising out of the economic, social, and cultural discrimination.
6. It may be noted that the categorization of children in clause 3.3.1 is entirely unnecessary and will open floodgates to misuse by the State to institute discriminatory programmes as has already been done in the flawed SSA. This is why we must also review the otherwise well-intended provision for 'special programme' and 'residential bridge courses' in clauses 15 (ii) and (iii) respectively for "Out-of-School Children". Let such implementation strategies, successfully demonstrated by various activist groups, remain in the domain of what can be negotiated between the State and the people; these need not be legislated for. The simpler the law, the better it would be!

7. The concept of neighbourhood school needs to be placed in the perspective of the Common School System and Inclusive Education (the relevant policy and advocacy documents along with research evidence have also been made available to the sub-committee in the Background Papers). Without this commitment, the prevailing tendency of the State to institutionalize a multi-track education system for the poor is likely to overtake.
8. The only justiciable manner of referring to elementary education is to refer to the concept of “*elementary education of equitable quality*”. How would an ambiguous construct like “satisfactory quality” (clause 3.3) become justiciable? Just give this justiciable right under Article 21A and see how the people will take this instrument into their hands to compel the State to fulfill its obligations, provided you also have punitive clauses (missing from the present emerging draft).
9. Why has the sub-committee made no reference to the language issue in elementary education? Can the neighbourhood schools function without a rational language policy in a Common School System? What about Article 350A of the Constitution (the precise number of the Article needs to be checked; I am writing out of memory) which gives a right to every child to study through her mother tongue? Is this not part of educational rights?
10. The most alarming set of provisions in the emerging draft relate to the issue of financial allocation. It is necessary to reproduce the proposed clause 8:
  - (i) The level of per student expenditure on elementary education in real terms shall not be less than the highest of the last five years preceding the commencement of this Act
  - (ii) The rate of growth in per student expenditure on elementary education will be at least equal to the rate of growth in state / local body revenue, and
  - (iii) The share of expenditure on elementary education in the total expenditure will not be less than the highest of the last five years.

This clause has to be read in conjunction with clauses 7, 9 and 10. What do these imply? The last five years (and also the previous years in 1990s) represent the impact of Structural Adjustment Programme under the IMF-World Bank regime as a result of which the Central Government diluted the Operation Blackboard norms, introduced EGS Centres, multi-grade teaching and the farcical ‘bridge courses’ and replaced the regular teacher by a para-teacher (in violation of the NCTE Act). How can this be the norm for fulfilling the State’s obligation to ensure right to education? These five years are also the period when the Central Government ignored the Tapas Majumdar Committee Report which is the only publicly available scientific estimate of the financial requirement for bringing the out-of-school children into the school system (documents showing the dilution of these norms are also available in the Background Papers).

The simplest and the best way to deal with this issue is to merely refer to the requirement of “adequate financial allocation” since this will give an instrument

to the people to incrementally seek higher provisions as per the need to procure right to “elementary education of equitable quality” (the repeated petitions in the Delhi High Court are good examples of how people seek their rights; the Andhra Pradesh Court also gave a similar judgment in 1997). In case, someone insists on referring to some norms, the only available norm will require us to go back to the Kothari Commission in combination with the 1986 Policy (Section 11.4). This calls for a commitment to ensure that the allocation will “uniformly *exceed* 6 per cent of national income” and the allocation to elementary education will *not be less than half* of this outlay. Please mark the italicized expression *exceed* which is indicative of under-investment in education for the past four decades i.e. since Kothari Commission’s recommendation, thereby leading to ever-widening cumulative gap of investment. The Tapas Majumdar Committee estimates may be viewed as a logical exercise in estimating this cumulative gap, requiring an additional investment of less than 0.6% of GDP (at 2005-06 levels) annually for the next ten years. The sub-committee will be treading on a dangerous path if it tries to invent new norms at this stage inspite of an established discourse on this subject (all relevant documents are available in the Background Papers). Please remember that, apart from the political parties and the Parliament, all teachers’ and students’ organisations and social movements are committed to ensure that the public outlay will “uniformly *exceed* 6 per cent of national income”. Do you want to open a pandora’s box merely to legitimize the policy of abdication by the State as practiced during the neo-liberal phase (without a human face) of the **Nineties and the beginning of this century?**

Lastly, a Financial Memorandum, based on the Tapas Majumdar Committee estimates, must be attached to this Bill. Nothing less than the Tapas Majumdar Committee norms (there is a strong case for certain additional norms) can be considered at this stage. If the sub-committee has access to an alternative financial study on this matter, this study has not yet been made available in the Background Papers. Without doing this, the sub-committee does not have a right to impose new norms arbitrarily.

**Note:** The sub-committee is requested to take into consideration the voluminous policy-related documents, research evidence and advocacy material furnished by various bodies to this CAFE Committee and made available in the Background papers. A specific reference is being made here to the material submitted by the Public Study Group on CAFE Committee, Tamil Nadu FORCES, teachers’ organisations, activist groups and individual academics. The sub-committee is obliged under the democratic process of CAFE to furnish counter-evidence and counter-arguments if it desires to chart a divergent path; it can not just impose its arbitrary ideas without a sound logical and academic basis.

Bhopal,  
22 February 2005

- Prof. Anil Sadgopal  
Member, CAFE Committee  
on Free and Compulsory Education Bill

**CABE Committee**  
**On**  
**“Free and Compulsory Education Bill And Other Issues**  
**Related To Elementary Education”**

**Minutes of the Fourth Meeting dated 16<sup>th</sup> April, 2005,**  
**held at New Delhi**

Fourth meeting of the above CABE Committee took place under the chairmanship of Shri Kapil Sibal, Union Minister of State, Science and Technology and Ocean Development, on 16.04.05 at 0930 hrs. at the CSIR Science Centre, Lodhi Road, New Delhi. The following were present:

**Members**

1. Shri Kapil Sibal - In the Chair  
Union Minister of State (Indep. Charge) for  
Science & Technology & Ocean Dev
2. Shri Dhal Singh Bisen,  
Minister for School Education, Madhya Pradesh,
3. Shri Nagendra Kumar Pradhan  
Minister of School & Mass Education, Orissa,
4. Smt. Kumud Bansal, Secretary, Govt. of India, Deptt. of Elementary Education &  
Literacy,
5. Prof. A.K. Sharma,
6. Prof. Tapas Majumdar
7. Prof. Anil Sadgopal
8. Dr. Vinod Raina
9. Prof. Krishna Kumar, Director, NCERT,
10. Prof. R. Govinda, NIEPA,
11. Dr. Archana Mehendale
12. Sh. D. R. Meena, Jt. Secretary & legal Advisor  
Dept. of Legal Affairs Ministry of law and Justice,

13. Dr. C. Chandramohan, Director (Education), Planning Commission

14. Shri K.M. Acharya

Member-Secretary

Jt. Secretary, Min. of HRD, Deptt. of EE & L,

**Special Invitees to the Meeting**

1. Shri Ram Pal Singh  
President, All India Primary Teachers' Federation
2. Shri D. Rami Reddy  
President, School Teachers' Federation of India
3. Shri R.K. Maini, Principal, Hyderabad Public School, and  
Chairman, Indian Public Schools Conference

**Non-Members Present to assist the Committee**

1. Smt. Anshu Vaish,  
Principal Secretary, Govt. Of M.P., School Education Deptt.,
2. Shri S.K. Ray, F.A., Ministry of HRD,  
(Participated on behalf of Shri Anurag Goel, Addl. Secretary,  
Ministry of Finance)
3. Shri S.K. Gupta, Deputy Secretary, Ministry of Tribal Affairs  
(Participated on behalf of Shri Samirendra Chatterji, JS, Tribal Affairs)
4. Shri Amit Kaushik,  
Director, Deptt. of Elementary Education & Literacy, MHRD
5. Shri Avinash Dikshit, PS to MOS (S&T)
6. Dr. Nalini Juneja  
Fellow, NIEPA,

Main agenda of the meeting was to discuss the second draft of the essential provisions of the proposed Bill on Free and Compulsory Education which was prepared by the Sub-Committee headed by Dr A.K.Sharma, based on the comments received in the previous (third) meeting if the Committee held on 12<sup>th</sup> February. A copy of the draft which was discussed is enclosed as Annex 1.

2. The Chairman

at the outset, complimented the Sub-Committee for having covered so much ground. He also extended a warm welcome to the three special invitees,

present, viz. S/Shri Ram Pal Singh, Rami Reddy and R.K.Maini. He then requested Prof. A.K. Sharma and Shri Vinod Raina to make a short presentation on the revised draft which was meant to be discussed in the meeting.

### 3. Prof. A.K. Sharma

Said that the Sub Committee, which had met about fourteen times before the third meeting dated 12.3.05 of the CABE committee, met another three times thereafter to incorporate the comments received in the third meeting. The core concerns which guided the present version were:

- The child had to be at the centre of all concerns.
- In guaranteeing the right to education, the legislation should not merely assure school places for all children, but should give effect to the spirit of the Constitution, keeping equity and quality at par with considerations of quantity.
- Panchayati Raj and Municipal bodies must be assigned their due place in the legislation.
- Implementation of the Act would need to be independently monitored. Hence, the proposal for national and State – level Commissions.
- Plurality of approaches in providing free and compulsory is necessary, but without resorting to sub-standard alternatives. Hence, the draft envisages full-time formal schooling as the instrumentality of providing free and compulsory education.

### 4. Dr. Vinod Raina

then drew attention to the following main points of the revised draft:

- The revised draft has concentrated on making necessary provisions for making the delivery system work. We cannot simply follow China's short legislation because there, it is the Party's dictat which works.
- Recommended title of the Bill is the 'Right to Education Bill 2005.'
- In Chapter II ('Child's Right to Education'), right against expulsion/ striking off of name from the School, and right to transition to the Upper Primary stage, have been added.

- Provision regarding ECCE (Clause 4B) has been modified to make it obligatory on the State to provide ECCE facilities in proximity to every free School within a period of three years.
- A new Clause 6A has been added to take care of the severe shortage in pre-service training capacity for elementary teachers in many States, by making it obligatory on the appropriate government to augment such capacity according to assessed need.
- Clause 7 has been amended to make it obligatory on the local authority to make adequate provision for un-interrupted education of children of migrant families.
- Part B of Chapter III ("Responsibility of the State") has been modified (i) so that the cost-sharing formula between various tiers of the State will now not figure in the Act itself, but will be determined by independent Commissions keeping various relevant factors in view, and (ii) planning for provision of free and compulsory education will be done in a bottom-up manner.
- Chapter IV which was earlier titled "The School", is now titled "Schools and Teachers", as it now includes a number of new provisions concerning the teacher, e.g. banning of private tuition, Teachers' cadre to be School-based and to be accountable to the local community, teacher remuneration to be comparable to KVS norms, mechanism for redressal of grievances etc.
- It has now been proposed that in private unaided schools having their own feeder pre-primary institutions, 25% reservation for disadvantaged children of the neighbourhood would apply to admissions in such feeder institutions also. Secondly, a provision has been added in Clause 11 to the effect that the appropriate government would reimburse to private unaided schools for the free education of disadvantaged children at a rate equal to the per child expenditure in free schools.
- Notwithstanding strong reservations expressed in the previous meeting about the advisability of providing the Schedule containing detailed School norms as part of the Act, the Sub-Committee, after detailed discussion, thought it necessary to retain it, but with the provision that the independent commission envisaged would have the power to amend it whenever necessary.
- A new Clause 16-A has been added providing for mother tongue to be the medium of instruction at the primary stage.
- In view of the suggestion received in the previous meeting to avoid burdening Commissions with database functions, independent National and

State-level Data Authorities have now been proposed (Clause 20A) for maintenance of online data on all children in the 0 to 14 years age group.

- Composition of the independent commissions has been spelt out in Clause 20.
- To facilitate conclusive discussion in today's meeting, a set of 19 specific questions/issues have been added at the end of the document for the Committee to deliberate upon and take a decision.

## 5. The Chairman

suggested that the nineteen issues be taken up for discussion right away. Subsequently, however, in response to Prof. Sadgopal's request, he allowed an initial discussion on the 'overall vision' of the document.

## 6. Prof. Anil Sadgopal

made the following points regarding the over-all schema of the document:

- That the Preamble should reflect facts, and not opinion. Accordingly, in the third para of the Preamble, the phrase "to remedy this situation", in relation to the 86<sup>th</sup> Amendment, should be dropped as many look upon that Amendment as an un-mitigated disaster. Similarly, in the fifth para of the Preamble, the word "facilitate", in relation to parents' fundamental duty, should be replaced with "provide opportunities for" as per the text of the 86<sup>th</sup> Amendment.
- The neighbourhood schools and the issue of mother tongue as the medium of instruction flow out of the concept of Common School System, but it is unclear why the draft omits to refer to the Common School System itself.
- Clauses 8 and 9 still do not take care of the cumulative gap that has been building up over the years due to under-provisioning for Elementary Education. Besides, these Clauses amount to dilution of the State's financial responsibility by making allocation by it contingent on receipt of plans from SMCs and Local Authorities.
- The suggestion made by Prof. Krishna Kumar in the last meeting to make teachers in govt./semi-govt. and private unaided schools equally liable for duty in connection with elections, census, etc., should be incorporated.
- Categorization of schools into 'free schools' and 'fee-charging schools' is inappropriate. The Bill should stick to the commonly-understood classification of schools, viz. 'private unaided', 'aided', and 'government / local body schools'.



- UEE can never be achieved without universal ECCE. Similarly, the Bill will have to make necessary provisions regarding children in the 14-18 years' age group on account, inter alia, of India's international commitment as a signatory to the Convention on the Rights of the Child (CRC). The Bill must take care of these aspects.

#### 5. Shri SK. Ray, Financial Advisor, Ministry of HRD,

said that, given the federal polity of our country, the Bill is too detailed. For example, the provision to give remuneration to all teachers across the country in a manner comparable to KVS teachers, and spelling out detailed school norms in the Schedule, are inconsistent with the need to provide adequate flexibility to States. In any case, financial implications of the recommendations should be worked out at the earliest, and placed before the Committee.

#### 6. Prof. Krishna Kumar

said that::

- The Bill is too wordy. Its Preamble and the Chapter on 'Content and Process' are unnecessary as their contents are already spelt out in the National Policy on Education (NPE). The only provision worth retaining from the said Chapter is the one prohibiting physical punishment.  
(At this, Dr Vinod Raina clarified that NPE and National Curricular Framework are not justiciable while the proposed Act would be.)
- The Bill is inconsistent with NPE,1986, inasmuch as the latter had advocated a national system of education and a national curricular framework, while the Bill recognizes far too many sub-systems.
- Proposed provision regarding Neighbourhood School will leave out of its purview a large number of private schools which do not have a neighbourhood , located as they are in the middle of nowhere.
- The Bill continues to differentiate between teachers in government and private schools in terms of their liability to perform election and such-like duties.

#### 7. Dr. C. Chandramohan, Director(Education), Planning Commission,

observed that:

- the Bill does not take into account the nobility and status of the teaching profession.

- The Bill should provide for a uniform pattern of 5+3 for the Elementary Stage throughout the country instead of the present State-to-State variations in which the Elementary stage terminates at Class VII in seven or eight states.

#### 8. Prof. Tapas Majumdar

said that:

- The seven CABE Committees have overlapping concerns. It is therefore necessary that their Chairmen should meet and coordinate the work of the Committees.
- Do not agree with Prof. Sadgopal that the 86<sup>th</sup> Amendment was a disaster. We have to remember that it was passed unanimously by both Houses of Parliament. Instead of amending the 86<sup>th</sup> Amendment to make better provision regarding ECCE, framing of a separate law for children in the 0-6 years' age group should be considered.
- The Bill must be developed in the context of the existing law of the land, including the judgements of the Apex Court. It should also bear reference to the recommendations of the Saikia Committee which, along with the Unnikrishnan judgement, had led to the Tapas Majumdar Committee.

#### 9. The Minister of School Education, Madhya Pradesh,

gave his comments on the draft in the form of a written Note a copy of which is appended as Annex2.

#### 10. The Chairman

rounded off the discussion on the 'overall vision' of the document with the following observations:

- It is necessary to have a financial statement before us in order to take a view on the draft essential provisions of the Bill.
- It is desirable to prescribe uniform basic standards, which States should generally conform to.
- It is important to stick to the mandate given to the Committee, viz. the formulation of a Bill in pursuance of Art. 21-A, which refers to free and compulsory education of children in the 6-14 years' age group.

The Chairman then invited members to comment on the 19 issues identified by the Sub-Committee for decision, and these were discussed serially as follows:

## SUMMARY OF ISSUE-WISE DISCUSSION

### Issue No. 1: 'Are definitions of 'free education' and 'compulsory education' appropriate?'

- **Shri Ram Pal Singh, Dr Archana Mehendale and Prof. Anil Sadgopal** felt that 'free education' should be defined in more specific, clear and positive terms. Prof. Sadgopal also said that there was an anomaly in Clause 2(1)(l)(ii) inasmuch as it is not clear as to what would happen if there are expenses acting as barriers in the education of certain children but the appropriate government omits to prescribe them under this sub-clause.
- **Smt. Anshu Vaish** said that the obligation to provide free education should not preclude the SMC or PTA from levying an appropriate School Development Fee as is permitted under the MP Jan Shiksha Adhiniyam.
- It was also pointed out that the part of the definition of free education regarding freedom from payment of fee to any examining body conducting public examination is inconsistent with Clause 17(1) which bars public examination at the elementary stage.
- **Secretary, Elementary Education & Literacy**, said that the definition of 'compulsory education' includes 'special steps' (like bridge courses) to enable older children to complete elementary education, and that these steps ~~could~~ include non-formal education ~~also~~ as mentioned in the NPE itself.

~~However~~, **Prof. Sadgopal** felt that the definition of compulsory education should omit any reference to 'special steps' as bridge courses are only a strategy to deal with a specific problem and its mention in the Act would provide scope for misuse by making sub-standard part-time education a permissible option.

### Issue No. 2: 'Has child's right to education been appropriately spelt out?'

- **Prof. Anil Sadgopal** was of the view that the contents of Clause 16A (regarding instruction in the Mother Tongue at the Primary stage) should be shifted from Chapter V ("Content of Process of Education") to Chapter II (Child's Right to Education of Equitable Quality), as the Right to learn in the Mother Tongue. He also suggested that the terms 'age-appropriate grade' and 'special programmes' used in sub-clauses (2) and (3) respectively of Clause 3 should be suitably defined.
- In regard to Clause 3(6), it was suggested that it should not legalise children being pushed out of the education system. It should accordingly permit striking off of a child's name from the register of a School only if either a

transfer is sought by the parent to another school or if the Local Authority has satisfied itself that the child belongs to a migrant family, and has been enrolled in another school.

The Member-Secretary explained that retaining names of children on a school's rolls, who are in fact continuously absent for a long time, would only result in unduly exaggerated enrolment figures. Therefore, some provision in this regard is necessary – though with adequate safeguards. Shri Amit Kaushik pointed out in this connection that Clause 3(4) is meant to take care of children who, though enrolled, are not able to participate in elementary education.

**Issues No. 3 &4: 'Has the State's responsibility been appropriately**

**(i) spelt out, and**

**(ii) sub divided as among Central Government, Appropriate Government and Local Authority?"**

- **Dr Archana Mehendale said that:**

(i) "religious disabilities" should be added to the various other kinds of disabilities listed in Clause 4(6), and similarly OBCs should be added in the definition of "disadvantaged group" in Clause 2(1)(gg).

(ii) There is inconsistency between Clause 4-B and the Schedule inasmuch as the former requires provision of ECCE facilities near every School within three years but the latter lists ECCE only as a desirable School norm

- **Prof. Krishna Kumar felt that the period of five years allowed in Clause 6-A for State Governments to match elementary teacher training capacity with its requirements was too long. He also suggested that Clause 4-B (regarding ECCE) should begin with the phrase "Given that ECCE leads to UEE..."**

Dr Vinod Raina said that the Sub-Committee would have been happy to propose a shorter period for matching requirement of trained teachers with pre-service training capacity, but did not do so in view of the very large gap which existed in several states. Dr Govinda and Shri Ram Pal Singh felt that provision of a shorter period of, say, three years will at least build up pressure on States to attend to this long-festering problem.

Secretary, EE & L, said that the distance mode should also be utilized to bridge the gap to the extent possible.

- **Shri Rami Reddy** said that Clause 6(2)(v), instead of referring only to provision of building and teaching-learning material in Schools, should require provision of all inputs as per the Schedule.
- **Dr Govinda** said that even if ECCE cannot be universalized, every School should at least offer one year of 'Reception Class' by way of Pre-School education, as is done in USA. At this, **Dr Sadgopal** said that some of our own North-Eastern states are also doing this.
- **Prof. Sadgopal** said that Clauses 8 and 9, in their present form, are not acceptable. Making adequate allocations for UEE is entirely the responsibility of the State, and School Development Plans should not be made the basis or condition precedent for this, as Clause 8(4) seeks to do. The Tapas Majumdar Committee did not merely estimate the financial implications of the Right to Education, but had also suggested the way to mobilize resources for it, viz. by a re-prioritization of government expenditure. A mere additional 0.8% of GDP is all that is required to meet the estimated requirement of fulfilling the Right to Education.

**Dr Vinod Raina** said that the exercise done by the Tapas Majumdar Committee needs to be updated as it is over six years old. Also, there should be no dispute with the principle of bottom-up planning reflected in Clause 8.

**Secretary, EE & L**, said that procedures for allocating resources to various sectors already exist, and changes needed therein would have to be clearly spelt out.

**The Member-Secretary** informed the Committee that NIEPA had been requested to work out financial implications of the Sub-Committee's recommendations. He also said that the Schedule would be necessary, inter alia, for purposes of making financial estimates also, which would be quite impossible in the absence of any norms regarding what is to be provided. Of course, State Governments would have the option to make local amendments to the Act, incl. the Schedule, after following the procedure laid down in the Constitution. :

- It was pointed out that the child's entitlement and State's responsibility have been stated in the Bill, but there should also be a clause to enable time-bound redressal of a situation of non-fulfilment of the State's obligation

#### **Issue No. 5: "Should school norms be defined in the Act or left to Rules?"**

The general consensus was in favour of the Act having a Schedule of School norms. The following suggestions were made to make it more comprehensive:

- Prof. Krishna Kumar said that though he continued to have reservations about prescribing national norms, provision of a radio, TV, at least one PC, and a telephone to every school should also be included. A Geometry Box would be very necessary for teaching Maths.
- Dr Archana Mehendale suggested that electricity and MDM kitchen should be added in the Schedule.
- Prof. Sadgopal said that Pupil-Teacher Ratio should be limited to 30 even in Schools having over 150 enrolment, and the Schedule should also stipulate per child space norm for the Classrooms. The Schedule should also require various facilities for disabled children as per the PWD Act. He also suggested that the Act require all States to switch to the 5+3 system within three years.
- Considerable discussion took place on the issues of (i) part-time teachers for Art, Physical and Work Education at the Upper Primary level, as mentioned in the Schedule, and (ii) the number of working hours which the Schedule should prescribe for teachers. Prof. Krishna Kumar and Prof. Sadgopal strongly pleaded for not according 'second grade' status to the above-mentioned three areas. Regarding number of working hours, there were different views. Secretary, EE & L, expressed the opinion that the Bill could altogether avoid going into this degree of detail.
- Dr Govinda said that Clause 15D regarding teachers' accountability to the SMC and local authority may be all right for checking teacher absenteeism, but is inadequate for academic supervision and monitoring. The Bill should provide for a system of monitoring the work of every teacher in every school through independent professional bodies. The Chairman and Mrs. Anshu Vaish endorsed this idea.

**Issue No. 6: "Are independent Commissions necessary, and if yes, have their tasks been suitably defined? If statutory National and State**

**Commissions for Children are created (under legislation proposed by the Dept. of WCD), will it suffice to entrust them with the tasks proposed for the National / State Commissions in Clause 20?"**

The Member-Secretary introduced the subject by recalling that a Bill for establishing a National Commission for Children (in respect of all Child Rights) - and with enabling provision to establish similar Commissions at the State level - has reportedly been approved by the Cabinet, and is likely to be introduced soon in Parliament. Hence, there is need to consider proposal of the Sub-Committee regarding separate Commissions for the Right to Education, in that light.

The Chairman expressed the view that this Bill should go ahead with the proposed Commissions for monitoring the right to education notwithstanding the fact that a National Commission for Children Bill to monitor all child rights is also on the anvil.

The following points were made on this issue:

- The draft suggests critical functions for the Commission: such as on sharing of expenditure between Central Government, Appropriate Governments and the local authorities. Can an independent body (with no government representation/participation) take decisions on such matters? Would this not clash with the assigned functions of bodies such as Finance Commission and Planning Commission?
- The Commission is expected to perform administrative, financial, quasi-judicial as well as education-related functions, which seem over-ambitious.

**Issues No. 7 & 8:**

7. "Are the provisions regarding obligation of fee charging schools to provide free education to 25% children, and State's liability to reimburse to such schools for children admitted free, at the rate of per child general expenditure, appropriate?"
8. "Should obligation of Kendriya Vidyalayas and Navodaya Vidyalayas with regard to admission of children from the neighbourhood, be similar to that of 'free schools' or of 'fee-charging schools'?"

There was broad consensus about the appropriateness of the provision referred to in Issue No. 7.

Regarding Issue No. 8, after detailed discussion, it was generally agreed that obligation of KVs and NVs to provide free education to disadvantaged children from the neighbourhood may be limited to 25%.

A suggestion was also made to the effect that the terms 'free school' and 'fee-charging school' used in the Bill should be replaced by the terms 'state-supported' and 'private unaided' schools.

**Issue No. 9: "Should screening procedures and capitation fees in fee - charging schools be banned?"**

There was general agreement about banning screening procedures. Regarding 'Capitation Fee', it was felt that while the provision was well-intentioned, definition of the term needed to be improved – e.g. by changing the phrase "other than a fee" used therein to "other than a fee or any other payment".

**Issue No. 10: "Are any provisions for regulation of private schools other than those already proposed in the Bill, needed?"**

There were no suggestions for any further regulatory provisions.

**Issue No. 11: "Are provisions regarding community's and parents' role, as reflected in the clause on SMCs (Clause 15) adequate?"**

Dr Archana Mehendale felt that SMC should consist primarily of parents, and its Chairman and Secretary should necessarily be parents. Smt. Anshu Vaish felt that the Bill should provide for the PTA instead of the SMC as is the case in the MP Act.

After discussion, the general view was that Clause 15, in its present form, is, on the whole, quite appropriate.



**Issue No. 12: “Is the provision regarding parents’ responsibility adequate?  
(CI 23)”**

There was consensus that the Bill should not have any penal provision for parents whose children do not attend school. However, Shri Ram Pal Singh suggested that the Bill may at least provide for some disincentives (like denial of subsidies) for such parents.

**Issue No. 13: “What provisions are needed so as to universalize participation and completion of EE by children of disadvantaged groups?”**

The general view was that present provisions of the draft are about as much as a central legislation can lay down in this regard, and that rest of the interventions would have to be designed based on specific target groups and local circumstances, which cannot - and need not – be spelt out in a central Bill.

**Issue No. 14: “Are the provisions in the Bill adequate to rectify the dysfunction in the system of delivery of elementary education? (Clauses 13-15B, 20, 20A)”**

The only suggestion made on this issue was that Clause 22A(“Admission to Class One to be permitted throughout the Academic Session”) should be modified to make it applicable across the board for the elementary stage.

**Issue No. 15: “Are provisions relating to monitoring and data adequate?”**

It was suggested that Clause 20A(1) may be modified so that national child database is created and maintained for 0-18 years’ (instead of 0-14 years’) age group.

**Issue No. 16: “Are provisions regarding teachers’ appointments, duties, accountability, remuneration and service conditions, adequate?”**

- Prof. Krishna Kumar felt that the present provisions of the draft may lead to parochialisation of the teacher cadre whereas we need to encourage teacher mobility. He said that even if teachers are appointed to individual schools, their selection should be done at a higher (say, State) level, and by a professional body. He also felt that Part-time teachers may be permitted only on a selective basis, so as to utilize the services of locally-available

resource persons, but not in an institutionalized manner as the draft seeks to do for Physical, Art and Work Education. Many members expressed agreement with these views. Prof. Krishna Kumar also cautioned against leaving the teacher entirely to the caprices of the SMC or the local authority.

- It was agreed that the proposal regarding comparability in the remuneration pattern of State Govt. teachers with KVS teachers would have to be examined in the light of its financial implications and State Governments' finances.
- Dr Archana Mehendale said that local authorities which would be responsible for hiring and punishing teachers, may not be well-suited to also discharge the role of redressing teachers' grievances.

**Issue No. 17: "Is the time limit proposed for augmenting teacher training capacity appropriate? (Cl. 6A)"**

It was felt that, for the present, this period may be kept as three years which could be later extended by a legislative amendment, if necessary. It was also however noted that the three-year time-limit may not be realistic in the case of the eastern and north-eastern States where the mis-match between requirement of teachers and pre-service training capacity is huge.

**Issue No. 18: "Can the ECCE-related provisions be improved upon?"**

It was generally agreed after discussion that the present formulation may be retained..

**Issue No. 19: "What should be the title of the Bill?"**

It was agreed that the title proposed by the Sub-Committee ("Right to Education Bill") is, on the whole, quite appropriate.


**Concluding Observations**

After the above discussion on the issues flagged by the Sub-Committee, Prof. Anil Sadgopal reiterated three areas on which he continued to be dissatisfied with the Sub-Committee's draft, viz. (i) The issue of financial allocations (Clauses 8&9), (ii) Making adequate provisions for children in the 0-6 and 14-18 years' age group, and (iii) Suitably enshrining the Common School System in the Bill. In regard to the third, Dr Vinod Raina said that the draft's provisions regarding neighbourhood school, equitable quality, instruction in the mother tongue, etc., are nothing but concrete manifestation of the principles of the Common School System as enunciated by the Kothari Commission.

**The Chairman** requested Prof. Anil Sadgopal to suggest concrete formulations on the above points, as he considers fit - but also taking into account the concerns expressed by others.

**The Chairman concluded the meeting** with the announcement that a five-member Sub-Committee chaired by him, and consisting of Secretary, EE & L, Prof. A.K.Sharma, Prof. R. Govinda, and the Member-Secretary, will now prepare the final draft of the Bill, keeping in mind the views expressed by members in the third and fourth meetings, and this final draft will then be brought before the Committee for approval. On the issue of placing the draft on a web-site for inviting comments from the public at large, it was decided that a view would be taken after the full draft is presented to the Committee in its next meeting.

The meeting ended with thanks to the Chair.



(K.M. Acharya)  
Jt. Secretary, Ministry of HRD,  
Deptt. of Ele. Education & Literacy, &  
Member-Secretary, CABE Committee on  
Free & Compulsory Education Bill and  
Other Issues relating to Ele. Education

*For Discussion within the CAFE Committee:  
Essential Provisions of the Bill on Free and Compulsory Education:  
(As recommended by the Sub Committee of the CAFE Committee)*

## Right to Education Bill 2005

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*For Discussion within the CAFE Committee:  
Essential Provisions of the Bill on Free and Compulsory Education:  
(As recommended by the sub committee of the CAFE committee)  
2<sup>nd</sup> April 2005*

**Right to Education Bill 2005**

*An Act to put into effect the right to free and compulsory education to  
all children in the age group of six to fourteen years*

**PREAMBLE**

Whereas the Preamble to the Constitution resolves to secure to all citizens of India JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation;

And whereas, despite the original Article 45 of directive principles of the Constitution having made it the duty of the State to provide free and compulsory education to all children up to age fourteen in ten years (1960), the number of out of school children particularly from the disadvantaged groups and those engaged in labour, and those receiving poor quality education has remained very large;

And whereas, to remedy this situation, the 86<sup>th</sup> Constitutional Amendment Act 2002 has provided for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right under Article 21A of the Constitution;

And whereas the above Act also provides under Article 45 that the State shall endeavour to provide early childhood care and education to all children up to the age of six years;

And whereas the above Act further provides under Article 51-A (k) that it shall be a fundamental duty of every citizen of India who is a parent or guardian to facilitate the education of his child/ward between the age of six and fourteen years;

And whereas it is considered important and essential to create a humane and equitable society that incorporates the secular values and the ethnic, religious and cultural diversities of India;

And whereas it is recognized that the objectives of democracy, social justice, and equity can be achieved only through the provision of equitable quality elementary education to all; and

Be it enacted by Parliament in the fifty-sixth year of the Republic...

## **CHAPTER I**

### **PRELIMINARY**

#### **1. Short Title, Extent and Commencement**

- (1) This Act may be called the Right to Education Act, 2005;
- (2) It shall extend to the whole of India except the state of J&K; and
- (3) It shall come into effect from the date of its notification in the Gazette of India.

#### **2. Definitions**

- (1) In this Act, unless the context otherwise requires: -

##### **(a) “Appropriate Government”**

means

- i) the State Government in the case of territory comprised in a State;
- ii) the Government of a Union Territory, in the case of a Union Territory having its own legislature;
- iii) the Central Government, in the case of other Union Territories; provided that in relation to schools and institutions run or substantially funded by the Central Government, the Appropriate Government will be the Central Government regardless of their location.

##### **(b) “Capitation fee”**

means any fee, donation or contribution other than a fee that a fee charging school publicly notifies at the time of announcement for admission as being payable by all children in the event of admission to the school.

##### **(c) “Child”**

means a person who is not less than six years and not more than fourteen years of age.



**(d) “Child in need of care and protection”**

shall have the meaning assigned to it in clause (d), of section 2 of the Juvenile Justice [Care and Protection of Children] Act, 2000 [56 of 2000].

**(e) “Child with special needs”**

means a child with a disability.

**(f) “Compulsory education”**

means an obligation on the State to take all necessary steps in terms of this Act to ensure that:

- (i) every child of the age of six years enrolls in a school, participates in it, and completes elementary education.
- (ii) every child over six years, but less than 14 years, who was not enrolled in a school at the commencement of this Act, is enrolled in a school; participates in it, and completes elementary education, if necessary, through special steps like bridge courses, including residential bridge courses.

**(g) “Disability”**

shall have the meaning assigned to it in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and shall include such other conditions as may be notified by the competent authority as a disability for the purposes of this Act.

**(gg.) “Disadvantaged group”**

Means scheduled castes, scheduled tribes, and such other groups disadvantaged due to economic, social, cultural, linguistic, gender, administrative, locational, disability or other factors, and notified as a disadvantaged group in relation to an area, in such manner as may be prescribed.

**(h) “Elementary education”**

means education at the elementary stage in a school.

**(i) “Elementary stage”**

means the stage of school education corresponding to Classes I to VIII as per courses of study prescribed by the competent authority.

**(j) “Equitable quality” in relation to elementary education**

means providing all children with education such that all children have comparable opportunities of access, participation and conditions of success.

**(k) “Fee-charging school”**

means a school which is not obliged under this Act to provide free education to all children studying therein.

**(l) “Free education”**

means freedom for the parent/guardian from liability to:

- i) pay any fee or charges to the school where his child/ ward is studying, or to any examining body which may be conducting public examinations for the elementary stage or for any sub-stage thereof, or to any other external body providing any service through the school.
- ii) incur such other expenses, as may be prescribed, which are likely to prevent the child from participating in and completing elementary education.

**(m) “Free school”**

means a school that is obliged under Clause 11 of this Act to provide free education to all children studying therein.

**(n) “First generation learner”**

means a child, neither of whose parents has completed elementary education.

**(o) “Guardian”, in relation to a child**

means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority.

**(p) “Juvenile in conflict with law”**

means a person who has not completed eighteenth year of age and is alleged to have committed an offence.

- (q) **“Local area”, in relation to a local authority**  
means the area comprised within the territorial jurisdiction of the authority.
- (r) **“Local authority”**  
means  
i) a Panchayat in respect of rural areas,\*  
ii) a Municipality in respect of an urban area, and  
iii) such other authorities as the Appropriate Government may, by notification, specify for the areas mentioned therein.
- (s) **“Migrant family”**  
means a family that does not reside at any one location for at least such number of days in the calendar year as may be prescribed.
- (ss) **“Minor Punishment”**  
Means any punishment other than dismissal, removal or reduction in rank.
- (t) **“Neighbourhood school”, in relation to a child,**  
means any school located within such area around the child's residence as may be prescribed.
- (u) **“Non-educational purpose”**  
means any purpose not connected with elementary education, or with children's access to, or participation in such education.
- (v) **“Out of school child”**  
means a child who is either not currently enrolled in a school or, though enrolled, is not able to participate therein.
- (w) **“Parent”**  
means the father or the mother of a child and includes an adoptive father or mother.

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\* *Explanation: In case of rural areas situated within scheduled areas, the Gram Sabha shall also be a local authority to the extent laid down in the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996.*

**(x) “Participation” in elementary education, in relation to a child,**

means her:

- i) regular attendance in school, and
- ii) effective participation in curricular and co-curricular activities of the school for the full duration of the day she attends school.

**(y) “Prescribed”**

means prescribed by rules made under this Act.

**(z) “School”**

means an institution or part of an institution, which imparts instruction at the elementary stage, or any part of such stage, and is recognised by the competent authority.

**(aa) “Screening procedure for admission to a school”**

means any procedure that is used to select one child in preference to another, except in a random manner, for admission to elementary school.

**(bb) “Substantially funded”, in relation to a school**

means a school which receives more than fifty percent of its annual expenditure through funds received as loan or grant either individually from the Central Government or a State Government or a local authority, or collectively from two or all of them.

**(cc) “Teacher”**

means a person who teaches in a school and includes the head teacher of such school.

**(dd) “Ward”, in relation to a child**

means a child who is under the guardianship of someone other than a parent.

**(ee) “Working child”**

means a child who:

- i) works for wages, whether in cash or in kind, or
- ii) works for her own family in a manner which prevents her from participation in elementary education.

- (2) The female gender, wherever used in pronouns in relation to a child, includes the male.
- (3) Words and expressions used but not defined in this Act, and defined in the Constitution, shall have the meaning assigned to them in the Constitution.

## CHAPTER II

### CHILD'S RIGHT TO FREE AND COMPULSORY EDUCATION OF EQUITABLE QUALITY

#### 3. Child's Right to Free and Compulsory Education of Equitable Quality

- (1) Every child who has attained the age of 6 years shall have the right to participate in full time elementary education and to complete it, and towards that end shall have the right to:
  - i) be admitted to a neighbourhood school, and
  - ii) be provided free and compulsory education in such school, in the manner provided in this Act.
- (2) A non-enrolled child who is in the age group 7-9 years, at the commencement of this Act, shall, in addition to the right specified in sub-clause (1), have the right to be admitted to an age appropriate grade in a neighbourhood school within one year from the commencement of this Act.
- (3) A non-enrolled child who is in the age group 9-14 years, at the commencement of this Act, shall in addition to the right specified in sub-clause (1), have the right to be provided special programmes within the neighbourhood school to enable her to join, as early as possible, but in any case within three years from the commencement of this Act, the age appropriate grade.
- (4) A child who, though enrolled, is not able to participate in elementary education, shall, in addition to the right specified in sub clause (1), have the right to be provided with necessary facilities and to have appropriate conditions created to enable her participation.
- (5) No child shall be expelled, from a school until she completes elementary education.
- (6) No school shall strike off the name of a child from its rolls except under the following circumstances:
  - i) The child's parents requests the school for a transfer certificate to enable the child admission to another school, and

- ii) The child is continuously absent from school for such minimum period as may be prescribed, and the local authority after due enquiry authorizes the school to strike off the child's name from its rolls.

Provided that in case of seasonally migrant families the local authority shall not authorize such striking off of names, till it has satisfied itself, that the child has been enrolled in another school.

### **3A. Right of Transition Till Completion of Elementary Education**

- (1) For every child studying in a school which provides education up to a level less than class VIII, the local authority shall specify a school where such child shall have the right of admission for free education till she completes elementary education.
- (2) No child moving from one school to another, including outside the state shall be required to provide records or transfer certificate for the purposes of admission in the new school; nor shall such child be subjected to any test whatsoever to determine whether she is to be admitted to the school. It shall be the responsibility of the local authority to ensure that the child is admitted to a school without delay, and placed in an appropriate grade and the child's records are transferred from the school last attended to the new school at the earliest.

## CHAPTER III

### RESPONSIBILITY OF THE STATE

#### **Part A: General**

#### **4. General Responsibility of the State**

It shall be the responsibility of the State:-

- (1) To ensure the availability of a neighbourhood school for every child.
- (2) To ensure that every child is provided free education in a neighbourhood school. In case only a privately managed unaided school is available and a free school is not available within the prescribed distance, the State would be required to get the child admitted for "free education" in the privately managed school. Wherever necessary, the State shall ensure that children from areas without schools are provided free education through transportation arrangements to the nearest school or by providing residential schools/ facilities.
- (3) Parents/guardians who choose to admit their children to fee- charging schools, even when a free school is available within the prescribed distance shall not have any claim on the State for providing free education to their children.
- (4) To institute and implement a mechanism for regular monitoring of enrolment, participation and attainment status of every child, and for taking corrective steps wherever necessary, so that every child completes elementary education.
- (5) To ensure that children in schools receive education (i) of equitable quality, and (ii) conforming to values enshrined in the Constitution.
- (6) To ensure that economic social, cultural, linguistic, gender, administrative, locational, disability or other barriers do not prevent children from participating in, and completing elementary education.

#### **4A. Responsibility of the State towards the Non-enrolled Child**

The Appropriate Government shall take necessary steps to ensure that: -

- i) All non-enrolled children in the 7-9 age group at the commencement of this Act are enrolled in a neighbourhood school within one year of the commencement of this Act.
- ii) All non-enrolled children in the 9-14 age group at the commencement of this Act:-



- (a) are enrolled in special programmes in a neighborhood school, or
- (b) where such children do not live within the neighbourhood of a school, they are enrolled in a residential bridge course in a school/residential school.

to enable them to be admitted to an age appropriate grade as early as possible, but in any case within three years of the commencement of this Act.

#### **4B. Provision of Facilities for ECCE**

The Appropriate Government shall provide facilities for early childhood care and education for all children below the age of six years in proximity to every free school within a maximum period of three years from the commencement of this act.

#### **4C. Provision of Facilities to Young Persons to Complete Elementary Education**

If a young person has, for whatever reason, been unable to complete elementary education by the age of fourteen years but is continuing her education in a school at that age, she shall continue to be provided free education in such school till she completes elementary education or attains the age of eighteen years, whichever is earlier.

### **5. Responsibility of the Central Government**

Providing Free and Compulsory education will be the concurrent responsibility of the central and Appropriate Governments, with the Central Government responsibility consisting of the following:

- i) Provision of financial support as per clauses 8 and 9.
- ii) Take action through appropriate bodies to develop a national curriculum framework, and develop and enforce standards for training and qualification of teachers for elementary education in a participatory and consultative manner.
- iii) Provide resource support to the State Governments, through appropriate institutions, for promotion of innovations and dissemination of best practices in the field of elementary education and for related research, planning and capacity building.
- iv) Monitoring progress of implementation of various interventions, schemes and programmes for achieving the objectives of this Act, and taking appropriate steps in case of default.

- v) Taking such other steps as the President may by order specify.

## **6. Responsibility of the Appropriate Government**

- (1) Responsibilities in connection with provision of free and compulsory education, except those of the Central Government as defined in Clause 5, shall be that of the Appropriate Government.
- (2) Without prejudice to the generality of sub clause (1), the Appropriate Government shall ensure that:
  - i) An exercise is carried out every year to determine the requirement of schools, facilities and their appropriate locations for the implementation of this Act,
  - ii) The additional schools required are established and made functional,
  - iii) Teachers are appointed in schools in accordance with the prescribed norms,
  - iv) The curriculum for elementary education and courses of study for each grade thereof are prescribed and revised periodically,
  - v) Every state funded school is provided with a building, teaching aids and learning material of the prescribed specifications,
  - vi) Elements of free entitlement as defined shall be provided in a timely manner as prescribed,
  - vii) A comprehensive data base is developed and maintained to facilitate the implementation of this Act,
  - viii) Adequate facilities are available/created for training of teachers and other personnel to meet the human resource requirement for the implementation of this Act, and
  - ix) Functioning of non-state supported schools is regulated so that they conform to the norms as laid down in or under this Act.

### **6A. Responsibility of the Appropriate Government to Augment Teacher Training Capacity Wherever Necessary**

Every Appropriate Government shall, within six months of the commencement of this Act, assess the State's requirement of professionally trained teachers as prescribed under this Act, vis a vis the capacity of existing training institutions, and shall in the event of a deficit, take steps to augment such capacity so as to

match the requirement within such period not exceeding five years from the commencement of this Act, as the Central Government may notify.

## **7. Responsibility of Local Authorities**

- (1) Subject to the responsibility of the Appropriate Government as laid down in Clause 6 the local authority shall, if empowered by law, perform the following functions:-
  - i) maintain the record of all children in its area, who are in the age group of 0-14 years, with special reference to children in each disadvantaged group, in such manner as may be prescribed.
  - ii) ensure that every child in the age group of 6-14 years residing within its jurisdiction is enrolled in an elementary school, participates in it, and is enabled to complete elementary education.
  - iii) Plan, budget and provide for additional schools, teachers, and other facilities that may be required as a result of the gaps identified through the school mapping exercise for ensuring free and compulsory elementary education.
  - iv) monitor the provisioning of all schools in its area imparting elementary education with prescribed infrastructure, teachers and supporting facilities for free and compulsory education.
  - v) Ensure the sustained education of the children of migrant families through special steps like provision of peripatetic teachers and residential facilities.
- (2) To the extent the above functions have not been devolved upon local authorities by law, the Appropriate Government will by rules determine the authorities at various levels which will perform the above functions for implementation of this Act till such time as such functions are assigned by law.

## **Part B: Planning and Finances**

### **8. Planning For Provision Of Free And Compulsory Education**

1. Every SMC shall prepare an annual, medium and long term School Development Plan to cater to the needs of the children residing in its neighbourhood in respect of their education of equitable quality.
2. School Development Plans, in the aggregate, shall be the basis for the annual, medium and long term plans for every local area, block and district, and metropolitan area.

3. Based on the plans referred to in sub clause (2) every Appropriate Government and Central Government shall prepare annual, medium and long term plans for provision of free and compulsory education in the states/ UT and the country.
4. The plans referred to in sub clause (3) above shall form the basis of the annual demand for grants for elementary education presented by the Appropriate/Central Government to the respective Legislatures/ Parliament, and such demand shall be accompanied with such details as may be prescribed.
5. The plans referred to in (3) shall also form the basis for monitoring the implementation of this Act, by the Commissions for Elementary Education.

**9. Assessment Of Financial Requirements And Allocation Of Financial Responsibility**

- (1) The National Commission for Elementary Education shall, on the basis of the plans prepared in accordance with sub clause (3) of clause 8, assess the financial requirements for the implementation of this Act for the country as a whole, at such intervals as may be prescribed, and shall determine the manner in which the expenditure shall be shared between the central and Appropriate Governments.
- (2) The State Commission for Elementary Education shall, on the basis of the plans prepared in accordance with sub clause (3) of clause 8, assess the financial requirements for the implementation of this Act, for the State, at such intervals as may be prescribed, and the manner in which the expenditure shall be shared between the Appropriate Government and Local Authorities.

## **CHAPTER IV**

### **SCHOOLS AND TEACHERS**

#### **11. Responsibility of Neighbourhood Schools**

- (1) All neighbourhood schools shall provide free and compulsory elementary education to children entitled under section 4 in the following manner:
- i. Schools wholly or substantially funded by the State, to all admitted children, and
  - ii. All schools, not covered under sub clause (i), to at least 25% children admitted to class I after the commencement of this Act, from among children belonging to disadvantaged groups and residing within the neighbourhood, randomly selected in such manner as may be prescribed.

Provided that if a school has a pre primary section at least 25% of children admitted to the preprimary section shall also be admitted from among children of disadvantaged groups.

- (2) For every child admitted and educated in pursuance of (ii) of sub-clause (1), the Appropriate Government shall reimburse to the school at a rate equal to the per child expenditure in free schools and State funded ECCE centres in such manner as may be prescribed.

#### **Alternate Formulation**

- (1) All neighbourhood schools shall provide free and compulsory elementary education to children entitled under section 4 in the following manner:
- i) Schools wholly or substantially funded by the State, except schools of specified categories, to all admitted children, and
  - ii) All schools, not covered under sub clause (i), to at least 25% children admitted to class I after the commencement of this Act, from among children belonging to disadvantaged groups and residing within the neighbourhood, randomly selected in such manner as may be prescribed.

Provided that if a school has a pre primary section at least 25% of children admitted to the preprimary section shall also be admitted from among children of disadvantaged groups.

- (2) For every child admitted and educated in pursuance of (ii) of sub-clause (1), the Appropriate Government shall reimburse to the school at a rate equal to the per child expenditure in free schools and State funded ECCE centres in such manner as may be prescribed.

*(Explanation: "Specified category" means such categories of state-funded schools as may be notified by the Appropriate Government.)*

## **12 Prohibition of Screening Procedures and Capitation Fees**

No child or her family shall be subjected to any screening procedure by a school while deciding about admission to the school at the elementary stage, nor shall the family be required to make any payment in the nature of capitation fee.

## **13. Norms and Standards for a School**

- (1) After the commencement of this Act, no school shall be recognised by the competent authority unless it fulfils the norms prescribed in the Schedule.
- (2) All schools which were already recognised at the commencement of this Act, and do not already fulfill the norms prescribed in the schedule, shall do so within a period of three years, from the commencement of this Act.
- (3) Responsibility for compliance with the provisions of sub section (2), shall be as follows;
- i. In case of schools wholly or substantially funded by government or local authority - of the concerned government /local authority (subject to the provisions of clauses regarding financial responsibility).
  - ii. In case of other schools: - of the management of such schools.

## **13A. Power to amend Schedule**

The National Commission on Universal Elementary Education may, in consultation with the Central and Appropriate Governments, at any time, amend the schedule to this Act either with respect to the country as a whole or any part thereof.

## **14. Prohibition of Deployment of Teachers for Non-educational Purpose**

No teacher of a school wholly or substantially funded by the State shall be deployed for any non-educational purpose except for decennial population census, election to local authorities, State Legislatures and Parliament, and disaster relief duties.

#### **14A. Prohibition of Private Tuition by Teachers**

No teacher shall engage in any teaching activity for economic gain, other than that assigned by his employer or supervisor.

#### **15. School Management Committees**

- (1) A School Management Committee (SMC) shall be constituted for every free elementary school, to monitor and oversee its working, and to plan and facilitate its overall development with such representation of parents, teachers and community and local authority members. as may be prescribed.
- (2) The SMC shall exercise such powers and perform such functions, and shall be accountable in such manner, as may be prescribed.
- (3) Composition of the School Management Committee shall be so prescribed that:
  - i) it has adequate representation of all sections of the community, including parents, teachers, scheduled castes, scheduled tribes, other backward classes, and persons/bodies working for education, and
  - ii) at least half of its members are parents.

#### **15A. Teachers' Cadre to be School-Based**

- (1) After the commencement of this Act, teachers in free schools run by an Appropriate Government shall be appointed for a specific school by such local authority (including SMC) as may be prescribed, and shall not be transferred therefrom.
- (2) All teachers already serving at the commencement of this Act, in free schools run by the Appropriate Governments shall be permanently assigned to a specific school in accordance with such procedure as may be prescribed and shall then not be transferred from the school so assigned.
- (3) Teacher vacancies shall be advertised and filled up school wise by the local authority /SMC. Serving teachers can also apply as per prescribed rules.

- (4) Appropriate Government may, by rules, make provisions in regard to teachers in schools run by larger local authorities which are similar to provisions of sub clauses (1)-(3) above.

*Explanation: For the purposes of this clause, "larger Local authority" means a Panchayat of district of intermediate level, or a Municipal Corporation.*

**15B. Teacher Vacancies In Free Schools Not To Exceed 10% Of Total Strength**

- (1) It shall be the duty of every appointing authority in relation to every free school, to see that teachers' vacancies in the schools under its control do not at any time exceed 10% of the total sanctioned posts of teachers.
- (2) Appropriate Governments and local authorities running free schools shall ensure that teachers and their sanctioned posts are deployed in schools in accordance with norms specified in the Schedule, and are not over-deployed in urban areas at the cost of rural areas.

**15C. Teacher Qualifications and Remuneration**

- (1) After the commencement of this Act, only such persons as possess the qualifications prescribed by the NCTE shall be appointed as teachers.

Provided that in states, which do not have adequate pre service training capacity, Central government/ NCTE may grant relaxation in this provision for such period and to such extent, as may be absolutely necessary.

- (2) Teachers serving at the commencement of this Act who do not possess qualifications prescribed by the NCTE shall be enabled by their employer, at his cost, to acquire the equivalent of such qualifications within such period not exceeding five years from the commencement of this Act, as may be notified by the Appropriate Government.
- (3) Remuneration of teachers serving in schools other than Kendriya Vidyalayas, if less than that of teachers with similar qualifications serving in Kendriya Vidyalayas, shall be revised so as to make it comparable to that of teachers of the latter category, within such period and in such manner as may be prescribed

**15D. Accountability of Teachers Employed in Free Schools Run by the Appropriate Governments and Local Authorities**

- (1) Notwithstanding anything contained in any other law, rules, regulation or contract for the time being in force, the following provisions shall apply to every



teacher employed in free schools run by an Appropriate Government or Local authority: -

- i) Power to grant leave to teachers shall vest in the Head Teacher / School Management Committee (SMC) to such extent and subject to such restrictions as regards nature and duration of leave, and in such manner as may be prescribed;
- ii) The Appropriate Government may by rules provide that salary shall be paid to the teacher in the normal course unless the SMC has reported to the pay disbursing authority that a teacher has remained unauthorisedly absent from duty, and / or that the salary shall be disbursed through the SMC, in such manner as may be prescribed; and
- iii) Unless the state legislature has by law otherwise provided or so provides in future, power to impose minor punishment on the teacher shall vest in the local authority having jurisdiction over the rural/urban/metropolitan area in which the school is situated, as specified below:-

A	for teachers in rural areas	Panchayat of the intermediate level
B	For teachers in government schools in urban areas –	The municipality
C	For teachers in government school in metropolitan areas-	Such authority as the Appropriate Government may notify

- (2) When an SMC considers a matter in exercise of its powers under (i) or (ii) of sub clause (1), no teacher other than the Head Teacher, who is a member of the SMC, shall participate in its proceedings, and the Head Teacher shall also not do so when the SMC is considering a matter concerning him.

#### **15E. Redressal of Teachers' Grievances**

It shall be the duty of the SMC/Local Authority to address teachers' grievances to the extent possible and to support the teacher in obtaining redressal of such grievances as does not fall within its purview.

## CHAPTER V

### CONTENT AND PROCESS OF EDUCATION

#### 16. Values, Content and Transaction of Elementary Education

Competent academic authorities while prescribing curriculum and evaluation procedures and schools while transacting them shall adhere to the following principles:

- i) They shall conform to the values enshrined in the Constitution,
- ii) All schools shall function in a child friendly and child centred manner, and in particular,
  - a. Allow the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, and allow the views of the child to be given due weight in accordance with the age and maturity of the child.
  - b. Would build on the child's knowledge, environment and cultural identity, particularly linguistic, and develop the child's personality, talents and mental and physical abilities to their fullest potential.
  - c. Use the child's mother tongue as the medium of instruction, at least during the first five years of the elementary stage.
  - d. Would rely on activity, discovery, understanding and problem solving.
  - e. Would be free of fear, trauma and anxiety to the child.
  - f. Evaluation processes shall be continuous and comprehensive and test the understanding and ability to apply knowledge rather than rote learning.

#### 16A Mother Tongue to Be The Medium of Instruction at the Primary Stage

Every School shall provide instruction in Classes I-V, in that scheduled language which is the mother tongue of the highest number of children studying in the school, and shall provide additional facilities for instruction through the mother tongue for children belonging to other linguistic groups studying in such school, in such manner as may be prescribed.

Provided that nothing in this clause shall preclude teaching of a language other than the mother tongue as one of the subjects at the primary stage.

**17. Completion of Elementary Education to be certified by the School**

- (1) No child shall be required to appear at a public examination at the elementary stage.
- (2) Every child who completes elementary education shall be awarded a certificate to that effect by the school where she completes it.

**18. Prohibition of Physical Punishment**

- (1) No child shall be awarded physical punishment in any form in a school.
- (2) Violation of sub-section (1) by a teacher shall amount to professional misconduct, and such teacher shall be liable to be punished in accordance with the disciplinary rules applicable.

**19. Teacher Training and Innovation**

- (1) NCTE while laying down norms, standards and guidelines in respect of pre-service training programmes for elementary school teachers shall be guided by the principles laid down in Clause 16.
- (2) The Appropriate Government in respect of teachers in free schools, and managements in respect of teachers in fee-charging schools, shall take all necessary steps, to ensure suitable in-service training and regular academic support, including through ICT, to teachers to enable them to implement the principles laid down in Clause 16. In particular, all teachers shall be provided opportunities for peer interaction and encouraged to engage in innovation.

## CHAPTER VI

### MONITORING OF IMPLEMENTATION OF THE ACT

#### 20. Commissions for Elementary Education

- (1) There shall be constituted a Commission for Elementary Education at the National level, as well as for every State, and UT with Legislature, which shall be known as the National/ State/ UT Commission for Elementary Education, to continuously monitor implementation of this Act, recommend corrective measures wherever necessary, and perform other functions specified in sub clause 5 below.
- (2) Every commission for Elementary Education, shall consist of the following members: -
  - a. A Chairperson, who shall be an eminent person with proven record of service in the field of education,
  - b. One member each having expertise in the fields of elementary education, development of disadvantaged groups, child development/ child rights, finance, and law, and
  - c. A member secretary having expertise in educational management.
- (3) The members of the National/ State Commission shall be appointed by the President/ Governor, on the recommendation of a committee consisting of the following:-

Prime minister/Chief minister speaker of the Lok Sabha/state legislative assembly, Minister, Human Resource Development,/school education, leaders of the opposition in the houses of Parliament/ State Legislature.
- (4) Every State/UT Commission will have a unit in every District/Metropolitan area of the State/UT.

- (5) The Commission/Units will perform the following functions at their respective levels: -

LEVEL	FUNCTIONS
1. National Commission for Elementary Education	<ol style="list-style-type: none"> <li>1. Monitoring all aspects including quality of elementary education</li> <li>2. To redress grievances of parents/ citizens/ civil society members relating to Elementary Education, and to act as Ombudsman for the purposes of this Act.</li> <li>3. To report to the Parliament/State legislature/ District Panchayat/Metropolitan Authority on the status of implementation of this Act and such other relevant issues pertaining to EE as may be prescribed.</li> </ol>
2. State Commission for Elementary Education	<ol style="list-style-type: none"> <li>4. Make recommendations to GOI/ Appropriate Government/ Metropolitan authority/ local authorities regarding effective implementation of this Act.</li> <li>5. To commission surveys, studies and research as may be required from time to time.</li> <li>6. To direct the Appropriate Government or a local authority to pay suitable compensation to a child or group of children towards whom it has defaulted in the performance of its obligations under this Act.</li> <li>7. To perform the function specified in clause 8</li> </ol>

**20A. National/ State/District Register of Children and National/State Child Data Authority**

- (1) An online National / State/ District Register of Children, accessible to the public at all times, shall be created and maintained for all children in the 0-14 years age group in such manner as may be prescribed.
- (2) Central / Appropriate Government shall establish an autonomous National /State Child Data Authority, or shall designate an existing institution as such Authority to maintain the NRC / SRC and perform such other functions as may be prescribed.
- (3) The SCDA may have district level units to perform such of its functions as may be prescribed.
- (4) The NCDA/ SCDA (including district level units) shall have the power to seek information from schools, parents, local authorities and Appropriate Governments in the performance of its functions and it shall be the duty of the latter to furnish such information.

## CHAPTER VII

### MISCELLANEOUS

#### **21. Prohibition of Causing Obstruction to Participation in Elementary Education**

No person shall prevent a child from participating in school.

Provided that notwithstanding anything contained in the Child Labour (Prohibition and Regulation) Act, 1986 (No.61 of 1986), no person shall employ or otherwise engage a child in a manner that renders her a working child.

#### **22. Entry age for Elementary Education and Procedure for Computing Age of a Child**

- (1) A child shall be admitted to class 1 only after she has attained the age of five years and ten months before the beginning of the academic session.
- (2) Ordinarily the birth certificate and, in its absence, a declaration by the parent or guardian shall be treated as prima facie proof of the age of a child, unless the admitting authority has reason to disbelieve it. In case it is disbelieved, the authority shall determine the child's age after making an enquiry in such manner as may be prescribed.

#### **22A Admission to Class One to be Permitted Throughout the Academic Session**

- (1) Children shall not be denied admission to class one, at any time of the academic session.
- (2) Children admitted to class one within four months of the commencement of the academic session shall be enabled to complete class one with the batch of students admitted at the beginning of the session. Children admitted later in the academic session, shall complete class one with the next batch of students.

#### **23. Responsibility of the Parent/Guardian**

It shall be the responsibility of every parent/guardian to enroll his child or ward, who has attained the age of 6 years and above in a school, and to facilitate her completion of elementary education.

**24. Act to be in Addition to, and not in Derogation of Certain Other Laws**

Provisions of this Act in relation to (i) children with disabilities, and (ii) children in need of care and protection, shall be in addition to, and not in derogation of the provisions, respectively, of (i) the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 [1 of 1996], and (ii) Juvenile Justice [Care and Protection of Children] Act, 2000 [56 of 2000].

**SCHEDULE**  
**Norms and Standards for a School**

S.No.	Item	Norm														
1.	Curriculum	As prescribed by the Competent Academic Authority														
2	Number of teachers:															
	(a) Primary School (Classes 1-5)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Enrolment</th> <th style="text-align: left;">No. of teachers</th> </tr> </thead> <tbody> <tr> <td>Up to 60</td> <td>2</td> </tr> <tr> <td>61 - 90</td> <td>3</td> </tr> <tr> <td>91 - 120</td> <td>4</td> </tr> <tr> <td>121 – 200</td> <td>5</td> </tr> <tr> <td>&gt;150</td> <td>5+ 1Head Teacher, and 1 part time clerk,</td> </tr> <tr> <td>&gt;200</td> <td>Pupil Teacher Ratio (excluding Head Teacher) not to exceed 40</td> </tr> </tbody> </table>	Enrolment	No. of teachers	Up to 60	2	61 - 90	3	91 - 120	4	121 – 200	5	>150	5+ 1Head Teacher, and 1 part time clerk,	>200	Pupil Teacher Ratio (excluding Head Teacher) not to exceed 40
Enrolment	No. of teachers															
Up to 60	2															
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121 – 200	5															
>150	5+ 1Head Teacher, and 1 part time clerk,															
>200	Pupil Teacher Ratio (excluding Head Teacher) not to exceed 40															
	(b) Upper Primary School (Classes 6-8)	<ul style="list-style-type: none"> <li>• At least one teacher per class such that there is as far as possible at least one teacher each for               <ol style="list-style-type: none"> <li>1. Science and Maths</li> <li>2. Social studies</li> <li>3. Languages</li> </ol> </li> <li>• At least one teacher for every 35 children</li> <li>• As soon as enrolment crosses 100:               <ol style="list-style-type: none"> <li>i. A full time head teacher and a part time clerk</li> <li>ii. At least part time teachers for:                   <ul style="list-style-type: none"> <li>• Art education</li> <li>• Health and Physical Education</li> <li>• Work education</li> </ul> </li> </ol> </li> </ul>														
3.	Qualifications of teachers	As per clause 15 C **														
4.	Building <ol style="list-style-type: none"> <li>i. Class rooms</li> <li>ii. Toilets (separate for boys and girls)</li> <li>iii. Drinking Water</li> <li>iv. Kitchen (wherever mid day meal is cooked in the school)</li> <li>v. Barrier free access</li> </ol>	All-weather building consisting of: At least one classroom for every teacher and an office cum store cum head teacher's room in every school														
	vi. Specifications of a classroom**	As may be prescribed														
6.	Minimum number of Working days/instructional hours in an academic year	<ol style="list-style-type: none"> <li>ii. 200 days</li> <li>iii. 800/1000 Instructional hours per academic year for primary/upper primary</li> </ol>														



7.	Minimum number of working hours per week for the teacher	40 (Teaching plus preparation hours)
8.	Teaching learning equipment	As may be prescribed
9.	Library	As may be prescribed **
10.	Play material, games and sports equipment	As may be prescribed
11*	Boundary wall or fencing	
12*	Playground / space (with e.g. slides, swings, see saw, gymnastic bars, sand pit etc.)	
<b>B. Desirable</b>		
1.	Arrangements for early childhood care and education of children below 6 years - either within or in the vicinity of the school premises.	

\* Exemptions may be permitted in appropriate cases.

\*\* Provision added after the third meeting of the Committee

### **A List of Some Important Issues that Remain to be Addressed**

1. Financial implication of the recommendations
2. Amendments to:
  - i) Child Labour Act
  - ii) NCTE Act
  - iii) PWD Act
  - iv) JJ Act
3. Special measures necessary for disadvantaged groups

### **Issues Specially Flagged for Committee's Decision**

1. Are definitions of 'free education' and 'compulsory education' appropriate?
2. Has child's right to education been appropriately spelt out?
3. Has the State's responsibility been appropriately spelt out?
4. Has the State's responsibility been appropriately sub divided as among Central Government, Appropriate Government and Local Authority?
5. Should school norms be defined in the Act or left to rules?
6. Are independent Commissions necessary, and if yes, have their tasks been suitably defined? If statutory National and State Commissions for Children are created, will it suffice to entrust them with the tasks proposed for the National / State Commission in Clause 20?
7. Are the provisions regarding obligation of fee charging schools to provide free education to 25% children, and State's liability to reimburse to such schools for children admitted free, at the rate of per child general expenditure, appropriate?
8. Should obligation of Kendriya Vidyalayas and Navodaya Vidyalayas with regard to admission of children from the neighbourhood, be similar to that of 'free schools' or 'fee charging schools'?

9. Should screening procedures and capitation fees in fee charging schools be banned?
10. Are any provisions for regulation of private schools other than those already proposed in the Bill, needed?
11. Are provisions regarding community's and parents' role as reflected in the clause on SMCs adequate? (15)
12. Is the provision regarding parents' responsibility adequate? (cl.23)
13. What provisions are needed so as to universalize participation and completion of EE by children of disadvantaged groups?
14. Are the provisions in the Bill adequate to rectify the dysfunction in the system of delivery of elementary education? (13-15B, 20, 20A)
15. Are provisions relating to monitoring and data adequate?
16. Are provisions regarding teachers' appointments, duties, accountability, remuneration and service conditions, and adequate?
17. Is the time limit proposed for augmenting teacher training capacity appropriate? (Cl.6A)
18. Can the ECCE related provisions be improved upon?
19. What should be the title of the Bill?

केब समिति की बैठक दिनांक 16 अप्रैल 2005 में डॉ ढाल सिंह बिसेन,  
स्कूल शिक्षा मंत्री, म.प्र. शासन के विचार

प्रीएम्बल (प्रस्तावना) में अनुसूचित जनजाति बच्चों का उल्लेख स्पष्ट रूप से होना चाहिये ।

अध्याय 1 (i) का i- राज्य सरकार द्वारा राज्य के शिक्षा विभाग के संबंध में नियमों/अधिनियमों के अंतर्गत प्रारंभिक कक्षाओं में पढ़ने वाले बच्चों से विकास शुल्क अभिभावकों की सहमति तथा निर्णय के आधार पर लिया जा सकता है ।

बिन्दु(cc) में यह भी स्पष्ट किया जाना उचित होगा कि-शिक्षक से अभिप्रेत है कि किसी स्कूल का ड्यूली अपाइंटेड शिक्षक चाहे उसे किसी भी ऐसे नाम से जाना जाता हो, जैसा कि राज्य सरकार द्वारा अनुमोदित किया जाना और ऐसे उस स्कूल में शिक्षण के लिए सम्यक रूप से नियुक्त किया गया हो ।

अध्याय 2 के

बिन्दु क.6 (ii) से सहमति नहीं है । किसी भी बच्चे का नाम स्कूल रजिस्टर से काटना नहीं चाहिये । लम्बे समय तक अनुपस्थित बच्चों की नियमिति उपस्थिति सुनिश्चित करने के उपाय करना चाहिये ।

बिन्दु क.3 A(2) में विरोधाभास परिलक्षित हो रहा है ।

कक्षा एक के अलावा अन्य कक्षाओं में प्रवेश लेने से पूर्व यदि बच्चे का टेस्ट न लिया जायेगा तो किस कक्षा में प्रवेश हेतु बच्चा उपयुक्त है का निर्धारण करना कठिन होगा। यह अध्याय 4 का बिन्दु क. 12 से विरोधाभासी है ।

अध्याय 03

बिन्दु (4B) में यह जोड़ा जाना उचित होगा कि:- राज्य सरकार द्वारा ऐसी बसाहटों जिनमें प्राथमिक या उच्च प्राथमिक शालाएं हों, आंगनवाड़ी का समय आवश्यक रूप से शाला के समय के अनुरूप किया जाये जिससे शाला में पढ़ने वाले बच्चों के छोटे भाई-बहनों की शाला समय में देखभाल हो सके ।

बिन्दु (5) में यह जोड़ा जाना उचित होगा :-

1. केन्द्र सरकार प्रदेशों द्वारा शिक्षा के संबंध में तैयार की गई स्थानीय रणनीतियों को समर्थन दिया जायेगा ।

**बिन्दु (6) में यह जोड़ा जाना उचित होगा:—**

1. राज्य सरकार द्वारा शिक्षकों की नियुक्ति शैक्षणिक सत्र के प्रारंभ में आवश्यक रूप से कर ली जायेगी ।
2. राज्य सरकारों द्वारा पलायन अवधि, एग्रीकलामेटिक कैलेण्डर तथा माईग्रेट पैटर्न के आधार पर पलायन करने वाले परिवारों के बच्चों की शिक्षा का अकादमिक कैलेण्डर पृथक से तैयार कराया जायेगा ।

**अध्याय 04**

**बिन्दु (14) हेतु दण्डात्मक कार्यवाही विहित किया जाना आवश्यक होगा ।**

**बिन्दु (15) से सहमति नहीं है । इसके स्थान पर निम्नलिखित विचार किया जाना उचित होगा:—**

केन्द्रीय विद्यालय के शिक्षकों के वेतन के अनुरूप राज्य के शिक्षकों को वेतन दिये जाने के प्रावधान करने से व्यय का भार बहुत अधिक होगा । अतिरिक्त संसाधन की व्यवस्था कैसे होगी पर विचार करना आवश्यक होगा ।

**बिन्दु क. 15D (1) का ii**

शिक्षकों के वेतन/मानदेय वितरण के अधिकार किसी एक का ही होना चाहिये बिल में यह कार्य संपादित करने हेतु 2 विकल्प नहीं दिये जाने चाहिये । यदि शिक्षकों के वेतन/मानदेय वितरण का अधिकार एस.एम.सी./पी.टी.ए. का होगा । ऐसी स्थिति में शिक्षकों के विरुद्ध दण्डात्मक कार्यवाही करने का अधिकार भी एस.एम.सी./पी.टी.ए. को ही होना चाहिये ।

शालाओं के लिये अभिभावक शिक्षक का गठन किया जायेगा । इसमें शाला में पढ़ने वाले सभी बच्चों के माता-पिता या संरक्षक तथा शाला में पदस्थ समस्त शिक्षक सदस्य होंगे । अभिभावक शिक्षक संघ अध्यक्ष, उपाध्यक्ष तथा कार्यकारिणी के सदस्य प्रतिवर्ष शैक्षणिक सत्र के प्रथम माह में निर्वाचित किया जायेगे ।

अभिभावक शिक्षक संघ के निर्वाचित प्रतिनिधियों में महिलाओं, अनुसूचित जाति, अनुसूचित जनजाति प्रतिनिधित्व भी राज्य सरकार द्वारा विहित किये अनुसार सुनिश्चित किया जायेगा ।

**अध्याय 5**

**बिन्दु क. 16 A से सहमति नहीं है ।**

प्राथमिक स्तर पर कक्षा 2 अथवा 3 तक ही शिक्षक द्वारा बच्चों को मातृभाषा में पढ़ाया जाना उचित होगा । जिसके उपरान्त धीरे-धीरे बच्चों को मानक भाषा की ओर ले जाया जायेगा । मध्यप्रदेश के परिदृश्य में अनेक स्थानीय बोलियों का प्रचलन है । प्रावधान 10 के लागू होने से शिक्षकों को पढ़ाने में कठिनाई होगी ।

## बिन्दु क. 17

निदानात्मक परीक्षण एवं उपचारात्मक शिक्षण (डायग्नोस्टिक तथा रेमेडियल टीचिंग ) को ध्यान में रखते हुए प्रत्येक कक्षा में मासिक तथा त्रैमासिक मूल्यांकन का प्रावधान किया जाना उचित होगा । कक्षा 5 वीं एवं 8 वीं के परिणामों को अधिक प्रभावशाली एवं शिक्षण को सुनिश्चित करने के लिये जिला बोर्ड का निर्माण करके, इन परीक्षणों का संचालन एवं परीक्षा परिणामों का प्रमाणीकरण जिला बोर्ड के सुपुर्द करना ।

## अध्याय 6

### बिन्दु क. 20(2)

केन्द्र तथा राज्य स्तर की कमीशन ने एन.सी.ई.आर.टी. नीपा, लोक शिक्षण संचालनालय, एस.सी.ई.आर.टी. जैसी संस्थाओं के रीप्रेजेंटेटिव (प्रतिभागी) का होना उचित होगा ।

**अध्याय 07, में निम्नलिखित जोड़ा जाना उचित होगा :-**

**बिन्दु क. 22 A के (1) में जोड़ा जाना उचित होगा :-** केवल कक्षा 1 में ही नहीं बल्कि किराी भी कक्षा में अकादमिक सत्र के किसी भी समय बच्चा प्रवेश ले सकेगा ।

- शाला जाने योग्य आयु वर्ग के किसी भी बच्चे को शाला जाने से रोकने वाले व्यक्तियों अथवा संस्थाओं के विरुद्ध दण्डात्मक कार्यवाही की जायेगी । यह दण्ड आर्थिक प्रकृति का हो सकता अथवा जैसा राज्य सरकार द्वारा विहित किया जाये ।
- इस बिल के प्रावधान के मुताविक होने वाला व्यय बहुत अधिक होगा । ( शिक्षकों का वेतन केन्द्रीय विद्यालय के शिक्षकों के बराबर का होना, निजी स्कूलों तथा निजी ई.सी.सी.ई.सेंटर को 25 प्रतिशत बच्चे दर्ज कराने बावत भुगतान करना) यह कैसे संभव हो पायेगा । इस पर विचार किया जाना आवश्यक है ।
- पब्लिक-पाईवेट पार्टनरशिप हेतु बिल में प्रावधान करना उचित होगा । जिससे कि प्रारंभिक शिक्षा अधिक राशि जुटाने हेतु कारपोरेट की भागीदारी सुनिश्चित की जा सके । मोविलाईज की गई राशि का विधिवत् ऑडिट समय-समय पर किया जायेगा ।

**CABE COMMITTEE ON FREE AND COMPULSORY EDUCATION AND OTHER  
ISSUES RELATED TO ELEMENTARY EDUCATION**

**MINUTES OF THE 5<sup>TH</sup> MEETING DATED 5.6.2005 HELD AT NEW DELHI**

Fifth meeting of the above CABE Committee took place under the Chairmanship of Shri Kapil Sibal, Union Minister of State, Science & Technology and Ocean Development, on 5.6.2005 at 1.00 pm at the CSIR Science Centre, Lodi Road, New Delhi. The following were present:

**Members**

1. Shri Kapil Sibal  
Union Minister of State (Independent Charge) for  
Science & Technology And Ocean Development
2. Smt Kumud Bansal, Secretary, Government of India, Department of Elementary  
Education & Literacy
3. Prof A K Sharma, former Director, NCERT
4. Prof Tapas Majumdar
5. Prof Krishna Kumar, Director, NCERT
6. Dr Vinod Raina
7. Prof Anil Sadgopal
8. Dr Shantha Sinha
9. Dr Archana Mehendale
10. Prof R Govinda, NIEPA
11. Shri Samirendra Chatterji Joint Secretary, Ministry of Tribal Affairs
12. Smt. Jayati Chandra, Joint Secretary, Ministry of Social Justice & Empowerment
13. Shri D R Meena, Joint Secretary and Legal Advisor  
Department of Legal Affairs, Ministry of Law & Justice.
14. K M Acharya, *Member Secretary*  
Joint Secretary, Department of Elementary Education & Literacy, Ministry of HRD

**Non-Members present to assist the Committee**

1. Ms Vrinda Sarup, Joint Secretary, Department of Elementary Education &  
Literacy, Ministry of HRD
2. Mr S K Gupta, Deputy Secretary, Ministry of Tribal Affairs

- 2
3. Shri D Sudhakaran, Deputy Secretary (Finance),  
Ministry of HRD
  4. Shri Amit Kaushik  
Director, Department of Elementary Education & Literacy, Ministry of HRD
  5. Shri Avinash Dikshit, PS to MOS (S&T)
  6. Dr K K Biswal, NIEPA
  7. Dr A N Reddy, NIEPA
  8. Dr Geetha Rani, NIEPA

Main agenda of the meeting was to discuss the final Draft of the basic provisions of the proposed Bill on Right To Education, which had been prepared by the Sub-Committee headed by the Chairman, in the light of the comments and views expressed in the previous (4<sup>th</sup>) meeting dated 16.4.05 of the Committee. A copy of the Draft which was circulated for discussion in the meeting, is enclosed at **Annex-I**

## **2. The Member Secretary**

invited, with the permission of the Chair, Prof A.K. Sharma and Prof Govinda to briefly present the highlights of the above draft.

## **3. Prof A.K. Sharma**

highlighted the following important changes:

- Certain changes in the Preamble
- Changed categorisation of Schools
- Schools to endeavour to provide pre-school education at least to children in the 5-6 years age group.
- A new category of children, based on parental income, viz. "children belonging to weaker clauses" defined for the purpose of being provided free education in un-aided schools under the 25% quota.
- Liability of non-State schools to provide free education to children from weaker clauses, made proportional to the recurring State grants received by them as percentage of their recurring expenditure, subject to a minimum of 25%.
- Requirements of data included in the clause dealing with responsibility of State to institute mechanism for monitoring, and provision regarding independent data authority, omitted.
- Duties of teachers added.
- Provision for establishment of State Commissions for Elementary Education, omitted.
- A provision added empowering School Management Committees to require defaulting parents to render childcare service in schools.

## **4. Prof R. Govinda**

then made a more detailed presentation about the new Draft. He also briefly presented the preliminary results of an exercise undertaken by NIEPA, at the request of



the Committee, to estimate the financial implications of the proposed provisions. Following were some of the main points made by Dr Govinda, besides those already made by Prof. A K Sharma:

- i) Chapter II – Child's Right
  - Modified clause 4(2) authorises Headmasters to issue transfer certificates, but absence of such certificate would not be a ground for denial of admission.
- ii) Chapter III – Responsibility of the State
  - a. Clause 5(2) has been shortened.
  - b. Clause 5(3) now provides for establishment of a mechanism to monitor enrolment, participation, achievement, etc., and making this information available in the public domain.
  - c. Clause 8 now assigns financial responsibility for implementing the Act concurrently to the Centre and the States, eliminating the role of the National Commission in determining the sharing pattern.
  - d. Clause 11 (1) (v) has been modified to require special steps for migrant children instead of specifying "peripatetic teacher" only.
  - e. Clause 12(4) has been modified to provide that school plans "shall be taken into consideration" instead of being the basis of further planning and financial allocations.
- iii) Chapter IV – Schools and Teachers
  - a. Schools would be free to admit eligible children from weaker sections against the 25% quota themselves.
  - b. The new clause 13(4) covers the school's obligation to provide information as may be required by various authorities under Clause 5(3).
  - c. A mildly adverse (non-penal) provision has been introduced under Clause 19(3) for parents who default in sending their children to school.
  - d. Linking of all teachers' salaries to KVS scales under Clause 22(3) has been removed—the amended Clause now refers only to "terms and conditions" of their service being appropriate to their qualifications.
  - e. Teachers' duties have been stipulated under Clause 23.
- iv) Chapter VI – Monitoring of Implementation
  - Provisions regarding State Elementary Education Commissions and their District-level Units have been omitted.
- v) Chapter VII – Miscellaneous
  - a. Clauses 32 and 33 dealing with powers to make rules and remedy breaches of the Act, have been introduced.

After summarising salient changes as above, Prof Govinda presented the preliminary results of an exercise undertaken by NIEPA to estimate the financial implications of the proposed provisions. He said that this was being done for four alternative scenarios based on (i) PTR of 1:35 and 1:40, combined with (ii) payment of teacher salaries according to KVS scales and "Typical" State scales. He summarised the tentative financial implications in the four scenarios for the five-year period, 2006-11, as follows:

Scenario	Estimated Fin. implications For 2006-11 (In Crore Rs.)
1. PTR=35; KVS scales	3,78,982.75
2. PTR=35; State scales	3,26,056.75
3. PTR=40; KVS scales	3,29,485.31
4. PTR=40; State scales	2,88,621.46

Paper containing details of above calculations was not circulated in the meeting, as the exercise was not yet complete. It was agreed that NIEPA's final paper on the subject will be sent to all members soon after it is ready.

#### 5. The Chairman

after the presentation as above, opened discussion with the remark that probably no Bill can satisfy everyone, and we should therefore suggest a Bill which would be satisfactory to most. The Committee should now at this stage avoid going into matters of detail, and should instead concentrate on major issues. The Committee need not worry too much about financial implications, though there is no denying their importance. The Prime Minister has desired that the Committee's recommendations should now be submitted forthwith, and therefore after today's meeting the Committee may authorise the Chairman to finalise them as there is now no time left for further meetings.

#### 6. Prof Tapas Majumdar

referred to certain suggestions made by him in the form of a Note, a copy of which is enclosed as Annex 2. In particular, he suggested that "juvenile in conflict with the law" should be defined as juveniles proved guilty of an offence rather than one who is merely accused of committing an offence.

It was pointed out that the definition used in the draft was as per that used in the Juvenile Justice Act.

#### 7. Dr Vinod Raina

made the following points:-

- Given the mandate of this Committee, the omission of children in the 0-6 and 14-18 age groups has been a limitation which he was deeply unhappy about.
- Some changes made vis-a-vis the earlier draft are inappropriate. For example:
  - Change regarding ECCE is retrogressive—ECCE should be an independent clause covering 0-3 years and 3-6 years separately, and not only 5-6 years as proposed now.
  - Clause 13(1), which speaks of "specified categories" of schools, is likely to be misused, as many types of schools would seek "specified category" status. The categories should be clearly spelt out in the Bill itself to avoid possible misuse.
  - Deletion of the provision regarding an independent database authority is inappropriate. There should be an independent provision regarding maintenance of an on-line database for children in the 0-14 years' age

group. States do not have <sup>5</sup> the capacity to undertake this work, and therefore either a new institution may be entrusted with this work, or it may be assigned to an existing institution having necessary capability.

- While concrete manifestations of the Common School System, like the neighbourhood school and provisions on Content and Process have been incorporated in the Bill, it would be desirable to refer to the concept of the System at least in the Preamble.

#### 8. Dr Archana Mehendale

said that she agreed with much of what Prof Tapas Majumdar and Dr Vinod Raina, had said, and added the following:

- Some agreements/decisions recorded in the minutes of the last meeting dated 16.4.2005 are not reflected in the Draft now circulated.
- Implications of the Bill for minority schools have not been examined, which is essential in light of Article 30 of the Constitution.
- Competent Authority has been mentioned in several places in the Draft, but has not been defined.
- Provisions regarding ECCE have been restricted only to children of 5-6 instead of providing for 0-6 years.
- "Specified categories" of schools should be designated by the independent Education Commission instead of the appropriate government.
- Reservation of 25% seats for free education in unaided schools should continue to be for children of "disadvantaged groups" as before, and not for those of "weaker sections" as provided now.
- Provision regarding striking off of a child's name need not be made in a Bill which aims at universalisation.
- Database should be for children of 0-18 years and not 6-14 years.
- School Management Committee should have a preponderance of parents of children studying therein.
- The new provision regarding adverse consequences for parents who do not send their children to school is inappropriate. Why should the Bill have such a provision for parents alone when there are no corresponding provisions for teachers, government officers, etc.?

#### 9. Dr Vinod Raina

interjected at this point to say that Clause 19 dealing with constitution of School Management Committees should stipulate that at least half the members would be parents of children studying in the school.

#### 10. Ms Archana Mehendale

resumed stating that:

- Under Clause 22(1), NCTE should be empowered to permit relaxation in training requirement for teacher recruits not beyond 5 years.
- Clause 32(1) regarding prohibition of causing obstruction to child's participation in elementary education may be made applicable to parents as well as employers.

- Rule making powers of Central and appropriate governments should be clearly laid down.
- Penalties for breach of the law must be specified in the Act itself rather than leaving it to Rules.

#### 11. Dr Shantha Sinha

made the following points:

- Pre-school facilities should cover at least children of 3-6 years instead of 5-6 years as proposed now.
- Equity has been compromised by requiring unaided schools to reserve 25% of their seats for children from the neighbourhood. This should be raised to 100%.
- Obligations of teachers in private schools in regard to matters like elections, census, etc. should be at par with those of State schools.
- Clause 19(3) which lays down adverse consequences for defaulting parents should be deleted.
- Scope of Clause 32(3), which permits admission only to Class One at any time during the year, should be enlarged to enable any-time admission to higher classes also.
- Aspects of decentralisation included in the Bill only seem to relate to SSA/DPEP practices, and have not been extended to deal with larger issues. More discussion about decentralisation and local bodies is needed, and there may be some merit in providing for automatic devolution of some funds to local bodies under the Bill.

#### 12. Ms Jayati Chandra, Joint Secretary, Ministry of Social Justice and Empowerment

made the following points:

- As severely and profoundly disabled children cannot participate effectively in schools, Clause 3 of the draft Bill should provide for their education in appropriate alternative environment wherever necessary, e.g. home-based education.
- The definition of Children With Special Needs (CWSN) should be expanded to include disabilities other than those mentioned in the Persons with Disabilities Act.
- Clause 7 ("Provision of facilities to young persons to complete elementary education") should be changed to provide that, in the case of disabled children, such facilities will be provided till completion of elementary education or attainment of 18 years of age, whichever is later, instead of "whichever is earlier" as is currently mentioned for all children.
- Biological age is not relevant in determining the age appropriate grade for children with mental disabilities, and this should be duly reflected in the provisions regarding admission to age-appropriate grade.
- Teaching-learning material of the kind suited to their special needs should be made a part of "free entitlements" for disabled children.
- Clause 3(6)(ii) should be modified to provide that even prolonged absence of a child, if due to medical reasons, shall not render his name to be struck off the school's rolls.

13. **Shri S Chatterjee, <sup>7</sup> Joint Secretary, Ministry of Tribal Affairs**

said that definition of "weaker clauses" should be modified to include Scheduled Tribes, regardless of income criterion.,

14. **Prof Anil Sadgopal**

expressed anguish at the fact that basic decisions regarding the framework of the Bill appeared to have already been taken. He circulated during the meeting (i) a 12-page note giving his detailed comments, (ii) a 3-page note on the Common School System (CSS), and (iii) a one-page definition of CSS, and requested that these be taken into account while finalising the draft Bill. Copies of the three documents are enclosed at Annex 3, and therefore his oral remarks, which were on the same lines as these notes, are not being recorded here *in extenso*. However, some of the points made by him were as follows:

- CSS and language of instruction remain two major related issues to be resolved. The government school system has broken down in the absence of CSS, and Clause 27 on instruction in mother tongue will not be meaningful unless placed in the larger framework of CSS.
- The Preamble to the Bill should be amplified to include mention of the UN Convention on the Rights of the Child and the Supreme Court judgment in the Unnikrishnan case.
- The mention of "bridge courses/special steps/programmes" for out of school children should be omitted as these are only some possible alternatives, and their specific mention is unnecessary.
- The term "Children With Special Needs", defined in Chapter I, has not been used anywhere in the Bill, and the definition is therefore redundant.
- The Persons With Disabilities Act reflects only a medical model of disability. The present draft should go beyond that definition, taking into account all kinds of disability, incl. social, economic, political, etc..
- Instead of "pre-school facility", the term "preschool" or "pre-primary education" would be more appropriate.
- The percentage of free seats reserved in unaided schools should be 50% and not 25% as presently proposed. Also, agree with Dr Vinod Raina's reservations about possible misuse of the provision regarding "specified categories" of State schools.
- Aided schools, as per his information, are always fully aided. Therefore, there is no need to provide that free seats in aided schools shall be in proportion to the extent of aid received by them. Such a provision would in fact invite misuse.

15. **Dr Shantha Sinha**

interjected here to say that the Bill must provide a mechanism to regulate unaided schools, and to ensure that they comply with their responsibilities under the Act.

16. **Prof Anil Sadgopal**

added that:

- In the absence of CSS, teachers of unaided schools would be spared non-educational duties.

- Before the Committee's recommendations are submitted to CABE, public response to the draft Bill must be elicited through regional meetings and the internet. Without this, the Committee's work would be an incomplete exercise.
- This law should give a clear indication that the mindset of the State has changed, compared to what it has been for the last 57 years. Unfortunately, the draft Bill, in its present form, still does not give that message.

**17. Prof Krishna Kumar, Director, NCERT**

said that:

- Facilities prescribed for schools in the Schedule should include electricity and telephone.
- Schools/School places and teachers are the most basic pre-requisites for UEE, but there is a severe shortage of these at present - for instance, UP alone needs about a million teachers. Present draft, due to its complexity, does not convey clearly enough that henceforth, every child will be provided a school and a teacher.
- Permissible upper limit of teacher vacancies (10%) provided in Clause 21(1) is too high, and should be reduced.
- The Bill should not sanctify multiple varieties of schools.
- Teacher recruitment should not be localised as envisaged in Clause 20(3). Instead, recruitment of teachers should be done from as wide a choice as possible.
- Chapter V which deals with Content and Process should be deleted, and these issues should be left to bodies like the NCERT to handle.

**18. Prof Tapas Majumdar**

then made the following additional points:

- The Bill cannot dictate to States beyond a point as this would go against the federal character of our Constitution. States will have the right to enact local amendments.
- While the Bill envisages improved physical provisioning, it does not adequately address the issue of capacity building of human and institutional resources. It should have better provisions regarding training and professionalisation of teachers.
- Provision for augmented financial and other resources should be accompanied by adequate safeguards to prevent their misuse.

**19. Prof Krishna Kumar, Director, NCERT**

added that:the logic behind clubbing "Specified categories" of State schools like Kendriya and Navodaya Vidyalayas with un-aided schools for purposes of determining their liability to provide 'free education' to children from the neighbourhood is not very sound. These schools may originally have been meant for children of special categories like those of transferable Central Govt. employees, but even such children need to study with local children and as per a curriculum with necessary local flavour, rather than studying only with children of other central employees and in accordance with a curriculum which bears little or no relationship to the local environment and culture. .

**20. Prof Anil Sadgopal**

agreed with Director, NCERT, and said that:

- KVs are already admitting children of parents who are not government employees, and the number of such students has been rising over the years.
- As regards Navodaya Vidyalayas (NVs), these were set up on wrong philosophical considerations, and provide no solution to India's problems in the field of school education.
- NVs, Ashram Schools and the like had to be set up only due to non-implementation of the Common School System. Implementation of CSS across the country would obviate the need for such schools.
- If the provision regarding schools of "specified categories" is retained, such categories would forever be expanding, instead of standards of all schools being raised.

**21. Ms Archana Mehendale**

pointed out following lacunae in the provision regarding National Commission for Elementary Education:

- Rank of the Member-Secretary has not been specified, and should be specified as being not below the level of Joint Secretary or Additional Secretary to the Central Govt.
- Powers of the Commission have not been spelt out.
- Earlier provision regarding State-level Commissions, in addition to the National Commission, should be restored. Acts pertaining to several other Commissions already have provisions for such bodies at national as well as state level.
- The Commission(s) should also be given the function of Redressal of teachers' grievances.

**22. Secretary, Elementary Education & Literacy,**

said that a plethora of Commissions is undesirable. The National Commission will give policy directions and oversee implementation of the Act throughout the country, and this should suffice for the present.

**23. Prof Govinda**

said that the National Commission could also choose to set up State-level units if necessary.

**24. The Chairman**

thanked everyone for their valuable contribution and regretted that it was not possible to satisfy all. He wished it were possible to adequately take care of the requirements of children of 0-6 and 14-18 years' age group, but this would have meant going beyond the mandate of the Committee. He said that, under the circumstances, this Act should primarily aim to provide adequate physical and human infrastructure so that all children receive elementary education of good quality. It cannot and should not aim to change everything that is wrong with school education.

**25. Prof Shantha Sinha**

suggested that:

- The Act should match demand and supply, and promote demand.
- It should also prescribe that a demand from a local community for necessary school inputs will be met within a definite time limit, say 90 days.

**26. Prof Anil Sadgopal**

suggested that a provision to the above effect be incorporated in Clause 9 ("Responsibility of Appropriate Government").

**27. Dr Vinod Raina**

volunteered to give an alternative draft regarding ECCE.

**28. Prof Anil Sadgopal**

said that he would separately send detailed comments on the Schedule to the Act, but made the following oral observations on this subject:

- The Schedule should provide for a uniform PTR of 30, rather than stipulating a higher PTR of 40 for Primary Schools having more than 200 students.
- The Schedule should also provide that school buildings will conform to norms pertaining to safety and disaster proofing.

**29. The Chairman**

made the following concluding observations:

- Decision regarding public hearings and placing the draft on the Internet should be left to CABE and its Chairman. Charter of this Committee is to submit its report to CABE. However, while forwarding the Report to Chairman, CABE, will recommend that it may be placed on the web, pending consideration by CABE, so that the Board has the benefit of public reactions to the Report when it meets to consider it.
- Copies of the final Report would be sent to all members simultaneously with its submission to HRM.
- As suggested by some members, the Report would include minutes of all meetings of the Committee as well as written submissions received by the Committee from members and others.
- Responding to a query from Prof Sadgopal whether the Report could be made public by members after it is submitted to HRM, Chairman said that the Report would be the property of CABE and it should be left to that body to decide when and how to place it in the public domain.

**29. Dr Anil Sadgopal** said that issues of the Common School System, children of 0-6 and 14-18 years' age group, and making good the cumulative gap in funding of elementary education, continue to remain un-addressed. He also pointed out that the Committee was yet to deal with its second term of reference (TOR), viz. "to



examine other issues related to elementary education for achieving the objective of free and compulsory basic education”.

In response to the second point made by Dr Sadgopal, Chairman said that the second TOR should be seen in relation to the first, and not independently.

30. **After discussion as above, the Committee authorised the Chairman to give final shape to its recommendations regarding the Bill, and submit necessary Report, containing recommended draft provisions, to Chairman, CABE.**

The Committee also decided that while financial implications of all four scenarios as worked out by NIEPA, should be submitted to CABE, the Committee's recommend scenario should be the one based on PTR of 35 and teacher salaries on KVS pattern.

31. The Member-Secretary, in his concluding remarks, said that the task before the Committee was extremely complex and challenging. He profusely thanked the Chairman for the very wise guidance and leadership which he provided to the Committee. He also thanked all members and special invitees for their very valuable contributions, and NIEPA - especially Dr Nalini Juneja and her team - for having provided excellent secretarial support to the Committee throughout.

Sd/-

(K M Acharya)

**Joint Secretary (EE), Ministry of HRD, and  
Member Secretary, CABE Committee  
on Free and Compulsory Education  
and Other Issues  
Related to Elementary Education**

*For Discussion within the CABE Committee:*  
**Essential Provisions of the Bill on Free and Compulsory Education:**

27<sup>th</sup> May 2005

## Right to Education Bill 2005

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*For Discussion within the CABE Committee:*

***Essential Provisions of the Bill on Free and Compulsory Education:***

27<sup>th</sup> May 2005

**Right to Education Bill 2005**

*An Act to put into effect the right to free and compulsory education to all children in the age group of six to fourteen years*

**PREAMBLE**

Whereas the Preamble to the Constitution resolves to secure to all citizens of India JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation;

And whereas, despite the original Article 45 of Directive Principles of the Constitution having made it the duty of the State to provide free and compulsory education to all children up to age fourteen in ten years (1960), the number of out of school children particularly from the disadvantaged groups and those engaged in labour, and those receiving poor quality education has remained very large;

And whereas, the 86<sup>th</sup> Constitutional Amendment Act 2002 has provided for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right under Article 21A of the Constitution;

And whereas the above Act also provides under Article 45 that the State shall endeavour to provide early childhood care and education to all children up to the age of six years;

And whereas the above Act further provides under Article 51-A (k) that it shall be a fundamental duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child/ward between the age of six and fourteen years;

And whereas it is considered important and essential to create a humane and equitable society that incorporates the secular values and the ethnic, religious and cultural diversities of India;

And whereas it is recognized that the objectives of democracy, social justice, and equity can be achieved only through the provision of equitable quality elementary education to all,

Be it enacted by Parliament in the fifty-sixth year of the Republic as follows;

# CHAPTER I

## PRELIMINARY

### 1. Short Title, Extent and Commencement

- (1) This Act may be called the Right to Education Act, 2005
- (2) It shall extend to the whole of India except the state of J&K;
- (3) It shall come into effect from the date of its notification in the Gazette of India

### 2. Definitions

- (1) In this Act, unless the context otherwise requires: -

(a) **“Aided school”**

means a school which receives aid from the government or from local authorities to meet the whole or part of its recurring expenses.

(b) **“Appropriate government”**

means

- i) the state government in the case of territory comprised in a State,
- ii) the Government of a Union Territory, in the case of a Union Territory having its own legislature,
- iii) the Central Government, in the case of other Union Territories;

provided that in relation to schools and institutions run by the Central Government, the appropriate government will be the Central Government regardless of their location.

(c) **“Capitation fee”**

means any fee, donation or contribution other than a fee or any payment that an aided / unaided school publicly notifies at the time of announcement for admission as being payable by all children in the event of admission to the school.

(d) **“Child”**

means a person who is not less than six years and not more than fourteen

years of age.

**(e) “Child in need of care and protection”**

shall have the meaning assigned to it in clause (d), of section 2 of the Juvenile Justice [Care and Protection of Children] Act, 2000 [56 of 2000]

**(f) “Child with special needs”**

means a child with a disability

**(g) “Compulsory education”**

means an obligation on the State to take all necessary steps in terms of this Act to ensure that:

- (i) every child of the age of six years enrolls in a school, participates in it, and completes elementary education.
- (ii) every child over six years, but less than 14 years, who was not enrolled in a school at the commencement of this Act, is enrolled in a school; participates in it, and completes elementary education, if necessary, through special steps like bridge courses, including residential bridge courses.

**(h) “Disability”**

shall have the meaning assigned to it in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and shall include such other conditions as may be notified by the competent authority as a disability for the purposes of this Act

**(i) “Disadvantaged group”**

Means scheduled castes, scheduled tribes, and such other groups disadvantaged due to economic, social, cultural, linguistic, gender, administrative, locational, disability or other factors, and notified as a disadvantaged group in relation to an area, in such manner as may be prescribed.

**(j) “Elementary education”**

means education at the elementary stage in a school

**(k) “Elementary stage”**

means the stage of school education corresponding to Classes I to VIII as per courses of study prescribed by the competent authority;

**(l) "Equitable quality" in relation to elementary education**

means providing all children with education such that all children have comparable opportunities of access, participation and conditions of success

**(m) "Free education"**

means freedom for the parent/guardian from liability to:

- i) pay any fee or charges to the school where his child/ ward is studying, or to any examining body which may be conducting public examinations for the elementary stage or for any sub-stage thereof, or to any other external body providing any service through the school.
- ii) incur such other expenses, as may be prescribed, which are likely to prevent the child from participating in and completing elementary education

**(n) "First generation learner"**

means a child, neither of whose parents has completed elementary education.

**(o) "Fully aided School"**

means a school which receives grants from a government or local authority to meet its full recurring expenses

**(p) "Guardian", in relation to a child**

means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority.

**(q) "Juvenile in conflict with law"**

means a person who has not completed eighteenth year of age and is alleged to have committed an offence.

**(r) "Local area", in relation to a local authority,**

means the area comprised within the territorial jurisdiction of the authority

**(s) "Local authority"**

means

- i) a Panchayat in respect of rural areas,\*
- ii) a Municipality in respect of an urban area, and



iii) such other authorities as the appropriate government may, by notification, specify for the areas mentioned therein

*\*Explanation: In case of rural areas situated within scheduled areas, the Gram Sabha shall also be a local authority to the extent laid down in the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996.*

**(t) “Migrant family”**

means a family that does not reside at any one location for at least such number of days in the calendar year as may be prescribed.

**(u) “Minor Punishment”**

means any punishment other than dismissal, removal or reduction in rank

**(v) “Neighbourhood”**

means such area around the residence of the child as may be prescribed

**(w) “Neighbourhood school”, in relation to a child,**

means any school located within the neighbourhood of the child's residence.

**(x) “Non-educational purpose”**

means any purpose not connected with elementary education, or with children's access to, or participation in such education.

**(y) “Out of school child”**

means a child who is either not currently enrolled in a school or, though enrolled, is not able to participate therein.

**(z) “Parent”**

means the father or the mother of a child and includes an adoptive father or mother;

**(aa) “Participation” in elementary education, in relation to a child,**

means her:

- i) regular attendance in school, and,
- ii) effective participation in curricular and co-curricular activities of the school for the full duration of the day she attends school.

**(bb) “Prescribed”**

means prescribed by rules made under this Act.

**(cc) “Pre-School facility”**

Means a facility provided by a school to meet the educational needs of children between the ages of 5 and 6 years.

**(dd) “School”**

means an institution or part of an institution, which imparts instruction at the elementary stage, or any part of such stage, and is recognised by the competent authority.

**(ee) “Screening procedure for admission to a school”**

means any procedure that is used to select one child in preference to another, except in a random manner, for admission to elementary school.

**(ff) “Specified category”**

means such categories of state-funded schools as may be notified by the appropriate government.

**(gg) “State school “**

means a school run by an appropriate government or a local authority.

**(hh) “Teacher”**

means a person who teaches in a school and includes the head teacher of such school.

**(ii) “Unaided school”**

means a school which is neither a state school nor an aided school

**(jj) “Ward”, in relation to a child**

means a child who is under the guardianship of someone other than a parent;

**(kk) “Weaker section” in relation to child**

Means a child in need of care and protection, or a child, the annual income of whose parents or guardians is less than such minimum limit as may be prescribed.

**(ll) “Working child”**

means a child who:

- i) works for wages, whether in cash or in kind, or
  - ii) works for her own family in a manner which prevents her from participation in elementary education.
- (2) The female gender, wherever used in pronouns in relation to a child, includes the male.
- (3) Words and expressions used but not defined in this Act, and defined in the Constitution, shall have the meaning assigned to them in the Constitution.

## **CHAPTER II**

### **CHILD'S RIGHT TO FREE AND COMPULSORY EDUCATION OF EQUITABLE QUALITY**

#### **3. Child's Right to Free and Compulsory Education of Equitable Quality**

- (1) Every child who has attained the age of 6 years shall have the right to participate in full time elementary education and to complete it, and towards that end shall have the right to:
  - i) be admitted to a neighbourhood school, and
  - ii) be provided free and compulsory education in such school, in the manner provided in this Act
- (2) A non-enrolled child who is in the age group 7-9 years, at the commencement of this Act, shall, in addition to the right specified in sub-clause (1), have the right to be admitted to an age appropriate grade in a neighbourhood school within one year from the commencement of this Act.
- (3) A non-enrolled child who is in the age group 9-14 years, at the commencement of this Act, shall in addition to the right specified in sub-clause (1), have the right to be provided special programmes within the neighbourhood school to enable her to join, as early as possible, but in any case within three years from the commencement of this Act, the age appropriate grade.
- (4) A child who, though enrolled, is not able to participate in elementary education, shall, in addition to the right specified in sub clause (1), have the right to be provided with necessary facilities and to have appropriate conditions created to enable her participation.
- (5) No child shall be expelled from a school until she completes elementary education.
- (6) No school shall strike off the name of a child from its rolls except under the following circumstances:
  - i) The child's parents requests the school for a transfer certificate to facilitate the child's admission to another school , and

- ii) The child is continuously absent from school for such minimum period as may be prescribed, and the local authority after due enquiry authorizes the school to strike off the child's name from its rolls;

Provided that in case of seasonally migrant families the local authority shall not authorize such striking off of names, till it has satisfied itself, that the child has been enrolled in another school.

#### **4. Right Of Transition Till Completion Of Elementary Education**

- (1) For every child studying in a school which provides education up to a level less than class VIII, the local authority shall specify a school where such child shall have the right of admission for free education till she completes elementary education
- (2) Any child moving from one school to another, including outside the state shall, for the purposes of seeking admission to another school, be entitled to receive a transfer certificate issued by the Headmaster of the school in which she was last enrolled. Provided further, that the absence of such a transfer certificate shall not constitute grounds for delaying or denying her admission to an appropriate grade in the new school; nor shall such child be subjected to any test whatsoever to determine whether she is to be admitted to the school.

## **CHAPTER III**

### **RESPONSIBILITY OF THE STATE**

#### **5. General Responsibility of the State**

It shall be the responsibility of the State:-

- (1) To ensure the availability of a neighbourhood school for every child;
- (2) To ensure that every child is provided free education in such school.

Provided that wherever necessary, the State shall ensure that children from areas without schools are provided free education through transportation arrangements to the nearest school or by providing residential schools/ facilities.

Provided further, that Parents/guardians who choose to admit their children to a school other than a State school /fully aided school shall not have any claim on the State for providing free education to their children.

- (3) To institute and implement a mechanism through the appropriate government, for regular monitoring of enrolment, participation and attainment status of every child, and taking corrective steps wherever necessary, so that every child completes elementary education and to make such information available in the public domain.
- (4) To ensure that children in schools receive education (i) of equitable quality, and (ii) conforming to values enshrined in the Constitution.
- (5) To ensure that economic social, cultural, linguistic, gender, administrative, locational, disability or other barriers do not prevent children from participating in, and completing elementary education.

#### **6. Responsibility of the State towards the Non-enrolled Child**

The appropriate government shall take necessary steps to ensure that: -

- i) All non-enrolled children in the 7-9 age group at the commencement of this Act are enrolled in a neighbourhood school within one year of the commencement of this Act.
- ii) All non-enrolled children in the 9-14 age group at the commencement of this Act: -
  - (a) are enrolled in special programmes in a neighborhood school, or

- (b) where such children do not live within the neighbourhood of a school, they are enrolled in a residential bridge course in a school/residential school

to enable them to be admitted to an age appropriate grade as early as possible, but in any case within three years of the commencement of this Act.

## **7. Provision of Facilities to Young Persons to Complete Elementary Education**

If a young person has, for whatever reason, been unable to complete elementary education by the age of fourteen years but is continuing her education in a school at that age, she shall continue to be provided free education in such school till she completes elementary education or attains the age of eighteen years, whichever is earlier.

## **8. Responsibility of the Central Government**

Providing Free and Compulsory education be the concurrent responsibility of the central and appropriate governments, with the Central Government responsibility consisting of the following:

- i) Provision of the necessary financial support concurrently with appropriate governments
- ii) Taking action through appropriate bodies to develop a national curriculum framework, and to develop and enforce standards for training and qualification of teachers for elementary education in a participatory and consultative manner
- iii) Provision of technical resource support to the State governments, through appropriate institutions, for promotion of innovations and dissemination of best practices in the field of elementary education and for related research, planning and capacity building
- iv) Monitoring progress of implementation of various interventions, schemes and programmes for achieving the objectives of this Act, and taking appropriate steps in case of default.
- v) Taking such other steps as the President may by order specify

## **9. Responsibility of the Appropriate Government**

- (1) Responsibilities in connection with provision of free and compulsory education, except those of the Central Government as defined in Clause 8, shall be that of the appropriate government

- (2) Without prejudice to the generality of sub clause (1), the appropriate governments shall ensure:
- i) The provision of the necessary financial support for implementation of this Act, concurrently with the Central Government, as stated in section 8(i)
  - ii) An exercise is carried out every year to determine the requirement of schools, facilities and their appropriate locations for the implementation of this Act,
  - iii) The additional schools required are established and made functional,
  - iv) Teachers are appointed in schools in accordance with the prescribed norms,
  - v) The curriculum for elementary education and courses of study for each grade thereof are prescribed and revised periodically,
  - vi) Every state funded school is provided with a building, teaching aids and learning material of the prescribed specifications,
  - vii) Elements of free entitlement as defined shall be provided in a timely manner as prescribed.
  - viii) A comprehensive data base is developed and maintained to facilitate the implementation of this Act
  - ix) Adequate facilities are available /created for training of teachers and other personnel to meet the human resource requirement for the implementation of this Act
  - x) Functioning of non-state supported schools is regulated so that they conform to the norms as laid down in or under this Act.

**10. Responsibility of the Appropriate Government to Augment Teacher Training Capacity Wherever Necessary**

Every Appropriate government shall, within six months of the commencement of this Act, assess the State's requirement of professionally trained teachers as prescribed under this Act, vis a vis the capacity of existing training institutions, and shall in the event of a deficit, take steps to augment such capacity so as to match the requirement within such period not exceeding five years from the commencement of this Act, as the Central Government may notify.



## **11. Responsibility of Local Authorities**

- (1) Subject to the responsibility of the appropriate government as laid down in Clause 9 the local authority shall, if empowered by law, perform the following functions:-
  - i) maintain the record of all children in its area, who are in the age group of 0-14 years, with special reference to children in each disadvantaged group, in such manner as may be prescribed
  - ii) ensure that every child in the age group of 6-14 years residing within its jurisdiction is enrolled in an elementary school, participates in it, and is enabled to complete elementary education.
  - iii) Plan, budget and provide for additional schools, teachers, and other facilities that may be required as a result of the gaps identified through the school mapping exercise for ensuring free and compulsory elementary education,
  - iv) monitor the provisioning of all schools in its area imparting elementary education with prescribed infrastructure, teachers and supporting facilities for free and compulsory education,
  - v) Ensure the sustained education of the children of migrant families through special steps as may be required.
- (2) To the extent the above functions have not been devolved upon local authorities by law, the appropriate government will by rules determine the authorities at various levels which will perform the above functions for implementation of this Act till such time as such functions are assigned by law.

## **12. Planning For Provision of Free and Compulsory Education**

1. Every School Management Committee as constituted under Section 19 shall prepare an annual, medium and long term School Development Plan to cater to the needs of the children residing in its neighbourhood in respect of their education of equitable quality
2. School Development Plans, in the aggregate, shall be the basis for the annual, medium and long term plans for every local area, block and district, and metropolitan area.
3. Taking into consideration the Plans referred to in (2) above, every Appropriate Government and Central Government shall prepare annual,

4. The plans referred to in sub clause (3) shall be taken into consideration while preparing the annual demands for grants for elementary education presented by the Appropriate / Central Government to the respective Legislatures/Parliament, and such demand shall be accompanied with such details as may be prescribed
5. The plans referred to in (3) shall also form the basis for monitoring the implementation of this Act, by the National Commission for Elementary Education

## **CHAPTER IV**

### **SCHOOLS AND TEACHERS**

#### **13. Responsibility of Schools**

(1) All schools shall provide free and compulsory elementary education to children entitled under section 3 in the following manner:

- i) State schools, except schools of specified categories, to all admitted children.
- ii) Aided schools to at least such proportion of their admitted children as its annual recurring aid bears to its annual recurring expenses subject to a minimum of 25 per cent
- iii) Unaided schools and schools of specified categories to at least 25% children admitted to class 1 after the commencement of this Act, from among children belonging to weaker sections randomly selected by the school in such manner as may be prescribed.

Provided that if a school belonging to a category mentioned in clauses (ii) and (iii), has a pre primary section, provisions of sub clauses ii and iii shall apply to the pre primary section also.

Provided further that free seats in any school, shall be offered first to eligible children residing within the neighbourhood and shall be offered to other eligible children only to the extent of vacancies remaining thereafter.

- (2) For every child admitted and educated in pursuance of (iii) of sub-clause (1), the appropriate government shall reimburse to the school at a rate equal to the per child expenditure in state schools / fully aided schools and state funded preschools in such manner as may be prescribed.
- (3) Notwithstanding the provisions of Clause 32 (2), considering the importance of preschool education in enabling children to participate in elementary education, every school shall endeavour to provide preschool facilities at least for children between the ages of 5 and 6 years.

- (4) All schools shall be obligated to supply to the appropriate government such information as may be necessary for the purposes of Section 5(3).

#### **14. Prohibition of Screening Procedures and Capitation Fees**

No child or her family shall be subjected to any screening procedure by a school while deciding about admission to the school at the elementary stage, nor shall the family be required to make any payment in the nature of capitation fee.

#### **15. Norms and Standards for a School**

- (1) After the commencement of this Act, no school shall be recognised by the competent authority unless it fulfils the norms prescribed in the Schedule.
- (2) All schools which were already recognised at the commencement of this Act, and do not already fulfill the norms prescribed in the schedule, shall do so within a period of three years, from the commencement of this Act.
- (3) Responsibility for compliance with the provisions of sub section (2), shall be as follows;
  - i) In case of state / fully aided schools - of the concerned government /local authority (subject to the provisions of clauses regarding financial responsibility)
  - ii) In case of other schools: - of the management of such schools

#### **16. Power to amend Schedule**

The National Commission for Elementary Education may, in consultation with the central and appropriate governments, at any time, amend the schedule to this Act either with respect to the country as a whole or any part thereof.

#### **17. Prohibition of Deployment of Teachers for Non-educational Purpose**

No teacher of a state/fully aided school shall be deployed for any non-educational purpose except for decennial population census, election to local authorities, State Legislatures and Parliament, and disaster relief duties

#### **18. Prohibition of Private Tuition by Teachers**

No teacher shall engage in any teaching activity for economic gain, other than that assigned by his employer or supervisor.

## **19. School Management Committees**

- (1) A School Management Committee (SMC) shall be constituted for every free elementary school, to monitor and oversee its working, and to plan and facilitate its overall development with such representation of parents, teachers and community and local authority members.
- (2) The SMC shall exercise such powers and perform such functions, and shall be accountable in such manner, as may be prescribed.
- (3) Notwithstanding the provisions of sub clause (2) above, the SMC shall have the power to enlist the services of such parents for childcare activities in schools, who consistently default in facilitating the participation of their child/ward in elementary education.
- (4) Composition of the School Management Committee shall be so prescribed that:
  - i) it has adequate representation of all sections of the community, including parents, teachers, scheduled castes, scheduled tribes, other backward classes, and persons/bodies working for education, and
  - ii) at least half of its members are parents.

## **20. Teachers' Cadre to be School -based**

- (1) After the commencement of this Act, teachers in State school/fully aided school run by an appropriate government shall be appointed for a specific school by such local authority (including SMC) as may be prescribed, and shall not be transferred therefrom.
- (2) All teachers already serving at the commencement of this Act, in State school/fully aided schools run by the appropriate governments shall be permanently assigned to a specific school in accordance with such procedure as may be prescribed and shall then not be transferred from the school so assigned.
- (3) Teacher vacancies shall be advertised and filled up school wise by the local authority /SMC. Serving teachers can also apply as per prescribed rules.
- (4) Appropriate government may, by rules, make provisions in regard to teachers in schools run by larger local authorities which are similar to provisions of sub clauses (1)-(3) above.

*Explanation: For the purposes of this clause, "larger Local authority" means a Panchayat of district of intermediate level, or a Municipal Corporation*

## **21. Teacher Vacancies in State schools / Fully aided schools Not To Exceed 10% Of Total Strength**

- (1) It shall be the duty of every appointing authority in relation to every State school/ fully aided school, to see that teachers' vacancies in the schools under its control do not at any time exceed 10% of the total sanctioned posts of teachers
- (2) Appropriate governments and local authorities running State schools / fully aided schools shall ensure that teachers and their sanctioned posts are deployed in schools in accordance with norms specified in the Schedule, and are not over-deployed in urban areas at the cost of rural areas.

## **22. Teacher Qualifications and Remuneration**

- (1) After the commencement of this Act, only such persons as possess the qualifications prescribed by the NCTE shall be appointed as teachers;

Provided that in states that do not have adequate pre service training capacity, Central government/ NCTE may grant relaxation in this provision for such period and to such extent, as may be absolutely necessary.

- (2) Teachers serving at the commencement of this Act who do not possess qualifications prescribed by the NCTE shall be enabled by their employer, at his cost, to acquire the equivalent of such qualifications within such period not exceeding five years from the commencement of this Act, as may be notified by the appropriate government
- (3) Terms and conditions of service, of teachers serving in schools, shall be decided from time to time, by the appropriate government, commensurate with prescribed professional qualifications and experience.

## **23. Duties of Teachers**

It shall be the duty of teachers in every school to:

- (1) to transact and complete the curriculum in accordance with the principles laid down in clause 26;
- (2) to transact the curriculum in accordance with the time schedule, decided by the school, subject to general guidelines of the Competent Academic Authority;

- (3) report every case of non-attendance to the parent or guardian concerned in the first instance, and in case it persists, to the SMC constituted under section 19;
- (4) regularly assess the learning level of each child, and to provide supplementary instruction as may be needed by the child.
- (5) regularly apprise every parent/guardian about the progress of learning and development of his child/ward studying in the school, and to also regularly report about such progress to the SMC, in such manner as may be prescribed

**24. Accountability of Teachers employed in State school / Fully aided schools run by the appropriate governments and local Authorities**

(1) Notwithstanding anything contained in any other law, rules, regulation or contract for the time being in force, the following provisions shall apply to every teacher employed in State schools / Fully aided schools run by an appropriate government or Local authority: -

- i) Power to grant leave to teachers shall vest in the Head Teacher / School Management Committee (SMC) to such extent and subject to such restrictions as regards nature and duration of leave, and in such manner as may be prescribed;
- ii) The appropriate government may by rules provide, that salary shall be paid to the teacher in the normal course through the SMC in such manner as may be prescribed;
- iii) Unless the state legislature has by law otherwise provided or so provides in future, power to impose minor punishment on the teacher shall vest in the local authority having jurisdiction over the rural / urban / metropolitan area in which the school is situated, as specified below:-

A	for teachers in rural areas	Panchayat of the intermediate level
B	For teachers in government schools in urban areas –	The municipality
C	For teachers in government school in metropolitan areas-	Such authority as the appropriate government may notify

(2) When an SMC considers a matter in exercise of its powers under (i) or (ii) of sub clause (1), no teacher other than the Head Teacher, who is a member of the SMC, shall participate in its proceedings, and the Head Teacher shall also not do so when the SMC is considering a matter concerning him

## **25. Redressal of Teachers' Grievances**

It shall be the duty of the SMC / Local Authority to address teachers' grievances to the extent possible and to support the teacher in obtaining redressal of such grievances as does not fall within its purview.



## **CHAPTER V**

### **CONTENT AND PROCESS OF EDUCATION**

#### **26. Values, Content and Transaction of Elementary Education**

Competent academic authorities while prescribing curriculum and evaluation procedures, and schools while transacting them, shall adhere to the following principles:

- i) They shall conform to the values enshrined in the Constitution,
- ii) All schools shall function in a child friendly and child centred manner, and in particular,
  - a) Allow the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, and allow the views of the child to be given due weight in accordance with the age and maturity of the child.
  - b) Would build on the child's knowledge, environment and cultural identity, particularly linguistic, and develop the child's personality, talents and mental and physical abilities to their fullest potential.
  - c) Use the child's mother tongue as the medium of instruction, at least during the first five years of the elementary stage
  - d) Would rely on activity, discovery, understanding and problem solving.
  - e) Would be free of fear, trauma and anxiety to the child
  - f) Evaluation processes shall be continuous and comprehensive and test the understanding and ability to apply knowledge rather than rote learning.

#### **27. Mother Tongue to Be The Medium Of Instruction At The Primary Stage**

Every School shall provide instruction in Classes I-V, in that scheduled language which is the mother tongue of the highest number of children studying in the school, and shall provide additional facilities for instruction through the mother tongue for children belonging to other linguistic groups studying in such school, in such manner as may be prescribed;

Provided that nothing in this clause shall preclude teaching of a language other than the mother tongue as one of the subjects at the primary stage.

**28. Completion of Elementary Education to be certified by the School**

- (1) No child shall be required to appear at a public examination at the elementary stage.
- (2) Every child who completes elementary education shall be awarded a certificate to that effect by the school where she completes it.

**29. Prohibition of Physical Punishment**

- (1) No child shall be awarded physical punishment in any form in a school.
- (2) Violation of sub-section (1) by a teacher shall amount to professional misconduct, and such teacher shall be liable to be punished in accordance with the disciplinary rules applicable.

**30. Teacher Training and Innovation**

- (1) NCTE while laying down norms, standards and guidelines in respect of pre-service training programmes for elementary school teachers shall be guided by the principles laid down in Clause 26.
- (2) The appropriate government in respect of teachers in State schools / fully aided schools, and managements in respect of teachers in unaided schools, shall take all necessary steps, to ensure suitable in-service training and regular academic support, including through ICT, to teachers to enable them to implement the principles laid down in Clause 26. In particular, all teachers shall be provided opportunities for peer interaction and encouraged to engage in innovation.

## CHAPTER VI

### MONITORING OF IMPLEMENTATION OF THE ACT

#### 31. National Commission for Elementary Education

- (1) There shall be constituted a Commission for Elementary Education at the National level, which shall be known as the National Commission for Elementary Education, to continuously monitor implementation of this Act, recommend corrective measures wherever necessary, and perform other functions specified in sub clause 4 below.
- (2) Every commission for Elementary Education, shall consist of the following members: -
  - a. A Chairperson, who shall be an eminent person with proven record of service in the field of education.
  - b. One member each having expertise in the fields of elementary education, development of disadvantaged groups, child development/ child rights, finance, and law, and
  - c. A member secretary having expertise in educational management
- (3) The members of the National Commission shall be appointed by the President, on the recommendation of a committee consisting of the following: -

Prime minister, Speaker of the Lok Sabha, Minister, Human Resource Development, leader of the opposition in Parliament
- (4) The Commission will perform the following functions
  1. Monitoring all aspects including quality of elementary education
  2. to act as Ombudsman for the purposes of this Act and to direct the appropriate authorities to redress grievances of parents/ citizens/ civil society members relating to Elementary Education,
  3. To report to the Parliament on the status of implementation of this Act and such other relevant issues pertaining to Elementary Education as may be prescribed.
  4. Issue directions to GOI / Appropriate Government/ Metropolitan authority/ local authorities regarding effective implementation of this Act.

## CHAPTER VII

### MISCELLANEOUS

#### **32. Responsibility of the Appropriate Government to Frame Rules**

For purposes of discharge of responsibilities and implementation of this Act, the Appropriate Government shall frame suitable rules in this regard. Notwithstanding the generality of these rules, the following shall apply:

**(1) Prohibition of Causing Obstruction to Participation in Elementary Education**

No person shall prevent a child from participating in school;

Provided that notwithstanding anything contained in the Child Labour (Prohibition and Regulation) Act, 1986 (No.61 of 1986), no person shall employ or otherwise engage a child in a manner that renders her a working child.

**(2) Entry age for Elementary Education and Procedure for Computing Age of a Child**

i) A child shall be admitted to class 1 only after she has attained the age of five years and ten months before the beginning of the academic session.

ii) Ordinarily the birth certificate and, in its absence, a declaration by the parent or guardian shall be treated as prima facie proof of the age of a child, unless the admitting authority has reason to disbelieve it. In case it is disbelieved, the authority shall determine the child's age after making an enquiry in such manner as may be prescribed.

**(3) Admission to Class One to Be Permitted Throughout the Academic Session**

i) Children shall not be denied admission to class one, at any time of the academic session.

ii) Children admitted to class one within four months of the commencement of the academic session shall be enabled to complete class one with the batch of students admitted at the beginning of the session. Children admitted later in the

academic session, shall complete class one with the next batch of students.

**(4) Responsibility of the Parent / Guardian**

It shall be the responsibility of every parent/guardian to enroll his child or ward, who has attained the age of 6 years and above in a school, and to facilitate her completion of elementary education.

**33. Authority to Remedy Breaches of this Act**

For any breach committed in the implementation of this Act, the Appropriate Government shall have the authority to take such remedial measures as may be necessary.

**34. Act to be in Addition to, and not in Derogation of Certain Other Laws**

Provisions of this Act in relation to (i) children with disabilities, and (ii) children in need of care and protection, shall be in addition to, and not in derogation of the provisions, respectively, of (i) the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 [1 of 1996], and (ii) Juvenile Justice [Care and Protection of Children] Act, 2000 [56 of 2000].

**SCHEDULE**  
**Norms and Standards for a School**

S.No.	Item	Norm														
1.	Curriculum	As prescribed by the Competent Academic Authority														
2	Number of teachers:															
	(a) Primary School (Classes 1-5)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Enrolment</th> <th style="text-align: left;">No. of teachers</th> </tr> </thead> <tbody> <tr> <td>Up to 60</td> <td>2</td> </tr> <tr> <td>61 - 90</td> <td>3</td> </tr> <tr> <td>91 - 120</td> <td>4</td> </tr> <tr> <td>121 – 200</td> <td>5</td> </tr> <tr> <td>&gt;150</td> <td>5+ 1Head Teacher, and 1 part time clerk,</td> </tr> <tr> <td>&gt;200</td> <td>Pupil Teacher Ratio (excluding Head Teacher) not to exceed 40</td> </tr> </tbody> </table>	Enrolment	No. of teachers	Up to 60	2	61 - 90	3	91 - 120	4	121 – 200	5	>150	5+ 1Head Teacher, and 1 part time clerk,	>200	Pupil Teacher Ratio (excluding Head Teacher) not to exceed 40
Enrolment	No. of teachers															
Up to 60	2															
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121 – 200	5															
>150	5+ 1Head Teacher, and 1 part time clerk,															
>200	Pupil Teacher Ratio (excluding Head Teacher) not to exceed 40															
	(b) Upper Primary School (Classes 6-8)	<ul style="list-style-type: none"> <li>• At least one teacher per class such that there is as far as possible at least one teacher each for               <ol style="list-style-type: none"> <li>1. Science and Maths</li> <li>2. Social studies</li> <li>3. Languages</li> </ol> </li> <li>• At least one teacher for every 35 children</li> <li>• As soon as enrolment crosses 100:               <ol style="list-style-type: none"> <li>i. A full time head teacher and a part time clerk</li> <li>ii. At least part time teachers for:                   <ul style="list-style-type: none"> <li>• Art education</li> <li>• Health and Physical Education</li> <li>• Work education</li> </ul> </li> </ol> </li> </ul>														
3.	Qualifications of teachers	As per clause 15 C														
4.	Building <ol style="list-style-type: none"> <li>i. Class rooms</li> <li>ii. Toilets (separate for boys and girls)</li> <li>iii. Drinking Water</li> <li>iv. Kitchen (wherever mid day meal is cooked in the school)</li> <li>v. Barrier free access</li> </ol>	All-weather building consisting of: At least one classroom for every teacher and an office cum store cum head teacher's room in every school														
	vi. Specifications of a classroom**	As may be prescribed														
6.	Minimum number of Working days/instructional hours in an academic year	ii. 200 days iii. 800/1000 Instructional hours per academic year for primary/upper primary														

7.	Minimum number of working hours per week for the teacher	40 (Teaching plus preparation hours)
8.	Teaching learning equipment	As may be prescribed
9.	Library	As may be prescribed
10.	Play material, games and sports equipment	As may be prescribed
11*	Boundary wall or fencing	
12*	Playground / space (with e.g. slides, swings, see saw, gymnastic bars, sand pit etc.)	

**B. Desirable**

1.	Arrangements for preschool facilities for children between the age of 5 and 6 years - either within or in the vicinity of the school premises.
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\* Exemptions may be permitted in appropriate cases

## Right to Education Bill 2005

Draft 27<sup>th</sup> May 2005

Suggestions by Tapas Majumdar

Preamble/ Chapter No.	Sec	Page	Existing Draft Text	Suggested Revision of Draft
PREAMBLE		2	And whereas it is recognized that the objectives of democracy, social justice, and equity can be achieved only through the provision of equitable quality education to all.  to add :	And whereas it is recognized that the objectives of democracy, social justice, and equity can be achieved only through providing equitably to all children of 6 to 14 years of age equal opportunity of receiving elementary education of a minimum acceptable quality in regular schools, And whereas it is also recognized that to follow the objectives stated above the state has to <b>endeavour</b> to equitably provide all children between 0 to 6 years of age appropriate pre-schooling and adequate early child care as necessary. And whereas it is now accepted that for all these purposes the state must <b>endeavour</b> to link up all schools in every region of the country as far as possible in an information network; and that such a network can be made use of to great effect for improving the state of elementary education in the country, including the quality of governance and the quality of teaching in all schools in every region..
Chapter II	(m)	5	"Equitable Quality" in relation to elementary education means providing all children with education such that all children have comparable opportunities of access, participation and conditions of success.	"Equitable Quality" or "Equity" in relation to elementary education means providing all children with at least the minimum acceptable quality of education calculated to give all children equal or comparable opportunities of access, entry, participation and conditions of success.
	(q)	5	"Juvenile in conflict with law" means a person who has not completed eighteenth year of age and is alleged to have committed an offence.	"Juvenile in conflict with law" means a person who has not completed eighteenth year of age and is found by a competent juvenile court to have committed a cognisable offence.
	to add (mm)	7		"the minimum acceptable quality" in relation to elementary education means education that would enable the child to have acquired satisfactorily on completion of the elementary stage the ability to benefit from further schooling for their secondary education..
Chapter III	to add 5(6)	11		To <b>endeavour</b> to provide equitably for all children between 0 to 6 years of age suitable pre-schooling and appropriate child care to prepare them for entering in due course the stage of compulsory and free elementary schooling on reaching 6 years of age.
	5(7)			To <b>endeavour</b> to provide all schools with at least some minimum facilities for connectivity with the rest of the world by telephone and through television, internet etc.



**Proposed Modifications in Draft Essential Provisions of  
the Bill on Free and Compulsory Education\***  
(Ref.: Draft of 27<sup>th</sup> May 2005)

**A. PREAMBLE**

1. Re-write the second paragraph as follows:

And whereas, despite the original Article 45 of Directive Principles of State Policy of the Constitution having made it a time-bound duty of the State to endeavour to provide free and compulsory education to all children "until they complete the age of fourteen years" within ten years from the commencement of the Constitution, more than half of the children (and almost two-thirds of the girls) in this age group in general and from the disadvantaged sections of society, including those engaged in labour, in particular, continue to be deprived of education and remain out-of-school;

2. Insert the following two paragraphs after the second paragraph:

And whereas the Government of India acceded to the U.N. Convention of the Right of the Child on December 11, 1992 wherein the child is defined as "every human being below the age of 18 years";

And whereas the Supreme Court of India, in the case of *Unnikrishnan J.P. vs. State of Andhra Pradesh and others* (S.C. 2178, 1993), gave all children a Fundamental Right to "free and compulsory education" until they "complete the age of fourteen years" and stated that this right "flows from Article 21". Further, the Supreme Court in the same judgment ruled that, after the age of fourteen years, the Fundamental Right to education continues to exist but is "subject to limits of economic capacity and development of the State" as per Article 41;

3. Third paragraph, last line: Add the following phrase in continuation of "under Article 21A of the Constitution" –

"in such manner as the State may, by law, determine;"

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\* This is not an exhaustive proposal for modifications in the draft Bill 27<sup>th</sup> May 2005. The proposed modifications relate to only some selected provisions that seem to be determining the central character of the recommended draft. All these concerns have been raised time and again in various meetings and through written submissions. Once these are accepted, wholly or partly, it would become necessary to make a range of associated or follow-up changes in the rest of the draft as well. In addition, a great deal of fine tuning and editorial changes are required elsewhere too in order to make the draft Bill an effective instrument in the hands of the people.

4. Re-write the fourth paragraph as proposed below:

And whereas the above Act under the amended Article 45 directs the State to “endeavour to provide early childhood care and education for all children until they complete the age of six years” which, read in conjunction with Article 21 of the Constitution as per Supreme Court directions and together with National Policy on Education – 1986 (Sections 5.1 to 5.4), makes holistic child care (including nutrition and health) and pre-primary education a Fundamental Right for all children in this age group;

5. Insert the following paragraph after the fourth paragraph:

And whereas, in view of the changed socio-economic scenario at national as well as global level, it has become necessary to provide to all children free secondary education up to Class X initially and later upto Class XII, in order to enable them to benefit from elementary education by providing them with the necessary capacity to (a) link up with the “world of work”; (b) have access to benefits under the reservation policy for the Scheduled Castes, Scheduled Tribes and other disadvantaged sections of society; and (c) face the challenges of the new global economic order;

6. Re-write the sixth paragraph as proposed below:

And whereas it is considered essential to create a democratic, egalitarian and just society that incorporates the secular values as well as the ethnic, religious, linguistic and cultural diversities of India;

7. a) Seventh paragraph, second line: Replace “equity” by “equality”.  
 b) Seventh Paragraph, second & third lines: Replace “equitable quality elementary education” by “elementary education of equitable quality”.  
 c) Seventh paragraph: Please consider the modifications suggested by Prof. Tapas Majumdar (the term “pre-schooling” may be read as “pre-primary education”).

## **B. Short title, Extent and Commencement**

### **Section 1 (3)**

Add the following phrase at the end of the sentence:

“but definitely within one year of the signing of the Act by the President of India.”

## **C. Definitions**

### **1. Section 2 (1) (b) (iii)**

The sentence “provided that . . . . . regardless of their location” is not clear and needs to be re-written as a separate sub-clause (iv) as suggested below:

(iv) the Central Government, in relation to schools and institutions run by the Central Government, regardless of their location.

## **2. Section 2 (1) (c)**

Re-phrase the definition of "Capitation Fee" as per Dr. Archana Mehendale's suggestion vide her Note dated 20<sup>th</sup> April 2005, as also indicated below:

### **"Capitation Fee"**

means any contribution that is required to be paid by children or their parents/guardians, other than the fees that have been publicly notified at the time of admission.

## **3. Section 2 (1) (d)**

Re-write the definition of "child" as proposed below:

### **"Child"**

means a person who has not completed the eighteenth year of age.

## **4. Introduce Definition of Common School System**

Insert the following definition after Section 2 (1) (e):

### **"Common School System"**

means the National System of Education that is founded on the principles and values enshrined in the Constitution and, as stated in the National Policy on Education – 1986, provides education of a comparable quality to all children equitably irrespective of their caste, creed, language, economic or ethnic background, location or sex, and wherein all categories of schools – i.e. government, local body or private, aided or unaided, or otherwise – will be under obligation to (a) fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms and (b) ensure free education to all children in a defined neighbourhood in an age group and/or up to a stage, as may be prescribed under this Act and/or Rules framed from time to time, while having adequate flexibility and academic freedom to explore, innovate and be creative and appropriately reflecting the geo-cultural and linguistic diversity of the country, within the broad policy guidelines and the National Curriculum Framework for School Education as approved by the Central Advisory Board of Education.

## **5. Section 2 (1) (f)**

Delete the definition of "Child with Special Needs" for the reasons given by Dr. Archana Mehendale in her Note dated 20<sup>th</sup> April 2005.

#### 6. Section 2 (1) (g) (ii)

In sub-clause (ii) of the definition on "Compulsory Education", delete the phrase "if necessary, through special steps like bridge courses, including residential bridge courses." The reason: It is rather restrictive as it focuses on a particular strategy which may or may not work in all situations in the country (SSA has been pursuing this strategy already for three years); "all necessary steps" includes this specific strategy while leaving space open for other equally effective approaches.

#### 7. Section 2 (1) (h)

We need to rethink on the definition of "Disability" as the definition given here in terms of the PWD Act, 1995 is limited by being in the medical model. Is there no way of defining disability which takes into account the political, socio-economic and cultural context of disability? A great deal of research has been undertaken on this issue internationally which should provide some meaningful insight for this purpose. Let us consult some knowledgeable persons in this field.

#### 8. Section 2 (1) (k)

Definition of "Elementary Stage": Define "competent authority" which has been mentioned a number of times in various sections and clauses in the draft Bill (elsewhere "competent academic authority" is mentioned but without being defined). Are these two different concepts?

#### 9. Section 2 (1) (l)

Definition of "Equitable quality in relation to elementary education":

- a) First Line: Insert "equitably" after "children with education".
- b) Second Line: Insert the words "throughout the academic year" after "participation".
- c) Second Line: Replace "and conditions of success" by the following phrase –  
"and completing elementary education with the prescribed course of study."

#### 10. Section 2 (1) (m)

- a) Insert the words "child and her" after "freedom for the".
- b) Sub-clause (i), Last Line: Insert the words "inside the school or" after "any service".
- c) Sub-clause (ii): This may be deleted as it opens up the possibility of interpreting as to what expenses may "prevent the child from participating in and completing elementary education" and which may not. Sub-clause (i) is more than adequate to define "Free Education" and does not attach any conditionality to the concept as does Sub-clause (ii).

**11. Section 2 (1) (q)**

Definition of “Juvenile in conflict with law”: Is this adequate to be merely “alleged to have committed an offence”? What about the requirement of the allegations being proven in a competent court? Please check with the J.-J. Act, 2000 and clarify.

**12. Section 2 (1) (s)**

- a) Sub-clause (i): Insert “as provided under the Constitutional (Seventy-third) Amendment” after “rural areas”.
- b) Sub-clause (ii): Insert “as provided under the Constitutional (Seventy-fourth) Amendment” after “urban area”.

**13. Section 2 (1) (w)**

Re-write the definition of “Neighbourhood School, in relation to a child” as proposed below:

**“Neighbourhood School, in relation to a child”**

means a school (including all privately managed and duly recognized government-aided or unaided schools), being part of the Common School System, around the child’s residence either within the walking distance or accessible through free and appropriate transport facility, as may be prescribed from time to time under this Act, while giving due consideration to factors such as gender, age, disability (physical or mental), physical terrain, pedagogic quality, linguistic requirements and other socio-economic or cultural constraints that mitigate the neighbourhoodness of a school.

**14. Section 2 (1) (y)****“Out of school child”**

Second Line: Insert the words “and complete elementary education through the prescribed course of study” after “participate therein”.

**15. Section 2 (1) (aa)****“Participation”**

Sub-clause (ii): Insert “throughout the academic year” after “attends school”.

**16. Section 2 (1) (cc)**

The title “Pre-School Facility” should read “Pre-Primary Education”

- a) First Line: Replace “a facility” by “Pre-Primary Education”.
- b) Second Line: Replace “5” by “4”.

**17. Section 2 (1) (dd)****“School”**

Replace “instruction” by “education” in this definition and, in other sections/clauses, by either “education” or “teaching-learning process” or any other expression appropriate to the context.

**18. Section 2 (1) (ee)****“Screening procedure for admission to a school”**

a) First Line: Insert “including interaction with the child or her parents/guardians” after “procedure”.

b) Second Line: Insert “or its pre-primary section”.

**19. Section 2 (1) (hh)****“Teacher”**

Insert “who possesses qualifications and pre-service training as per NCTE norms and has been appointed through duly prescribed procedures and in accordance with duly approved service conditions” at the end of the sentence.

**20. Section 2 (1) (ii)****“Unaided School”**

Replace the words “an aided school” by “a fully or partially aided school”.

**D. CHAPTER II: Child’s Right to Free and Compulsory Education of Equitable Quality****Sections 3 (2) and 3 (3)**

Section 3 (2) may be re-written as follows:

“A child who is past the age of six years but continues to be out-of-school at the commencement of this Act, shall, in addition to the right specified in Section 3 (1), have the right to be admitted to an age-appropriate grade in a neighbourhood school within one year of the commencement of this Act and provided all necessary support and facilities in order to enable her to participate in and complete the full course of elementary education of equitable quality with the expected educational attainment.”

Section 3 (3) is unnecessary and may be deleted as the proposed notion of “special programmes within the neighbourhood school” or “residential bridge course” as per Section 6 (ii) (b) for the non-enrolled children in the age group of 9-14 years is suggestive of merely a scheme or strategy which can vary from region to region or reformulated from time to time. SSA has been operating such programmes for the past three years. The law need not restrict the choices or the creativity of the concerned

Governments/ Local Bodies/ VECs/ SMCs by specifying a scheme or a strategy. The simpler and less prescriptive is the law, the more effective it is likely to be. This point was made at the second meeting of the Committee held on 24.12.2004.

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**Section 3 (6) (ii):**

This may please be deleted as a provision to strike off a child's name from a school does not fit in a Right to Education Bill whatever may be the circumstances, unless evidence is available that her name has been enrolled in another school.

The provision for the children of seasonally migrant families may be retained as Section 3 (6) (ii).

**E. CHAPTER III: Responsibility of the State**

*[Title of Chapter III: Why should it not be titled as "Obligation of the State", rather than its softer version of "Responsibility"?)*

**Section 5:**

Section 5 may be replaced by the following:

"It shall be the obligation of the State:

- (1) To either provide or ensure the availability of a neighbourhood school up to elementary stage for every child as part of the Common School System within two years of the commencement of the Act.
- (2) To ensure that every child is provided free elementary education of equitable quality in a neighbourhood school for which purpose she is enrolled in a school in her neighbourhood within a year of the commencement of the Act and then provided all the necessary support – moral, socio-economic, cultural, pedagogic, linguistic or otherwise – to participate in the school for the whole day throughout the academic year and complete her prescribed course of elementary education of equitable quality with the expected educational attainment.
- (3) To take all necessary measures in order to ensure that all schools (including privately managed and duly recognized government-aided or unaided schools) are included in the Common School System and participate in the national programme of universalization of elementary education by acting as neighbourhood schools and providing free elementary education of equitable quality to the children in their neighbourhood as prescribed under this Act, irrespective of the type of their management, sources of their income or the Board of Examination with which they might be affiliated.
- (4) To ensure that all schools as part of the Common School System (a) provide education of equitable quality; (b) conform to values enshrined in the Constitution; (c) follow a rational language policy based upon the three-language formula as provided for in the National Policy on Education – 1986 and (d) enable all children to enroll in the neighbourhood school, participate in the

educational process throughout the academic year as full-time students and complete the full prescribed course of elementary education of equitable quality with the expected educational attainment.

- (5) To take all necessary measures in order to ensure that economic, social, cultural, linguistic, gender, infrastructural, administrative, locational, disability-related or such other barriers do not prevent children from participating in and completing elementary education of equitable quality with the expected educational attainment.

## **Section 6: Obligation of the State towards the Non-enrolled Child**

Re-write this Section in consonance with the suggested modification in Sections 3 (2) & (3).

## **Section 7**

Section 7 may be replaced by the following:

### **7. Special Obligations of the State**

#### **7.1 Provision of Facilities for ECCE including Pre-Primary Education**

"It shall be the special obligation of the State:

- (1) To provide for all children below the age of six years free facilities for holistic child care including support for nutrition, health, and social, mental, physical, moral and emotional development as part of integrated early childhood care and education, in each habitation within a maximum period of three years from the commencement of this Act.
- (2) To provide free crèche and at least two years of pre-primary education in each neighbourhood school as part of integrated early childhood care and education within a maximum period of three years from the commencement of this Act."

#### **7.2 Provision of Facilities to Adolescents to Complete Elementary Education**

"If an adolescent has, for whatever reason, been unable to complete elementary education by the age of fourteen years but is continuing her education in a school at that age, she shall continue to be provided free education in such school till she completes the full prescribed of elementary education or attains the age of eighteen years or whichever is earlier."

#### **7.3 Provision of Facilities to Adolescents to Complete Secondary and Senior Secondary Education**

"It shall be the responsibility of the State to provide, within three years of the promulgation of this Act, universal and free secondary (i.e. Classes IX-X) and senior secondary (i.e. Classes XI-XII) education of equitable quality through regular formal schools for the children in the 14-18 year age group, with due



consideration for various deprived sections of society with focus on the girls and the disabled in each of these sections.”

### **Section 8 (i)**

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Insert a *new* Section 8 to replace the existing Section 8 (i) as specified below:

### **Section 8: Financial Obligation of the State**

“The Central and Appropriate Governments shall have the concurrent obligation to ensure that adequate funds are provided for implementation of this Act for which purpose it shall be ensured that,

- a. the annual public outlay on education as a whole “uniformly exceeds six per cent of the national income”, as provided for in the National Policy on Education – 1986;
- b. at least half of this annual public outlay is allocated to elementary education;
- c. the public outlay for elementary education is adequate for meeting the demands of the cumulative gap of investment building up for decades and resulting in under-provisioning in various aspects of school education, particularly with regard to infrastructural facilities, number of schools provided, number of teachers’ posts created, teacher training facilities, supply of textbooks, resource material and teaching aids and others;
- d. additional funds are allocated as per specially created financial norms for the development of elementary education in the resource-poor States/UTs including the north-eastern States, Scheduled Areas (Fifth Schedule) and Scheduled Districts (Sixth Schedule);
- e. the proportion of the non-salary component of the elementary education budget, indicative of the State’s commitment to improving the quality of education, rises at a rate that is higher than the rate of growth of national GDP, without adversely affecting the remuneration levels and service conditions of the teachers and other school staff; and
- f. the annual expenditure on elementary education by the State rises at a rate that is at least equal to the rate of growth of national GDP while also taking into consideration the rate of inflation.”

## **F. CHAPTER IV**

### **Section 13: Responsibility of Schools**

Section 13 is replaced by the following:

“(1) All categories of schools, irrespective of their type of management, sources of income or affiliating Boards of Examination, shall provide free elementary education of

equitable quality to children residing in their neighbourhood as prescribed under the Act in the manner specified below:

- (i) Schools, fully or partially, aided by the State, except schools of specified ~~categories, to all admitted children residing in the neighbourhood; and~~
- (ii) All schools, not covered under the above sub-clause (i) of Section 13 (1) but including the schools of specified categories, to at least half of the children admitted in class I in the first academic year following the commencement of this Act and each successive year from then onwards, from among children belonging to the disadvantaged groups and residing within the neighbourhood, randomly selected in such manner as may be prescribed under this Act.

[Explanation: "Specified category" in this context means such categories of State-funded schools as may be notified by either the Central Government or the Appropriate Government, as the case may be, and may include Navodaya Vidyalayas, Kendriya Vidyalayas, Sainik Schools, State Government's residential schools and such other special purpose schools.]

Provided that if a school covered under the above sub-clause (ii) of Section 13 (1) has a pre-primary section, at least half of the children admitted to the pre-primary section shall also be admitted, in addition to those admitted as per sub-clause (ii), in the first academic year following the commencement of this Act and each successive year from then onwards, from among children belonging to the disadvantaged groups and residing within the neighbourhood, randomly selected in such manner as may be prescribed under this Act, and shall receive free pre-primary education of at least two years.

(2) For every child admitted in pursuance of Section 13 (1) (ii), the Appropriate Government/ Local Body shall reimburse the concerned school at a rate equal to the per child annual expenditure incurred by the State (averaged out for the state-funded schools of the relevant State/UT, including overhead costs) for providing free elementary education of equitable quality as well as for the state-funded ECCE centres in such manner as may be prescribed under this Act.

Provided that if a school is under obligation to either the Central Government or the Appropriate Government or any of the authorities/ agencies representing or acting on their behalf as a consequence of having received land/ building/ equipment/ other facilities either free of cost or at subsidized rates, such schools shall not be entitled for reimbursement under Section 13 (2) to the extent they are obliged under the law to provide free education to the children belonging to the disadvantaged groups residing in the neighbourhood of the school.

Provided also that if a school or the Society/ Trust/ Body owning the school has benefited, directly or indirectly, from grants/ loans/ tax exemption/ subsidies/ other financial benefits extended, wholly or partly, by the State, reimbursement under Section 13 (2) will be discounted proportionately as may be prescribed under this Act."

**Note:** The Alternate Formulation under Section 11 of the draft Bill as discussed at the 16<sup>th</sup> April meeting is unacceptable as it violates the Constitutional principle of equality, apart from also contradicting the Common school System. The Government will have neither the moral nor the legal ground to ask the private unaided schools to shoulder their national obligation under this Act if it continues to prevent the state-funded school systems from fulfilling the same obligation.

### Section 13 (3)

This Section concerning school's responsibility to provide pre-primary education will have to be re-written in light of the State's obligation in this regard as provided for in the new Section 7.1 suggested earlier in this document.

### Section 17: Prohibition of Deployment of Teachers for Non-educational Purpose

Section 17 of the recommended draft Bill is discriminatory to the children of the Government/ Local Body/ government-aided privately managed schools and, therefore, needs to be replaced by the following:

"No teacher or any other staff member of a neighbourhood school that is part of the Common School System, including the privately managed and duly recognized aided or unaided schools, shall be deployed for any non-educational purpose except for the decennial population census, election to Local Bodies, State Legislatures or the Parliament, and disaster relief duties, as and when duly notified by the Central or Appropriate Government/ Local Body."

"Further, while issuing notification for such deployment, the Central or Appropriate Government/ Local Body shall not discriminate, in whatsoever manner, among the teachers and other staff members of various categories of neighbourhood schools on account of the type of school's management, sources of school's income or the Boards of Examinations with which the schools under its jurisdiction may be affiliated."

### Section 20: Teachers' Cadre to be School-based

#### Section 20 (1)

Third Line: Delete "(including SMC)".

Fourth Line: The provision of not transferring the school-based teachers needs some clarifications and appropriate provision for providing them with opportunities for their exposure and growth and also for meeting personal emergency situations.

Two queries:

- a) What about provision of teachers' quarters in the vicinity of the school to which they are posted?
- b) What about promotional opportunities for the teachers?

### Section 22: Teacher Qualifications and Remuneration

Section 22 (2): Is it fair to expect an employed teacher to acquire the prescribed qualifications "at her cost"? Let us discuss its implications.

### Section 24: Accountability of Teachers

Two concerns:

- a) What about the accountability of teachers employed in private unaided schools? What law will apply to them? Or no laws will apply to them?

- b) Are we not making too many rules in an Act like this? I am concerned about 'overkill'.

## **G. CHAPTER V: CONTENT AND PROCESS OF EDUCATION**

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### **Section 26: Values, Content etc.**

Section 26 (ii) (c):

- Is this Section the most appropriate place for providing for mother tongue as the medium of education? What implications of shifting it to another Chapter?
- Please do not use the expression "medium of instruction"; this does not fit in with the rest of the provisions in the Section; let us use the expression "medium of education" instead.
- Will this apply to private unaided schools, especially if you are not talking of Common School System?
- What about three-language formula?

Section 26 (ii) (d): Replace "discovery" by "exploration".

Section 27: The concerns articulated above with regard to Section 26 (ii) (c) also apply here.

## **H. CHAPTER VII: MISCELLANEOUS**

### **Provision for Punitive Action Against the State and its Authorities/ Officials/ Representatives**

The following provision needs to be added in order to empower parents/ guardians and the children to take appropriate punitive action, in case of violation of the Act or deviation therefrom, against the Central Government, Appropriate Government or the Local Bodies or their authorities/ officials/ representatives:

"In case the Central Government, Appropriate Government or the Local Body or any of the authorities/ officials/ representatives acting on their behalf either fail, to take appropriate action as per the provisions of this Act or violate the Act in letter or spirit, the affected parents/ guardians or the concerned children or a public interest organisation or any other person or group of persons with a *locus standi* shall have the right to move the relevant court of law for punitive action against the authorities/ officials/ representatives in question and seek appropriate compensation as well as punitive damages."

- Prof. Anil Sadgopal  
Member, CABE Committee on

"Free and Compulsory Education Bill and Other Issues Related to Elementary Education"

04 June 2005,  
Bhopal.

## Common School System

The Education Commission (1964-66) had recommended a Common School System of Public Education (CSS) as the basis of building up the National System of Education with a view to "bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society." The Commission warned that "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 *anaemic and incomplete*. (emphasis ours)" The Commission contended that "if these evils are to be eliminated and the education system is to become a powerful instrument of national development in general, and social and national integration in particular, we must move towards the goal of a common school system of public education." The Commission also pointed out that such a system exists "in different forms and to varying degrees" in other nations like the USA, France and the Scandinavian countries. The British system, however, was based upon privileges and discrimination but, in recent decades, under democratic pressure, it has moved towards a comprehensive school system which is akin to the Common School System recommended by the Commission. There are other developed countries as well like Canada and Japan that have also developed similar systems.

The 1986 policy, while advocating a National System of Education, resolved that "effective measures will be taken in the direction of the Common School System recommended in the 1968 policy." Taking into consideration these policy imperatives and the contemporary emphasis on decentralisation along with the necessary flexibility in the school system to be able to respond to the contextual curricular demands, the concept of the Common School System (CSS) has itself been evolving. There are two widespread misconceptions about CSS, often promoted by its detractors, which we must deal with before going ahead. First, **CSS is misperceived as a uniform school system**. On the contrary, the Education Commission itself advocated that each institution should be "intimately involved with the local community . . . . be regarded as an individuality and given academic freedom." This guiding principle has assumed even greater significance in recent times in view of the expectation from each school or a cluster of schools to be able to respond to the local contexts and reflect the rich diversity across the country. Second, it is wrongly claimed that **CSS will not permit a privately managed school to retain its non-government and unaided (or aided) character**. Again, on the contrary, CSS implies that all schools – irrespective of the type of their management, sources of income or affiliating Boards of examinations – will participate and fulfill their responsibility as part of the National System of Education. Based upon the evolving public discourse on CSS, the following definition of CSS can be constructed for inclusion in the "Free and Compulsory Education Bill" being drafted by yet another CABE Committee at present:

"Common School System means the National System of Education that is founded on the principles and values enshrined in the Constitution and, as stated in the National Policy on Education – 1986, provides education of a comparable quality to all children equitably irrespective of their caste, creed,

language, economic or ethnic background, location or sex. and wherein all categories of schools – i.e. government, local body or private, aided or unaided, or otherwise – will be under obligation to (a) fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms and (b) ensure free education to all children in a defined neighbourhood in an age group and/or up to a stage, as may be prescribed under this Act and/or Rules framed from time to time, while having adequate flexibility and academic freedom to explore, innovate and be creative and appropriately reflecting the geo-cultural and linguistic diversity of the country, within the broad policy guidelines and the National Curriculum Framework for School Education as approved by the Central Advisory Board of Education.

What we have discussed so far in this report as the guiding principles and basic characteristics of a successful programme of universalisation of secondary education is fully consistent with the Common School System as defined above. We might as well add that the kind of paradigm shift we have recommended here can become sustainable only when it is implemented in all categories of schools, including the privately managed unaided schools, in the whole of the country within a declared timeframe, though a properly phased programme will be necessary. This essential linkage between curricular reforms and systemic reforms must be understood, before it is too late. And such reforms would be feasible only within the framework of a Common School System. The Committee would further like to assert that no developed or developing country has ever achieved UEE or, for that matter, Universal Secondary Education, without a strong state-funded Common School System. India is unlikely to be an exception to this historical and global experience.

### **Three-Language Formula**

The three-language formula evolved out of a major political exercise and negotiations in the critical decade of 1950s and the early years of 1960s in response to the rising tensions with respect to different language regions of the country and the question of related cultural identities. In essence, this outcome reflected the federal spirit of our Constitution and the commitment to sustain and promote India's plural character. It is in this background that the 1986 policy made a commitment to implement the three-language formula "more energetically and purposefully." NCFSE-2005 also reiterates this position and proposes to make a renewed bid to fulfill the commitment. While, as part of this formula, a crucial responsibility befalls upon the elementary stage of education to promote mother tongue as the medium of education, it is the secondary/senior secondary stage of education that becomes the real testing ground of the more challenging aspects of the formula. The 1986 policy also acknowledged the "uneven" implementation of the formula. The Hindi-speaking states, with their greater share in political power, have a special responsibility in responding to this challenge, especially with respect to the concept of the third language as a modern Indian language from a non-Hindi speaking region. Concrete steps in this direction will provide a new thrust for the non-Hindi speaking states to make a fresh commitment to implement the language policy in letter and spirit. It is here that the political commitment made by the nation's leadership soon after independence to strengthen India's unity and integrity, promote inter-cultural dialogue and build an enlightened and articulate citizenship, will be redeemed.

In this context, the Committee would like to urge upon the Central Government to take the initiative of setting up an effective and adequately funded structure and process for promoting inter-language translation of the highest quality material available in different languages of India. An active role of the States/UTs ~~will be critical to the success of this~~ central initiative. This process must also cover the word class material available globally in the languages of different countries and make it available widely in all major Indian languages. India's capacity in the field of IT should prove to be of special asset in this respect, provided urgent political attention is paid to this issue. It would be only appropriate if this inter-language endeavour would include Braille and computer-aided facilities for making quality material available to the disabled children also. Apart from enriching communication and understanding among different language regions of the country, the availability of such material in Indian languages will go a long way in enriching the quality of education not just at the secondary/ senior secondary education level but at the higher education level as well.

[Let us avoid using the colonial term "instruction". What we are talking about is "*education*" and not "*instruction*". For instance, English for the vast majority in India or, for that matter, the state language in the case of linguistic minorities (e.g. Bangla for the Hindi-speaking population of Howrah or Hindi for the Oriya-speaking children of the Bastar region on the border of Orissa) can be the "medium of *instruction*" at the primary stage but the mother tongue (in the two instances cited here i.e. Hindi and Oriya respectively) will be the "medium of *education*".]

Bhopal,  
June 02, 2005

- Prof. Anil Sadgopal  
Member, CABE Committee on  
Universalisation of Secondary Education

**CABE COMMITTEE ON  
“Free and Compulsory Education Bill  
and Other Issues Related to Elementary Education”**

**“COMMON SCHOOL SYSTEM means the National System of Education that is founded on the principles and values enshrined in the Constitution and, as stated in the National Policy on Education – 1986, provides education of a comparable quality to all children equitably irrespective of their caste, creed, language, economic or ethnic background, location or sex, and wherein all categories of schools – i.e. government, local body or private, aided or unaided, or otherwise – will be under obligation to (a) fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms and (b) ensure free education to all children in a defined neighbourhood in an age group and/or up to a stage, as may be prescribed under this Act and/or Rules framed from time to time, while having adequate flexibility and academic freedom to explore, innovate and be creative and appropriately reflecting the geo-cultural and linguistic diversity of the country, within the broad policy guidelines and the National Curriculum Framework for School Education as approved by the Central Advisory Board of Education.”**

Bhopal,  
June 05, 2005

- Proposed by Anil Sadgopal  
Member, CABE Committee on “Free and  
Compulsory Education Bill and Other Issues  
Related to Elementary Education”



**REPORT OF THE**

**CABE COMMITTEE**

**ON**

**Free and Compulsory Education Bill and  
Other Issues Related to Elementary Education**

**Volume 3**

**Part II : Written Submissions Made to the Committee**

**June 2005**

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केब समिति की उप समिति की बैठक दिनांक 28 फरवरी 2005  
में की गई अनुशंसाओं पर चर्चा हेतु टीप  
नाम : **Right to Education Bill 2005**

प्रीएम्बल (प्रस्तावना) में अनुसूचित जनजाति बच्चों का उल्लेख स्पष्ट रूप से होना चाहिये।

पीएम्बल में उल्लेखित 'वीकर सेक्शन' को परिभाषित करना उचित होगा।

अध्याय 01.

बिन्दु (1). से सहमति नहीं है। इसमें निम्नलिखित का जोड़ा जाना उचित होगा कि:

राज्य सरकार द्वारा राज्य के शिक्षा विभाग संबंधी नियमों/अधिनियमों के अंतर्गत प्रारंभिक कक्षाओं में पढ़ने वाले बच्चों से विकास शुल्क अभिभावकों की सहमति तथा निर्णय के आधार पर लिया जा सकता है।

बिन्दु (CC). में यह भी स्पष्ट किया जाना उचित होगा कि —

शिक्षक से अभिप्रेत है कि किसी स्कूल का ड्यूली अपाइंटेड शिक्षक चाहे उसे किसी भी ऐसे नाम से जाना जाता हो, जैसा कि राज्य सरकार द्वारा अनुमोदित किया जाए और उसे उस स्कूल में शिक्षण के लिए सम्यक रूप से नियुक्त किया गया हो।

अध्याय 02.

बिन्दु (3). में यह जोड़ा जाना उचित होगा कि—

शाला जाने योग्य आयु के किसी भी बच्चे को वर्ष में किसी भी समय शाला में दर्ज होने का अधिकार होगा।

अध्याय 03.

बिन्दु (4b). में यह जोड़ा जाना उचित होगा कि—

राज्य सरकार द्वारा ऐसी बसाहटों जिनमें प्राथमिक या उच्च प्राथमिक शालाएं हों, में आंगनवाड़ी का समय आवश्यक रूप से शाला के समय के अनुरूप किया जायेगा जिससे शाला में पढ़ने वाले बच्चों के छोटे माई-बहनो की शाला समय में देखभाल हो सके।

अध्याय 03.

बिन्दु (5) में यह जोड़ा जाना उचित होगा —

1. केन्द्र सरकार प्रदेशों द्वारा शिक्षा के संबंध में तैयार की गई स्थानीय रणनीतियों को समर्थन दिया जायेगा।
2. केन्द्र सरकार द्वारा शालेय स्तर पर वर्क एज्युकेशन एवं व्यवसायिक शिक्षा (विशेषकर कक्षा 6 से 8 ) को बढ़ावा दिया जायेगा।

बिन्दु (5,ii) में यह जोड़ा जाना उचित होगा —

नेशनल करीकु लम फेमवर्क में वर्क एजूकेशन तथा व्यवसायिक शिक्षा को भी स्थान दिया जायेगा।

बिन्दु (6). में यह जोड़ा जाना उचित होगा —

- 1- राज्य सरकार द्वारा शालेय स्तर पर वर्क एजूकेशन एवं व्यवसायिक शिक्षा (विशेषकर कक्षा 6 से 8 ) को बढ़ावा दिया जायेगा।
- 2- राज्य सरकार द्वारा शिक्षकों का नियुक्ति शैक्षणिक सत्र के प्रारंभ में आवश्यक रूप से कर लिया जायेगा।
- 3- राज्य सरकारों द्वारा पलायन अवधि, एग्रोकलामेटिक कैलेण्डर तथा माईग्रेटरी पैटर्न के आधार पर पलायन करने वाले परिवारों के बच्चों की शिक्षा का अकादमिक कैलेण्डर पृथक से तैयार कराया जायेगा।

बिन्दु 8 का 3 राज्य के हित से नहीं है। इससे राज्य पर आर्थिक भार अधिक होगा।

अध्याय 04.

डिशएडवान्टेज ग्रुप को परिभाषित करना उचित होगा।

बिन्दु क 12 से सहमति नहीं है। यदि कोई शाला त्यागी बच्चा/भौसमी प्रवासी परिवारों के बालक शैक्षणिक सत्र के दौरान किसी भी समय शाला से प्रवेश हेतु आते है, स्कूल के प्रधानअध्यापक को यह अधिकार होगा कि ऐसे बच्चों को स्किनिंग कर उनकी क्षमता के अनुसार कक्षा में प्रवेश दें।

बिन्दु (14). में यह जोड़ा जाना उचित होगा —

शिक्षकों को बिल में उल्लेखित गैर शिक्षकीय कार्यों में संलग्न करने से पूर्व भी जिला प्रशासन को राज्य शासन से अनुमति लेनी आवश्यक होगी तथा राज्य शासन को भी यह अनुमति देते समय इस बात को ध्यान में रखना आवश्यक होगा कि शाला हेतु निर्धारित न्यूनतम कार्य दिवस ऐसा करने से प्रभावित न हो तथा यथा संभव इन कार्यों हेतु अन्य विभागों के कार्यकर्ताओं/कर्मचारियों को सर्व प्रथम प्राथमिकता के आधार पर इन कार्यों में संलग्न किया जाये। इन्हें लगाने के बाद ही शेष बची आवश्यक संख्या हेतु ही शिक्षकों को लगाया जाये।

#### अध्याय 04.

बिन्दु (15), से सहमति नहीं है। इसके स्थान पर निम्नलिखित विचार किया जाना उचित होगा —

शालाओं के लिये अभिभावक शिक्षक का गठन किया जायेगा। इसमें शाला में पढ़ने वाले सभी बच्चों के माता-पिता या संरक्षक तथा शाला में पदस्थ समस्त शिक्षक सदस्य होंगे। अभिभावक शिक्षक संघ के अध्यक्ष, उपाध्यक्ष तथा कार्यकारिणी के सदस्य प्रतिवर्ष शैक्षणिक सत्र के प्रथम माह में निर्वाचित किये जायेंगे।

अभिभावक शिक्षक संघ के निर्वाचित प्रतिनिधियों में महिलाओं, अनुसूचित जाति, अनुसूचित जनजाति का प्रतिनिधित्व भी राज्य सरकार द्वारा विहित किये अनुसार सुनिश्चित किया जायेगा।

#### अध्याय 05.

बिन्दु (16 ii), में यह जोड़ा जाना उचित होगा —

- 1 शाला में अध्ययनरत बच्चों को वर्क एजुकेशन और व्यवसायिक शिक्षा का प्रबंध किया जायेगा।
- 2 सभी बच्चों को प्रारंभिक स्तर पर लाईफ स्कूल एजुकेशन दी जायेगी तथा उनकी इस विषय में समझ के विकास हेतु प्रोजेक्ट कार्य कराये जायेंगे।
- 3 निदानात्मक परीक्षण एवं उपचारात्मक शिक्षण (डायग्नोस्टिक तथा रेमेडियल) को ध्यान में रखते हुये प्रत्येक कक्षा में मासिक तथा त्रैमासिक मूल्यांकन का प्रावधान किया जाना उचित होगा। कक्षा 5 एवं 8 के परिणामों अधिक प्रभावशाली एवं शिक्षण को सुनिश्चित करने के लिये जिला बोर्ड का निर्माण करते हुये इन परीक्षाओं का संचालन एवं परीक्षा परिणामों का प्रमाणीकरण जिला बोर्ड के सुपुर्द करना।

#### अध्याय 06.

जिला स्तर पर राज्य कमीशन की इकाई की आवश्यकता प्रतीत नहीं होती है। इससे वर्तमान में कार्यरत संस्थानों में विसंगतियां परिलक्षित होंगी।

अध्याय 07, में निम्नलिखित जोड़ा जाना उचित होगा —

शाला जाने योग्य आयु वर्ग के किसी भी बच्चे को शाला जाने से रोकने वाले व्यक्तियों अथवा संस्थाओं के विरुद्ध दण्डात्मक कार्यवाही की जायेगी। यह दण्ड आर्थिक प्रकृति का हो सकता है अथवा जैसा राज्य सरकार द्वारा विहित किया जाये।

**केब समिति की बैठक दिनांक 16 अप्रैल 2005 में डॉ ढाल सिंह बिसेन,  
स्कूल शिक्षा मंत्री, म.प्र. शासन के विचार**

प्रीएम्बल (प्रस्तावना) में अनुसूचित जनजाति बच्चों का उल्लेख स्पष्ट रूप से होना चाहिये ।

अध्याय 1 (i) का i- राज्य सरकार द्वारा राज्य के शिक्षा विभाग के संबंध में नियमों/अधिनियमों के अंतर्गत प्रारंभिक कक्षाओं में पढ़ने वाले बच्चों से विकास शुल्क अभिभावकों की सहमति तथा निर्णय के आधार पर लिया जा सकता है ।

बिन्दु(cc) में यह भी स्पष्ट किया जाना उचित होगा कि-शिक्षक से अभिप्रेत है कि किसी स्कूल का ड्यूली अपाइंटेड शिक्षक चाहे उसे किसी भी ऐसे नाम से जाना जाता हो, जैसा कि राज्य सरकार द्वारा अनुमोदित किया जाना और ऐसे उस स्कूल में शिक्षण के लिए सम्यक रूप से नियुक्त किया गया हो ।

अध्याय 2 के

बिन्दु क.6 (ii) से सहमति नहीं है । किसी भी बच्चे का नाम स्कूल रजिस्टर से काटना नहीं चाहिये । लम्बे समय तक अनुपस्थित बच्चों की नियमिति उपस्थिति सुनिश्चित करने के उपाय करना चाहिये ।

बिन्दु क.3 A(2) में विरोधाभास परिलक्षित हो रहा है ।

कक्षा एक के अलावा अन्य कक्षाओं में प्रवेश लेने से पूर्व यदि बच्चे का टेस्ट न लिया जायेगा तो किस कक्षा में प्रवेश हेतु बच्चा उपयुक्त है का निर्धारण करना कठिन होगा। यह अध्याय 4 का बिन्दु क. 12 से विरोधाभासी है ।

अध्याय 03

बिन्दु (4B) में यह जोड़ा जाना उचित होगा कि:- राज्य सरकार द्वारा ऐसी बसाहटों जिनमें प्राथमिक या उच्च प्राथमिक शालाएं हों, आंगनवाड़ी का समय आवश्यक रूप से शाला के समय के अनुरूप किया जाये जिससे शाला में पढ़ने वाले बच्चों के छोटे भाई-बहनों की शाला समय में देखभाल हो सके ।

बिन्दु (5) में यह जोड़ा जाना उचित होगा :-

1. केन्द्र सरकार प्रदेशों द्वारा शिक्षा के संबंध में तैयार की गई स्थानीय रणनीतियों को समर्थन दिया जायेगा ।



**बिन्दु (6) में यह जोड़ा जाना उचित होगा:—**

1. राज्य सरकार द्वारा शिक्षकों की नियुक्ति शैक्षणिक सत्र के प्रारंभ में आवश्यक रूप से कर ली जायेगी ।
2. राज्य सरकारों द्वारा पलायन अवधि, एग्रोकलामेटिक कैलेण्डर तथा माईग्रेट पैटर्न के आधार पर पलायन करने वाले परिवारों के बच्चों की शिक्षा का अकादमिक कैलेण्डर पृथक से तैयार कराया जायेगा ।

**अध्याय 04**

**बिन्दु (14) हेतु दण्डात्मक कार्यवाही विहित किया जाना आवश्यक होगा ।**

**बिन्दु (15) से सहमति नहीं है । इसके स्थान पर निम्नलिखित विचार किया जाना उचित होगा:—**

केन्द्रीय विद्यालय के शिक्षकों के वेतन के अनुरूप राज्य के शिक्षकों को वेतन दिये जाने के प्रावधान करने से व्यय का भार बहुत अधिक होगा । अतिरिक्त संसाधन की व्यवस्था कैसे होगी पर विचार करना आवश्यक होगा ।

**बिन्दु क. 15D (1) का ii**

शिक्षकों के वेतन/मानदेय वितरण के अधिकार किसी एक का ही होना चाहिये बिल में यह कार्य संपादित करने हेतु 2 विकल्प नहीं दिये जाने चाहिये । यदि शिक्षकों के वेतन/मानदेय वितरण का अधिकार एस.एम.सी./पी.टी.ए. का होगा । ऐसी स्थिति में शिक्षकों के विरुद्ध दण्डात्मक कार्यवाही करने का अधिकार भी एस.एम.सी./पी.टी.ए. को ही होना चाहिये ।

शालाओं के लिये अभिभावक शिक्षक का गठन किया जायेगा । इसमें शाला में पढ़ने वाले सभी बच्चों के माता-पिता या संरक्षक तथा शाला में पदस्थ समस्त शिक्षक सदस्य होंगे । अभिभावक शिक्षक संघ अध्यक्ष, उपाध्यक्ष तथा कार्यकारिणी के सदस्य प्रतिवर्ष शैक्षणिक सत्र के प्रथम माह में निर्वाचित किया जायेगे ।

अभिभावक शिक्षक संघ के निर्वाचित प्रतिनिधियों में महिलाओं, अनुसूचित जाति, अनुसूचित जनजाति प्रतिनिधित्व भी राज्य सरकार द्वारा विहित किये अनुसार सुनिश्चित किया जायेगा ।

**अध्याय 5**

**बिन्दु क. 16 A से सहमति नहीं है ।**

प्राथमिक स्तर पर कक्षा 2 अथवा 3 तक ही शिक्षक द्वारा बच्चों को मातृभाषा में पढ़ाया जाना उचित होगा । जिसके उपरान्त धीरे-धीरे बच्चों को मानक भाषा की ओर ले जाया जायेगा । मध्यप्रदेश के परिदृश्य में अनेक स्थानीय बोलियों का प्रचलन है । प्रावधान 10 के लागू होने से शिक्षकों को पढ़ाने में कठिनाई होगी ।

## बिन्दु क. 17

निदानात्मक परीक्षण एवं उपचारात्मक शिक्षण (डायग्नोस्टिक तथा रेमेडियल टीचिंग ) को ध्यान में रखते हुए प्रत्येक कक्षा में मासिक तथा त्रैमासिक मूल्यांकन का प्रावधान किया जाना उचित होगा । कक्षा 5 वीं एवं 8 वीं के परिणामों को अधिक प्रभावशाली एवं शिक्षण को सुनिश्चित करने के लिये जिला बोर्ड का निर्माण करके, इन परीक्षणों का संचालन एवं परीक्षा परिणामों का प्रमाणीकरण जिला बोर्ड के सुपुर्द करना ।

## अध्याय 6

### बिन्दु क. 20(2)

केन्द्र तथा राज्य स्तर की कमीशन ने एन.सी.ई.आर.टी. नीपा, लोक शिक्षण संचालनालय, एस.सी.ई.आर.टी. जैसी संस्थाओं के रीप्रेजेंटेटिव (प्रतिभागी) का होना उचित होगा ।

अध्याय 07, में निम्नलिखित जोड़ा जाना उचित होगा :-

**बिन्दु क. 22 A के (1) में जोड़ा जाना उचित होगा :-** केवल कक्षा 1 में ही नहीं बल्कि किररी भी कक्षा में अकादमिक सत्र के किसी भी समय बच्चा प्रवेश ले सकेगा ।

- शाला जाने योग्य आयु वर्ग के किसी भी बच्चे को शाला जाने से रोकने वाले व्यक्तियों अथवा संस्थाओं के विरुद्ध दण्डात्मक कार्यवाही की जायेगी । यह दण्ड आर्थिक प्रकृति का हो सकता अथवा जैसा राज्य सरकार द्वारा विहित किया जाये ।
- इस बिल के प्रावधान के मुताबिक होने वाला व्यय बहुत अधिक होगा । ( शिक्षकों का वेतन केन्द्रीय विद्यालय के शिक्षकों के बराबर का होना, निजी स्कूलों तथा निजी ई.सी.सी.ई.सेंटर को 25 प्रतिशत बच्चे दर्ज कराने बावत भुगतान करना) यह कैसे संभव हो पायेगा । इस पर विचार किया जाना आवश्यक है ।
- पब्लिक-पाईवेट पार्टनरशिप हेतु बिल में प्रावधान करना उचित होगा । जिससे कि प्रारंभिक शिक्षा अधिक राशि जुटाने हेतु कारपोरेट की भागीदारी सुनिश्चित की जा सके । मोविलाईज की गई राशि का विधिवत् ऑडिट समय-समय पर किया जायेगा ।

AND  
OTHER ISSUES : A FEW OBSERVATIONS

**Shri NAGENDRA KUMAR PRADHAN**  
Minister, School & Mass Education,  
Government of Orissa, Bhubaneswar

Meeting of the CBE Committee on  
Free and Compulsory Education Bill, 2004

C.P.S.S.A.

November 22, 2004

New Delhi

Shri Nagendra Kumar Pradhan  
Minister, School & Mass Education,  
Government of Orissa, Bhubaneswar

Right now is his bones are being formed;  
his blood is being made,  
and his senses are being developed.  
To him we cannot answer "Tomorrow".  
His name is "Today".

- Gabriela Mistral

### 1.0 Background :

Basic or elementary education is the foundation of the education pyramid. It is the cornerstone of socio-economic development. It is a passport to life; a life worth-living. This realization has driven, almost without exception, all countries, both developed and developing, to accord top priority to elementary education. India is no exception to this endeavour. It has a long history of trial and tribulation, struggle and striving to achieve the cherished goal, goal of free and compulsory education. The pre-Independence period efforts and initiatives marked the commencement of a 'period of small beginnings', followed by more intensified and significant efforts, culminated in G.K. Gokhale's historic legislative resolution (1910) for free and compulsory elementary education in India. Gokhale said, '*educate your children, educate all your children, educate everyone of your children*'.

With acquiring independence, the reforms for achieving goals of free and compulsory education got significantly galvanized. The outcome : massive expansion of the Indian elementary education system, making it one of the largest in the world. Some of the most pronounced and potential developments that expanded the scale and accelerated the pace of move for universalization of elementary education in the country include :

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\* A paper prepared for the first meeting of CABE Committee on "Free and Compulsory Education Bill and other

- Article 45 of the Constitution for UEE which expresses India's commitment and urgency to UEE.
- The Kothari Commission (1964-66), the National Policy on Education (1986, modified in 1992), the Acharya Ramamurti Commission (1990), and the Delhi Declaration (1993) discussed at length the need for and importance of, and instrumentalities to make quality elementary education available for all.
- The World Declaration on Education for All (1990) at Jomtien (Thailand) of which India is one of the signatories, comprehensively conceptualized the basic education and set time-bound goals for achieving the target.
- As a consequence of all these, a number of programmes such as District Primary Education Programme (DPEP), and the Sarva Shiksha Abhiyan paced the move towards UEE for all with overriding concern for quality and equity issues.
- The 93rd Amendment Act 2002 (earlier the 86th Amendment) largely activated by judicial pronouncements of the Supreme Court, made free and compulsory education a fundamental right for all children in the school-going age-group (6-14 years). The Apex Court extended the scope of Article 21 by reading into the Fundamental Right of life a vision of life worth living which would include the nurturing enforce of education during childhood. As an outcome of this, the new Article 21A in Part III of the Constitution states that :

The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

It is expected that the Court's interpretation of Article 21 would trigger significant civil activism in this direction. Despite this historic Amendment, by enlarging the ambit of Article 21 (Right to Life) to make right to elementary education an explicitly stated fundamental right, it is not still "enforceable" as the enabling legislation to operationalize it yet to be enacted. Weiner (1991) in his study "The Child and State in India" very poignantly raises a few questions that reveal the untold harsh truth.

Why is the Indian state unable - or unwilling - to deal with the high and increasing illiteracy, low school enrolments, high dropout rates, and rampant child labour? Why did Government commissions reviewing child labour and education policies as recently as 1985-1986 not call for compulsory education or for legislation to abolish child labour? How are we to understand these policies in a country whose governing elites profess to be socialist and many of whose bureaucrats, politicians, and intellectuals are advocates of an intrusive state? Why has the state not taken legislative action when the Indian Constitution calls for a ban on child labour and for compulsory primary school education, positions frequently reiterated in government reports as a long-term objective? Between official rhetoric and policy, there is a vast gap, and it is puzzling why the Indian Government does not do what it says it wants to do.

## 2.0 Free and Compulsory Education Bill, 2004 - A Move Forward :

With a view to inviting comments from the widest possible civil society / public for their appropriate reflection in the draft bill, in compliance with Article 21A, the first draft of the legislation was prepared and posted on the Department of Human Resource Development web-site ([www.education.nic.in](http://www.education.nic.in)) in October, 2003. After a careful incorporation of the suggestions received, a revised version of the draft bill entitled 'Free and Compulsory Education Bill, 2004' has been posted on the site. In addition to this, the draft bill was sent to State Governments, inviting their reflections and views. The draft bill has seven chapters, 47 sections, and two schedules that are quite comprehensive, encompassing a wide-range of issues involved in the proposed draft legislation.

## 3.0 A Few Observations :

### 3.1 Pre-primary Education Ignored :

The criticality of Early Childhood Care and Education (ECCE) for the physical, cognitive, and emotional development of children has been well-established. Research based evidence suggests that children with exposure to pre-school education have a number of advantages over their counterparts who are deprived of early stimulation through pre-school education : (i) the readiness of children with pre-school exposure for their transition to primary education is pro-active; (ii) they regularly attend school, actively participate in teaching-learning process and perform better; and (iii) they have better nutritional status and socialization. These

to six years has not been given due importance. The State responsibility towards the education of children of this precious formative years of life has been, however, accommodated in the amended version of the Article 45 which is under Directive Principles of State Policy. Thus, denial of right to education of children of this age-group is not enforceable.

Therefore, there is a need to extend and enhance the scope of Article 21 to include education of children of the age-group three to six years. The education of children of this age-group needs to be made an enforceable fundamental right.

### 3.2 Two-tier System :

The draft bill recognizes two different categories of schools, namely, 'approved schools' and 'transitional schools'. The National Policy on Education (1986, modified in 1992), District Primary Education Programme and the Sarva Shiksha Abhiyan also talks of alternative variants of a full-scale primary school, what the draft bill calls it 'transitional school'. The concept of transitional school reflected in the draft bill does not refer to anything about 'comparable' quality with the approved school. Thus, it tends to legitimize a two-tier school system : one for the privileged and the elite, and the other for the deprived and the marginalized. The glaring deficiencies are :

- The schedule of the bill clearly delineates the hierarchy within which the 'approved schools' and 'transitional schools' are being set-up. Instead of having a 'common school' system as advocated by the Kothari Commission, 1964-66, the bill talks about a two-tier system which runs counter to the egalitarian philosophy of the largest democracy in the world.
- The norms, prescribed in the bill, for approved schools include at least two teachers in primary school, one room per teacher, 200 working days in the academic year, and four hours of teaching per working day in primary schools. In comparison to this, the transitional schools get 'instructors' 'who have passed the Tenth grade' (Class VIII for women, if women with Class X qualification not available in the village or ward, as the case may be) and have been trained for 30 days. The bill is, however, silent about the minimum hours of instruction per day, minimum number of

place.

- More disturbing is the 'desirable' norms which could never be satisfied and left to the discretion of the schools and the school management. For instance, even the provision of toilet and water facilities considered desirable for approved schools do not find any mention in the equivalent list in transitional schools.

Thus, the draft bill tends to legitimize a 'second rate' and 'second track' education for the children who are disadvantaged in more than one ways. Our experience has consistently shown that with all kinds of positive discriminatory measures and affirmative action in favour of disadvantaged social groups, the results have not been very encouraging. There are many underlying factors. One of the greatest road-blocks to education of disadvantaged children is the mind-set of people in power and in decision-making position. The way out is to think of a 'common school' system with all kinds of inequities removed. One of the important messages of the Tapas Mazumdar Committee Report was that equitable and quality universal elementary education was affordable (Tilak, 2004).

### 3.3 The Concept of Free Education :

To be in conformity with spirit of the Indian Constitution in respect of the concept of free education, all kinds of fees and payments to schools need to be abolished. To extend the concept of free education a little further, the State should be the sole authority to provide free education to children. Even the opportunity costs of education need to be compensated, to a large extent, by the State.

Taking a different view, it may be said that since education yields both public and private benefits, it needs to be financed jointly by the State and parents. In case of children belonging to socio-economically disadvantaged groups, the state should shoulder greater responsibility. The draft bill provides enough leeway in the form of 'as may be prescribed' for charging or waving all the charges such as expenditure on textbooks, stationery, uniforms, and public transport etc.

### 3.4 Quality of Education :

Quality of what children learn has come to the centre-stage of education, more particularly in elementary education where foundation is

laid for further layers of education. The quality of schooling depends on a number of factors : (i) the quality of teachers, (ii) the quality of training (pre-service and inservice) they are exposed to, (iii) the quality of classroom processes, (iv) the quantum and quality of time-on-task, and (v) the quality of monitoring and supervision. Ideally, the draft bill should not provide space for low quality and low cost alternatives such as education guarantee schools, and para teachers which tend to undermine the quality of primary schooling.

This is based on the realization that all parents, poor or rich, want quality primary education for their children. The bill should, therefore, strongly emphasize the need for quality education for all children, more importantly through the approved schools. However, the following points need to be examined further.

- Automatic promotion and non-detention policy at the elementary level as envisaged in the bill. This is likely to have a debilitating effect on the quality of elementary education.
- In order to boost the morale of teachers who perform better, scheme for incentives need to be provided for.
- The number of teaching days, as reported by many field studies, being abysmally low (about 140 days a year), lengthening of school year and having longer instructional hours may be considered. Now, there is a world-wide trend towards longer school year and longer school hours.
- Monitoring of classroom processes need to be made frequent and meaningful so as to improve the quality of teaching.
- The qualification, tenure, and future prospects of 'instructors' in transitional schools are causes of concern. A long term perspective needs to be in place so as to encourage them for better performance.
- The concept of quality in terms of levels of achievement such as mastery level or other levels needs to be well-defined.

### 3.5 Education of Children of Migrant / Seasonal Workers :

There is a stark absence in the draft bill : lack of provisions for enrolment of children of migrant / seasonal workers. In view of their transition from one work site to another, they are expected to be enrolled

in more than one school during the academic year and the attendant complications in taking examination. The bill does not provide any provision for them. This needs to be looked into.

### 3.6 Eight Years of Elementary Education :

The bill defines elementary stage as school education corresponding to Classes I to VIII. The National Policy on Education talks about a National System of Education, comprising eight years of elementary education i.e., five years of primary education and three years of upper primary education. All states are expected to move towards this structure. However, the duration of elementary education in many states is at variance with the National System of Education. Ideally, as envisaged in the bill, all states need to move toward the prescribed structure of the National System of Education i.e., eight years of elementary education, two years of secondary education and two years of higher secondary education. For enabling the states with Class VIII, forming a part of secondary education, Government of India may be required to provide funds.

### 3.7 Compulsory Education :

The 'compulsion' should be on Governments to provide access to good quality education to all children. The compulsion should, however, not be on parents and households. This aspect needs to be further examined in greater length and breadth so as to shift the burden from parents and households to Government. Compulsion as envisaged in the bill, it is apprehended, is likely to exacerbate the plight of poor parents who are severely afflicted by massive poverty and ignorance.

### 3.8 Prohibition of Physical Punishment :

This is one of the significant prescriptions of the draft bill. The prohibition should be applicable to both 'approved schools' and 'recognized schools'. It must be rigorously followed. Majority of the Indian states have taken very firm steps for prohibition of physical punishment in schools. Orissa is a frontline state in this respect.

### 3.9 Movement of Children from Un-recognized School to Recognized School :

Section 14 (9) of the draft bill states that "a child receiving instruction in a school which is not recognized, shall not have a right to be admitted to a recognized school". Given the state-sanctioned proliferation of private

their children inadvertently in a school that is not recognized. In penalizing the child for this by denying him / her admission in a higher or equivalent grade, is socially unjust. The bill should provide opportunity for such children.

#### 4.0 Other Issues :

Universalization of Elementary Education is being increasingly taken up as number one priority for the State. One of the significant contributions of the National Policy on Education (1986, and modified in 1992), which has been further reaffirmed by the World Conference on Education for All (1990) and later the Delhi Declaration (1990), is conceptualization of basic education / UEE in its comprehensive connotation. Along with quantity which has been accomplished to a large extent, two other concerns such as equity and quality have been given pre-eminent importance. While District Primary Education Programme funded jointly by Government of India and World Bank / DFID and the Sarva Shiksha Abhiyan, Government of India's flagship programme for UEE jointly taken up by Central Government and State Governments have contributed a lot for achieving the composite goals of UEE, the following issues, based on a realistic assessment of field realities, need to be closely looked into.

#### 4.1 Elementary Education - A Joint Responsibility of Central Government and State Government :

Being in the Concurrent List, education is the joint responsibility of Central and State Governments. State, comprising Central Government and State Governments, is the major provider of funds for elementary education. Education is a labour intensive sector of national development. Teachers' salaries constitute a sizeable segment of total expenditure on education. For instance, at the elementary level, teachers' salaries consume more than 95 per cent of the total expenditure on elementary schools. With a substantial number of teachers in the teaching workforce, the State Governments bear a huge amount of expenses met from the state budget. It entails a huge burden on the State Government. The States, almost without exception, are unable to meet this huge burden due primarily to the severe financial crunch they are besieged with. An effective school cannot be conceived of without an effective teacher. We cannot have schools without teachers.

of salaries on the state exchequer. Almost all states have the same concern. If UEE is a national commitment, the Central Government may provide funds to the State Governments to mitigate the severe financial burden on account of huge expenditure on teachers' salaries.

#### 4.2 School Community Partnership :

Three decades back, the local community served as a solid support system for primary schools. Not only were primary schools established and sustained by community support, the local community had an unshakable commitment to their effective functioning. Teachers taken care of, school buildings constructed and maintained, children brought to schools and schools made to function with total involvement of the community. The community, in fact, owned the school. With greater Government initiatives for primary schools, unfortunately the school community bond got weakened and declined. Schools are being increasingly looked upon as Government schools. Community is being distanced from schools. It is a concern to be taken note of.

Even though school community partnership is being revived through DPEP and SSA initiatives and interventions, there is enough space for improvement. As per stipulations of Government of India, school buildings constructed under DPEP / SSA are to be maintained by State Governments / community after the closure of the Project. The dependency syndrome developed through Government and project initiatives has proved to be counterproductive. Two possible lines of action appear to be : (i) continuance of maintenance grants by the Central Government for a few years; or (ii) empowering the community to harness local resources in the form of cash, kind or labour. To go a little further, it is suggested that income tax exemption may be taken advantage of by industries, firms, and individuals who are entitled to pay income tax for their contribution to local schools.

#### 4.3 MoU Signed between State Governments and Government of India for DPEP / SSA :

Programmes like DPEP and SSA are being implemented through State Societies as independent and autonomous bodies. The contents of the MoU should be progressive enough to make a dent on school improvement and renewal. The MoU should not have retrograde provisions. The provisions



should be flexible enough to meet the mandates of the emergent situation and contextual realities. Rigidity needs to be shunned.

## 5.0 Conclusion :

The draft bill is a right move towards making elementary education free and compulsory. Since 'compulsion' is more on the Government, more particularly, on the Central Government, availability of adequate resources for making the provisions of the bill operative, the Central Government should have a positive discriminatory approach in favour of States that are besieged by severe financial crunch. The Common Minimum Programme proposes to transfer all central schemes to the states. This would certainly affect the poor states of the country. It may be recalled that central schemes, that include Centrally Sponsored Scheme, Centrally Assisted Scheme and Central Scheme have a specific connotation and are formulated with a specific objective. The proposal of Government of India to continue the Sarva Shiksha Abhiyan programme with sharing of funding responsibilities by the Union and the States in the ratio of 50 : 50 basis beyond Tenth Plan period appears to be a retrograde step. The provisions of the draft bill should be progressive and forward looking. For achieving the goals of UEE through the instrumentality of free and compulsory act, care should be taken to ensure that the state does not abdicate its own legal and moral responsibilities in providing basic education to all children. The interests of historically disadvantaged children should not be brushed aside. In the process of broadening and deepening centre-state partnership for UEE, the Central Government should continue to provide substantial support to states for sustaining the reforms initiated for reforming and renewing the existing system of elementary education.



## **Alternative Framework for a Bill on Free & Compulsory Education**

**Suggested by Prof. Anil Sadgopal, Member, CABE Committee**

The following features.....help define an alternative framework for a Bill for fulfilling the Constitutional obligations and policy commitments:

- i) Keeping the federal polity of India and the concurrency of education in mind, any Central legislation can be no more than a Model Act (as was the case with 73<sup>rd</sup> and 74<sup>th</sup> amendments) aimed at persuading and guiding the State/UTs to draft similar legislations adapted in the context of their particular social history, socio-economic conditions, educational situation and other aspects of their contemporary reality.
- ii) The Bill will aim at ensuring education of equitable quality for all children up to 18 years of age, including early childhood care and pre-primary education for children in the 0-6 age group.
- iii) The Bill's central theme should be to establish a Common School System, including the 'recognised but not substantially aided' schools, for all children within a specified time frame, to begin with up to class VIII with provision to extend the system up to class XII.
- iv) The Bill should provide for eventually transforming all schools, within a specified time frame, into genuine neighbourhood schools wherein all children living in a designated neighbourhood, irrespective of their backgrounds, can learn and socialize together in a harmonious environment without discrimination of any kind.
- v) The Bill should ensure inclusive education for all children with special needs, including physically and mentally challenged children as well as those belonging to the socially and culturally marginalized sections of society.
- vi) The Bill should have provision for compulsion on the State to ensure flow of adequate resources for meeting the needs of building up a Common School System that will ensure education of equitable quality for all children within a specified time frame.

- vii) The Bill should provide for cognizing offence of the authorities and concerned officials for their failure to fulfill their Constitutional obligations in the framework of such a Bill along with provision for appropriate punitive action.
  
- viii) The Bill should duly empower and authorize only the Constitutional authorities such as the State/UT Governments and the Panchayati Raj Institutions under the 73<sup>rd</sup> and 74<sup>th</sup> Amendments; no parallel structure of authorities is called for.
  
- ix) The Bill must distinguish between the concerned community, grass roots and parental groups, on the one hand, and NGOs and 'civil society organisations', on the other, for assigning roles for fulfilling the UEE agenda; the NGOs and 'civil society organizations' can't substitute for the former.
  
- x) There should be specific provisions in the Bill to effectively eliminate the practice of social, cultural, religious, ethnic, linguistic and gender discrimination in schools.

*Excerpted from "Deconstructing Free and Compulsory Education Bill, 2003 : A Concept Paper for an Alternative Framework", by Prof. Anil Sadgopal; January, 2004.*

## EMPOWERING THE GOVERNMENT SCHOOLS<sup>\*,#</sup>

*a plea for political priority for the only historical option for India*

The crisis was foreseen by the Kothari Education Commission (1964-66) which unequivocally recommended the **Common School System with neighbourhood schools** as the National System of Education for all children of India. What is a Common School System? The most important feature of a Common School System is *equitable* (not *uniform*) quality of education for all types of schools, be they Government, government-aided, local body or private schools. Six essential and non-negotiable attributes of equitable quality of education need to be specified : (i) minimum physical infrastructure, including library, teaching aids, playgrounds and many other features (e.g. early childhood care centres and pre-primary schools attached to primary/elementary schools); (ii) professional quality of teachers and teacher : student ratio; (iii) diversified and flexible curriculum to reflect the geo-cultural plurality of the country, while emphasising certain core curricular features of nation-wide significance; (iv) pedagogy for holistic, child-friendly and liberative education; (v) apart from gender sensitivity, pedagogic and social empathy for the *dalits*, tribals, cultural and ethnic minorities and the physically or mentally challenged children; and (vi) de-centralised and community-controlled school system.

The Indian Parliament has expressed its commitment to the Common School System twice in its resolutions on the National Policy on Education respectively in 1986 and 1992 (the 1968 policy, issued as a Cabinet resolution, was also committed to the Common School System). Yet, the concept could not be translated into practice because the political leadership and bureaucracy at all levels along with the intelligentsia found an *escape route* for their own children viz. the private school system. This shift in commitment from the Government school system to the private school system implied an increasing loss of political, bureaucratic and social will to improve the Government schools. The present policy support to privatisation and commercialisation of education amounted to legitimisation of *status quo* of disparity, discontent and disempowerment of the vast majority of Indian people.

The Central Advisory Board on Education (CABE) appointed a Committee on Common School System in 1988. The CABE Committee proposed a ten-year phase-wise programme for reconstruction of the present school system into a Common School System. In 1990, the Acharya Ramamurti Committee, constituted to review the 1986 Policy, extended the CABE Committee proposals further. The chief features of a phase-wise re-construction programme may be summarised as follows : (a) Highest political priority to improvement of both the access and the quality of the Government, local body and the government-aided schools; (b) De-centralisation of decision-making and management of schools through the Panchayati Raj framework and making the school entirely accountable to the community it serves; (c) Fulfilling the Constitutional obligation of a minimum of eight years of *elementary* education (instead of five years of *primary* education) under Article 45 to all children up to 14 years of age (including the early childhood care and pre-primary 0-6 age group); (d) Allocation of

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\* This concept was first evolved and elaborated in the *LOKSHALA Programme for Universalisation of Elementary Education*, organised by Bharat Jan Vigyan Jatha with academic support from Maulana Azad Centre for Elementary and Social Education of the Department of Education, University of Delhi (March 1995).

# Published in *Outlook*, December 11, 2000.

*adequate* financial resources, getting out of the '6% of GNP' trap; (e) A pedagogically and socially rational language policy for the medium of *education* (not *instruction*) common to all schools, so that language becomes a means of *articulation*, rather than *imposition*; (f) A carefully constructed programme of incentives, disincentives, persuasion and eventually legislation to gradually bring the private schools into the fold of the Common School System; incentives to private schools may include grants for children from low-income groups, computed at the rate of allocation per child in Government schools, such that all children in the neighbourhood have access; disincentives may include gradual withdrawal of all hidden subsidies to private schools, like the cheap land, tax-free income and exemption from income tax on donations, teachers trained at public cost, etc.

The elite in India have always been dismissive of the concept of Common School System by mocking at it as being politically too radical and, therefore, infeasible. In contrast, the poor and the lower middle class have for long internalised the concept as the only means for their empowerment and social justice. It is an irony that such an equitable public school system has been prevalent in some form or the other in several European countries, USA and Canada. Indeed, this is the only historical option left for India for building a cohesive, secular and just society. The diversionary educational agenda including adult literacy, non-formal centres, Alternative Schools or Education Guarantee Scheme, will have to be given up. The agenda of 'Empowerment of Schools' for creation of a Common School System must receive topmost priority in national political agenda.

November 30, 2000

Prof. Anil Sadgopal  
Head & Dean  
Department of Education  
University of Delhi

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Published in *Outlook*, December 11, 2000.

*(Note: This is a preliminary draft of a concept paper I am attempting to write on this matter of critical significance to India's future. I am e-mailing it to MV Foundation as a humble contribution to the praiseworthy initiative Dr. Shantha Sinha has taken to organise a consultation in Hyderabad today in order to mobilize public opinion against this horrendous Bill. This Bill deserves to be in a waste paper basket, rather than in the Parliament of the largest democracy in the world. It is a blot on the nation that claims to become a super-power in Information Technology and the third largest economy of the world by 2020. Apologies for my strong views. Elementary education is one area where we can't afford to be polite any more. Space for politeness and compromises ended in 1960 when we should have achieved universal elementary education as directed by the Constitution and in fulfillment of the promise of India's glorious freedom struggle against imperialism. – Anil Sadgopal, New Delhi, January 10, 2004)*

## DE-CONSTRUCTING 'FREE AND COMPULSORY EDUCATION BILL, 2003'

*a concept paper for an alternative framework*

- Prof. Anil Sadgopal  
Professor of Education  
University of Delhi  
& Senior Fellow  
Nehru Memorial Museum and Library

### Preamble

Since June 2003, the Government of India (Ministry of Human Resource Development) had been circulating a draft of the 'Free and Compulsory Education Bill, 2003' which was later put on Ministry's website (19<sup>th</sup> September 2003). As per media reports, the Ministry claimed that the Bill fulfills the Government's promise given on the floor of the Lok Sabha on 28<sup>th</sup> November 2001 during the debate on the Constitution (Eighty-Sixth Amendment) Bill, 2001. The promise was made by the Minister of Human Resource Development himself in order to pacify the MPs who criticised the Bill for its various lacunae and bias against the poor parents and their children. Several people's organizations, child rights groups and educationists articulated their criticism in the media, submitted Memoranda to the Union Minister as well as to the leadership of the leading political parties in the Opposition and the Leader of Opposition in the Lok Sabha (Smt. Sonia Gandhi) and the Rajya Sabha (Dr. Manmohan Singh), petitioned the

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\* This paper was written before the third version of 'The Free and Compulsory Education Bill, 2004' dated January 8, 2004 (Draft III) became available. The Draft III was circulated by the Secretary, Department of Education, Ministry of Human Resource Development, at a meeting of State/UT Secretaries of Departments of Education, held at New Delhi, 15th -16th January 2004. It is now posted on MHRD's website as well. A preliminary analysis of Draft III reveals that it has all the negative aspects of the earlier drafts, apart from adding new provisions designed to violate the federal structure of Indian democracy and furthering the control of the Centre in formulating the curriculum. – Footnote added on April 6, 2004 before submitting it to the follow-up consultation jointly organized by CACL and MV Foundation in Bhubaneswar on April 10, 2004.

† In view of the clear mandate given in the General Elections 2004 against both communal politics and economic reforms 'without a human face', it is obligatory for the UPA government to review the Draft Free and Compulsory Education Bill dated January 8, 2004. There is no way in which this Bill can be improved upon by any 'cut and paste' method, as it is based upon premises that violate the Constitution. The only pro-people option for the UPA government is to withdraw the Draft Bill forthwith and undertake a transparent and democratic process for re-writing the Bill afresh. – Footnote added before submitting this paper for the consultation organized by the Ministry of HRD, Govt. of India on August 5, 2004.

Parliamentary Standing Committee on Women and Child Development and organized public rallies, seminars and meetings, seeking redrafting of the Bill. Detailed critiques appeared in the form of articles in the media and academic papers, contending that the lacunae were deliberate, rather than being a result of an oversight (Sadgopal 2001a,b,c,d; 2002; Shahabuddin, 2001; Swaminathan, 2001). The amendment was being made, it was contended, not to make elementary education a Fundamental Right, but *to fulfill the dictates of IMF-World Bank's Structural Adjustment Programme* and to legitimize the increasing *abdication by the State* of its Constitutional obligations towards *elementary education of equitable quality* for all children. All of this protest was ignored and an assurance was repeatedly given by the Minister that the lacunae in the Bill will be taken care of by enacting a new law. How would a law take care of the lacunae introduced in the Constitution through an amendment? If the Government intended to rectify the lacunae later through a law, why was it bent upon introducing these in the Constitution in the first place? The leadership of various political parties neither raised nor pursued such uncomfortable questions in the Parliament. In spite of critical speeches by MPs representing a wide political spectrum, the assurance of a law to be enacted later seemed to have led to a curious consensus in the Parliament on the bias inherent in the Constitutional amendment against children (girl children in particular) belonging to various deprived sections of the society. The Bill was pushed through the Parliament and later signed by the President in December 2002.

Here comes the promised law in the form of the draft 'Free and Compulsory Education Bill, 2003'. A detailed scrutiny of its provisions revealed that the Bill will have serious adverse implications for the education of India's children in the 6-14 year age group, the group covered under the Article 21A introduced through the 86<sup>th</sup> Amendment to the Constitution. The children likely to be denied their fundamental right in this age group due to the adverse provisions in the Bill will belong largely to the Scheduled Castes, Scheduled Tribes and several communities of the OBCs (including all the children engaged in various forms of child labour) and the cultural and linguistic minorities, as well as those living in the socio-economically backward regions of the country. Further, the Bill is ambiguous in its commitment to ensure inclusive or integrated education for the disabled children. Two-thirds of the out-of-school and 'pushed out' children in each of these sections of society and regions to be adversely affected by the Bill will be the girl children. Thus the proportion of children likely to be adversely affected in the 6-14 age group alone will be more than half i.e. almost 10 crores. Since the Bill fails to provide any guarantee for Early Childhood Care and Pre-primary Education (ECCE) for children under six years of age, all the children of the aforesaid sections of society will be deprived of the necessary nutritional, health care and pre-primary educational support. Thus not less than 8 crore children in the 0-6 age group (the child population in this age group was almost 16 crore in 2001) will be denied what is considered to be critical for their development for elementary education and citizenship. Also, as far as the 14-18 age group is concerned, the Bill has no provision whatsoever either for (a) the out-of-school children and those who are 'pushed out' of elementary education mid-way (drop-outs in official parlance) or (b) those who would be finishing elementary education at the age of 14 years and would be keen on continuing into secondary and senior secondary education. Thus almost 9 crore children in the 14-18 age group will be denied their basic

human rights as per the UN Convention on the Rights of the Child which defines a child as a person up to 18 years of age. In this sense, **the Bill is characterized by severe social, cultural, gender and educational bias against almost 27 crore children up to 18 years of age** out of a total of 44 crore children (the estimates of child population in each age group being based on 2001 census and its projections. Selected Educational Statistics, 2000-2001).

While these negative features in the Draft Bill were being publicly debated and a demand to re-draft the Bill was being articulated (Social Jurist, 2003), the Secretary, Ministry of Human Resource Development, introduced a new draft of the same Bill at a meeting held at NIEPA on 15<sup>th</sup> December 2003. The Secretary informed the meeting that the first Draft was already circulated to the State/UT Governments and their comments were awaited. However, the second draft (dated 10<sup>th</sup> December 2003) is an improved version and would now replace the earlier draft. It is significant that the second draft was prepared within six days of the electoral victory of BJP in three States in the Hindi heartland. Even a cursory comparison will reveal that the second draft is not a result of few additions, deletions or modifications in the first draft but it is entirely a freshly written version. Yet, it carries forward all the negative features of the earlier draft, apart from introducing several new provisions with implications that are far more alarming for India's future than those of the first draft. It would be naïve not to read the second draft in the perspective of the recent electoral gains made by BJP in December 2003, giving the ruling NDA combine at the Centre a sense that its political control at both the Centre and several States/UTs is likely to last longer than one could have predicted a few weeks before the results of the assembly elections were declared. This paper will attempt to examine both the drafts of the Bill (henceforth called Draft I and Draft II respectively) in this light and de-construct them with the objective of deciphering an alternative framework for drafting a pro-people Bill.

Several provisions of the Bill, founded on erroneous premises regarding children, education and Indian reality, are also violative of the Constitution of India, National Policy for Children (1974), National Policy on Education (NPE)-1986 (as modified in 1992) and the UN Convention on the Rights of the Child (signed by the Government of India in December 1992). A detailed scrutiny of the various provisions of the Bill has convinced us that, if implemented in its *present* form, **the Bill will impede India's endeavour to acquire a democratic, egalitarian and secular character, apart from preventing the nation from becoming an enlightened, humane and forward-looking member of the global community.**

## Major Issues

**1. Discrimination through Low-quality Parallel Tracks of Elementary Education:** The Bill legitimises three parallel tracks of elementary education in its Schedule 'A' for children in 6-14 year age group viz. A. Regular school; B. Education Guarantee Scheme (EGS) Centres and Alternative Schools (AS); C. Open Schooling Centres (i.e. correspondence courses). Read along with



Government of India's recent policy-related documents, the norms specified for the EGS Centres and AS provide for *underqualified, untrained (or undertrained) and underpaid teachers* appointed on short-term contracts and essentially no physical infrastructure (not even bare classrooms under thatched roofs or tents). The specification of '*at least 4 hours of teaching every day*' for EGS Centres and AS in Bill's Draft I was diluted in Draft II to read '*as may be prescribed in the approved scheme*'. As per Draft II of the Bill, the minimum number of working days in an academic year in the 'regular approved schools' and 'recognised schools' will be 200. In contrast, the number of working days in an academic year in the case of EGS Centres and AS will be '*as may be prescribed in the approved scheme*' i.e. entirely left to the whims of the educational bureaucracy and the host of parallel local authorities specified in the Bill. Worse is the notion in Schedule 'A' of 'educating' the 6-14 age group children through a correspondence courses (euphemistically called 'Open Schooling Centres') – a concept that is neither pedagogically sound nor backed by any educational research or experience in the case of this age group. Even for the 'regular approved schools' and 'recognised schools', the Operation Blackboard norms approved by the Parliament in the NPE-1986 (as modified in 1992) have been diluted in Schedule 'A': instead of a minimum of *three* teachers and *three* classrooms in a primary school as per Operation Blackboard norms, the Bill provides for only *two* teachers and *two* classrooms. The Operation Blackboard norm of providing at least three teachers in every primary school and '*the number increasing, as early as possible, to one teacher per class*' as well as its specification that '*at least 50 per cent of the teachers recruited in future should be women*' has been ignored by the Bill. There is no reference in the Bill (Schedule 'A') either to the Operation Blackboard commitment to provide a minimum set of teaching aids to every primary and upper primary school. The bare minimum requirement for toilets (a specific commitment under Operation Blackboard norm), drinking water, playground and a boundary wall has been listed in the 'Desirable' category. Basically, the Schedule 'A' and all the other related provisions in the Bill regarding 'approved school' legitimize as well as institutionalize a most undesirable and anti-Constitutional sociological principle of education viz. *a separate stream of education for each segment of society*. This is in total violation of the commitment made thrice by the Parliament through NPE-1968, NPE-1986 and NPE-1986 (as modified in 1992) to the **Common School System**, as recommended by the Education Commission (1964-66). Instead of making education a tool for promoting equality and harmony in society, **this Bill cynically uses education to promote disparity and disharmony.**

**2. Penalising Parents for the Collapse of Official Educational Policies:** The Bill is founded on the false premise that the poor people do not want to send their children to school. Several recent field studies and surveys have revealed that the poor people, by and large, are keen to educate their children provided (a) they have access to a functioning school (not their low-quality alternatives) where their children can learn in a child-friendly environment; (b) their children are not subjected to indignities for being 'first generation learners' belonging to backward

sections of society and the girls are not made to feel inferior due to gender bias inherent in the prevailing school system; (c) the non-tuition cost of education is not beyond their meager and uncertain wages (which is far less than even the minimum wage) and (d) education is relevant to their lives, particularly to their need for a livelihood with dignity. Repeated National Sample Surveys and independent studies of out-of-school children and the so-called drop-outs have established that a substantial proportion of poor children take a conscious decision to keep out of school or quit education mid-way due to any one or more of the above reasons. This tragic state of affairs is now widely recognized by educationists as a consequence of the repeated collapse of official educational policies since independence. Yet, the Bill has provisions that essentially amount to forcing parents to send their children to the so-called 'approved schools' or 'recognised schools' or their low-quality alternatives, without ensuring that any of the above necessary conditions for education are fulfilled [Draft I, Section 7; Draft II, Sections 4, 8, 16 (5) (iv) to (vii), 16 (10), (11)]. In case, the poor parents decide to reject the 'approved school' as not being suitable for their children on any or all of the above four grounds, the Bill has no provision for recognizing their genuine concern as a 'valid reason'. The Bill takes a very narrow view of the 'valid reason' by limiting it to 'non-availability of an approved school within the distance prescribed', thereby entirely confusing the mere physical presence of the 'approved school' for genuine access to quality education [Draft II, Section 8 (2)]. It thus marginalizes the sociological, economic and educational grounds for parental rejection of the school. Yet, the Bill recognizes the decision of the parents not to send their children to such non-viable and even non-educational 'approved schools' or their even poorer alternatives as a penal offence and provides for shockingly severe penalties viz. 'a fine which may extend to One Thousand Rupees and in case of continuing contravention, with an additional fine not exceeding Rs. 50/- for each day during which such contravention continues after conviction' [Draft II, Section 29 (1)]. To be sure, such penalties are provided for not just the employers of child labour [covered under Section 7 (2) (i) of Draft II] but also for the parents as they will be duly covered by the offence specified in Section 7 (1) [Draft II] which states that 'no person shall prevent a child from attending school'. The Bill thus penalises the parents for the collapse of the official policies for building a *Common School System* that would have ensured quality and relevant education for *all children without discrimination*. This amounts to shifting the Constitutional obligation of the State to the poor parents.

3. **Abdication by the State of its Constitutional Obligation to Provide Adequate Resources for Elementary Education:** The Bill has three sets of provisions specifically designed to enable the State to abdicate, in gradual but decisive steps, its Constitutional obligation towards 'free and compulsory education' for all children. First, it is deliberately ambiguous about the State's obligation to provide *entirely free* elementary education to the 6-14 age group as it is not forthcoming about the commitment to provide non-tuition costs such as textbooks, stationery, uniforms, public transport and such other items. Both the

drafts make the provision of such essential educational support free of cost subject to Government rules, *instead of making it a matter of fundamental right under Article 21A* [Draft I, Section 2 (i); Draft II, Section 2 (m)]. The Draft II is even less committed to ensuring non-tuition educational support as it states that free education ‘may include, subject to rules made in this behalf, freedom from incurring expenditure, *wholly or partly*, on (textbooks, stationery, etc.) . . . . .’ [Section 2 (m) (i)]. The Bill is bound to have a retrogressive impact on the current policy in many states/UTs of providing such support free of cost, especially to SCs, STs and girls. It is a matter of serious concern that the reference to *health care and nutrition* in the definition of free education in Draft I [Section 2 (i)] has been withdrawn in Draft II [Section 2 (m) (i)], thereby allowing the State to recede from its present commitment to provide even free mid-day meals to all primary school children!

Second, the Bill authorizes the ‘appropriate Government’ to approve ‘a scheme framed by any person, body or institution for setting up Education Guarantee Centres or Alternative Schools . . . . .’ [Draft II, Section 26 (2)]. This provision opens the doors for privatization of even these parallel low-quality tracks of primary education as well as creates a space for unscrupulous non-government agencies to introduce their agenda in education, thereby allowing the State to further abdicate its Constitutional obligation.

Third, the provision in Draft II for designating a wholly parallel structure of Elementary Education Authorities at State-level (SEEA), District-level (DEEA), local (probably Block)-level (LEEA) and habitation-level (HEEA) (metropolitan-level for urban areas to be called MEEA) also provides for mobilization of resources from the community by such authorities at each of the above levels. The intention of the State in making such provisions is revealed in the following provision for the functions of the Habitation-Level Elementary Education Authority (HEEA):

“(iii) mobilizing resources for the plan (i.e. annual plan for free and compulsory education at habitation-level) from the community *to the maximum extent possible*, submission of the plan to the Local Elementary Education Authority two months before commencement of the academic year for obtaining funds *to the extent they can not be locally mobilized* and implementation of the plan with resources mobilized locally and those provided by LEEA and the appropriate government. (emphasis ours)”

- [Draft II, Section 16 (5) (iii)]

By stating that ‘LEEA and the appropriate Government’ will allocate funds to the HEEA ‘*to the extent they can not be locally mobilized*’, the State has revealed its intention that the resources from the community are expected not to *merely supplement* the resources provided by the Government, but eventually to even replace the Government’s resources substantially. This provision dangerously reflects the Structural Adjustment Programme imposed by IMF-World Bank on Indian economy, which calls for reducing public expenditure on education, health and other social welfare programmes in order to maximize privatization in these

sectors. It is in this perspective that the implications of the following provisions need to be examined:

“(1) Subject to the provisions of this Act, education in approved schools shall be free and compulsory;  
 Provided that genuinely voluntary contribution from parents, guardians and the community for free and compulsory education, in general, and improvement of approved schools, in particular, shall be encouraged.”

- [Draft II, Section 5 (1)]

“The Central Government, all appropriate governments and all authorities constituted under Sections 16-20 of this Act shall implement policies and measures to encourage parents, citizens, students of secondary and higher stages, bodies, organizations, institutions and the community at large to render voluntary support for achieving free and compulsory education, in general, and improvement of approved schools, in particular, by way of money, material, voluntary service or in any other form.”

- [Draft II, Section 24]

It is significant that the Government has thought it necessary to introduce the above provision. There is a rich tradition in all parts of India, in both the pre- and post-independence period, of the community making voluntary contributions through money, labour and voluntary service to the government and local body schools. This tradition is alive even today, especially in rural areas, despite the recent policy stance of the Government gradually diluting its support to the regular school system. This is apart from the community initiatives in setting up educational institutions with entirely philanthropic motive or inspiration to serve the society. This voluntary contribution was made to the schools through the Village Education Committees, parent-teacher associations, *Gram Sabha* or even directly to the Head Master/Principal without having any legal provision. This is why such provisions persuade us to question the eventual motive of the Government.

Given the imperatives of the Structural Adjustment Programme and the role of the market forces in accelerating the withdrawal of the State from the education sector, it is suspected that the Government will use such provisions to gradually build pressure on parallel designated authorities such as HEEA and LEEA to increase resource mobilization from the community, even if it amounts to compelling the community. Thus these provisions legitimise Government's measures to create such conditions which will facilitate abdication by the State of its Constitutional obligation for providing adequate resources for 'free and compulsory education', thereby promoting privatization of even elementary education.

*It is no wonder that there is no Financial Memorandum attached to this Bill.*

**4. Undermining the Constitutional Authorities by Creating a Parallel Structure of Authorities:** The Bill undermines the role of the Constitutional authorities in providing 'free and compulsory education' by designating a parallel structure of authorities from the State-level down to the level of habitations within

a village. Thus the Bill has provisions for an entirely parallel structure of Elementary Education Authorities at State-level (SEEA), District-level (DEEA), local (probably Block)-level (LEEA) and habitation-level (HEEA) which will replace, for all practical purposes, the Constitutional authorities such as the State Governments and the Panchayati Raj Institutions in the elementary education sector (Draft II, Sections 16 to 20). In metropolitan areas, it will be Metropolitan-Level Elementary Education Authority (MEEA) to substitute for municipal local bodies. The Bill empowers these parallel authorities to essentially take over all the critical functions of the State Governments, Panchayati Raj Institutions and municipal local bodies for governing 'free and compulsory education', including obtaining, allocating and channeling Government funds in this sector. The State-Level Elementary Education Authority (SEEA) will not only 'aid and advise the appropriate government in the discharge of its responsibility' but will also have the function of 'formulation of policy, laying down of priorities, raising of public awareness, and mobilization and allocation of resources . . . . . ' [Draft II, Section 20 (3) (i) and (iii)]. There is also a provision for either empowering by law or recognizing a Competent Academic Authority 'for prescribing curriculum for the elementary stage', thereby creating a space for a body other than the Central or State Government for this purpose [Draft II, Section 2 (1) (f)]. Designation of such a parallel structure to essentially substitute for the role of Constitutional authorities is clearly in violation of the provisions for education created under the concurrency arrangement as well as the 73<sup>rd</sup> and 74<sup>th</sup> amendments. Such a provision is also fraught with the danger of intervention by the political forces. **This subtle and gradual undermining of the Constitutional authorities sets an alarming trend with the objective of giving space for extra-Constitutional interference and replacing the State by the global market forces in elementary education sector.**

##### **5. Discrimination Against the Children with Special Needs and the Disabled Children:**

*(This section is based upon the writings of Jha, 2002 and 2003)*

The Bill states:

"child with special needs" means a child who is a person with disability as defined in clause (u) of Section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

- [Draft II, Section 2 (1) (c)]

The Bill has erroneously equated the 'child with special needs' with the 'person with disability' as the latter has been defined in Section 2(t) [not in Section 2(u)] of the Persons With Disabilities Act, 1995. In contrast, the UNESCO-convened 'World Conference on Special Educational Needs: Access and Quality' held in Salamanca, Spain in 1994 envisaged that the children with special educational needs would include:

'disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic, or cultural minorities and children from other disadvantaged or marginal areas and groups.'

- [UNESCO: Salamanca Framework for Action, 1994]

The Bill thus takes a very narrow view of 'child with special needs' and excludes crores of India's children who need to be covered under this category. The UNESCO's Salamanca Framework had declared that,

'those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting these needs.'

- [UNESCO: Salamanca Framework for Action, 1994]

Further, the Salamanca Framework called upon all governments to,

'adopt as matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise.'

- [UNESCO: Salamanca Framework for Action, 1994]

An appropriate definition of 'child with special needs' would have necessitated a major change in the policy stance towards the regular school system and rendered the Schedule 'A' of the Bill, prescribing three unequal tracks of education for the 6-14 age group, as null and void. The Bill fails in this respect insofar there is neither a provision nor even a reflection of the awareness relating to the need for transforming the regular schools into genuine inclusive schools. Instead, the Bill attempts to divert attention from this long-awaited central task of educational reconstruction by legitimizing unequal parallel tracks of low-quality facilities (EGS Centres, AS and correspondence courses) which do not even qualify to be called as educational facilities.

Ironically, the Bill also fails to do justice to the children with disabilities. It confuses the 'child with special needs' with the 'person with disability' [see Draft II, Section 2 (1) (e)] as the latter has been defined in Section 2(t) of the Persons With Disabilities Act, 1995 as follows:

'(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority:'

The above definition in the Persons With Disabilities Act, 1995 was formulated for the 'welfare' of the 'persons with disabilities', rather than for their education. Under this definition, a large number of children suffering from disabilities of less than 40% would be excluded from the benefit of 'free and compulsory education'. In particular, all those with learning disability or learning difficulty would fall in this excluded category.

In spite of borrowing a narrow definition of disability from the Person With Disability Act, 1995, the Bill contradicts the same Act by limiting its commitment to disabled children in the *6-14 age group only*. The Person With Disability Act, 1995 directs the appropriate Governments and local authorities to,

'(a) ensure that every child with a disability has access to free education in an appropriate environment *till he attains the age of eighteen years.*' (emphasis ours)  
- Person With Disability Act, 1995, Section 26 (a)

Apart from the disabled children in the 6-14 age group, the above expression of '*till he attains the age of eighteen years*' includes all disabled children in the 0-6 year and 14-18 year age groups as well. The Bill attempts to deprive this large group of disabled children from a guarantee of both Early Childhood Care and pre-primary education and elementary education. How can a Bill be allowed to contradict of the provision of another Act of the Parliament?

The in-built bias in the Bill (Draft II) against the disabled children is further reflected in its Section 8 (2) (ii) which cynically stipulates that '*the child suffering from a physical or mental disability which prevents him from attending school*' will be an adequate 'valid reason' for both the State as well as the parents to deny such children 'free and compulsory education.' With this excuse, the State will have a 'valid reason' for not even attempting to create inclusive environment (physical, cultural and pedagogic) for ensuring inclusive education in regular schools for the disabled children. This discriminatory provision must be rescinded forthwith.

The entire language of the Section 28 (Draft II) of the Bill is such as to allow the parallel designated authorities viz. HEEA and LEEA to escape the obligation to integrate the disabled children in regular schools or even in their low-quality alternatives (e.g. EGS Centres and AS). This provision *merely exhorts* HEEA and LEEA to make 'endeavour to promote integration of children with special needs in normal schools', without stipulating any offence or penalties if the authorities fail to make this 'endeavour' [Section 28 (1)]. This ineffective provision must be replaced by an effective provision. The Section 28 (2) also leaves the critical agenda of integration of the disabled children in regular schools to the whims of the parallel authorities by offering an escape route in '*if the disabilities are such that integration of the child in normal schools is possible.*' The lack of commitment of the Bill to the agenda of inclusive education through a Common School System is further revealed in the blatant manner in which it is promoting 'special schools' through Sections 28 (3) and (4). These latter Sections are liable to be used by the market forces to commercialise education of the disabled children through fee-charging 'special schools' in collusion with the designated parallel authorities.

**In this sense, as far as the agenda of inclusive education of the disabled children is concerned, the Bill violates Articles 14, 15, 16, 21, 21A and 45 of the Constitution.**

6. **Legitimation of Child Labour:** The Draft II of the Bill has added a provision which stipulates that 'every occupier, in relation to an establishment, who is required to send a written notice to the Inspector under Section 9' of the

Child Labour (Prohibition and Regulation) Act, 1986 about 'employing a child or permitting a child to work' shall also send a copy of the notice to the approved school and to the HEEA along with the following particulars:

- '(a) hours of the day, and days of the week when the child is employed or permitted to work in the establishment, and  
(b) such other particulars as may be prescribed.'

- Draft II. Section 7 (2) (ii) (a) & (b)

The Bill is curiously silent about what measures the approved school and the HEEA are obligated to take on receiving such particulars from those who engage child labour. It can be, therefore, safely assumed that the real purpose of this provision is to enable the 'designated authorities to adjust the hours and days of the approved school (for all practical purposes, these would be EGS Centres and AS) with the 'hours of the day, and days of the week when the child is employed or permitted to work in the establishment'. It must not be a mere coincidence that the Draft II of the Bill which added this provision also changed the minimum norm for teaching hours per day for EGS Centres and AS from 'at least 4 hours of teaching every day' (Draft I) to 'as may be prescribed in the approved scheme' (Draft II) in order to presumably allow the HEEA to adjust the 'hours of the day, and days of the week' to suit the needs of the employer of child labour in the concerned habitation. It also opens yet another opportunity of collusion between HEEA and the employer of child labour to continue the malpractice. This is a dangerous provision as it allows legitimization of child labour and protects those who engage children in 6-14 age group as labourers.

**7. Deployment of Teachers and Use of Schools for Non-Educational Purposes:** It is long established that the quality of teaching-learning process in government, local body and government-aided schools (henceforth called government schools) suffers due to frequent deployment of teachers and use of schools premises for non-educational purposes (census, surveys, elections etc.) on specific orders of the appropriate government and other authorities. One would have thought that the Bill would provide some relief on this count. However, the Bill has the following farcical provisions:

- "(1) No teacher of an approved school shall be deployed for any non-educational purpose *except under orders of the appropriate government.*  
(2) Premises of an approved school shall not be used for any non-educational purpose *except under orders of the appropriate government.*"

- [Draft II, Section 10]

What difference do these provisions make to the prevailing unfair situation of which the children in the government schools are victims of? None. The *status quo* will be maintained and the teachers and the school premises of government will continue to be used for non-educational purpose *on government orders*. The Bill would have done justice if it had provided for deployment of teachers and use of school premises of the rapidly growing number of private unaided recognized schools (i.e. public schools) for all those non-educational purposes, considered



critical for the nation, for which the government teachers and schools are used. The Bill failed to establish parity between the schools for the rich and those for the poor!

**8. Failure to Provide for Early Childhood Care and Pre-school Education:** The Article 45 (as amended after 86<sup>th</sup> amendment) of the Constitution and the NPE-1986 (as modified in 1992) call for ensuring Early Childhood Care and Pre-school Education for all children in the 0-6 age group as a critical input for proper child development, elementary education and enlightened citizenship. According to the Tenth Plan document, only 20% children in the 0-6 age group are covered under the ICDS programme which, even under the best of conditions, is designed essentially as a nutritional supplement programme, lacking in several other critical dimensions of early childhood care; pre-school education component is conspicuous by its absence. The Bill has entirely ignored the 0-6 age group children, thereby continuing the present situation wherein only the well-to-do can afford this essential input for their children. By denying a guarantee for equal opportunity for holistic development to the vast majority of India's 16 crore children in the 0-6 age group, the Bill has violated Articles 14, 15, 16, 21, 21A, 39 (f), 45 and 46.

**9. Escape Route for the Recognised (Not Substantially Aided) Schools to fulfill their Obligation:** The Bill is entirely farcical when it comes to the issue of Constitutional obligation of the 'recognized but not substantially aided schools' for providing space for free education of those children who are unable to afford the fees charged by such schools in their neighbourhood. The following grounds need to be cited to reveal the escape routes that the Bill [Draft II, Section 31] cleverly provides the powerful private school lobby for not fulfilling its Constitutional obligations:

- By authorising only the District Elementary Education Authority (DEEA) with powers to direct such schools to give admission to the poor children, the Bill has allowed all such schools in the metropolitan areas to escape from this obligation since DEEA is constituted only 'for such part of every district as is not included in a metropolitan area' [Draft II, Section 18 (1)]. The Metropolitan Elementary Education Authority (MEEA) constituted for each metropolitan area as per Section 19 (1) of Draft II is not authorized by the Bill to take any action in this matter!
- The perceived benefit of free education in such schools will be limited to 'children from families below the poverty line living in the district.' In many parts of the country, the minimum wage prescribed under the Minimum Wages Act, 1948 is above the poverty line and, therefore, only a tiny number of children in these localities, by definition, is likely to be eligible for admission in such schools (Agarwal, 2003). With rising pressure from Structural Adjustment Programme, the so-called poverty

line is being progressively pushed downwards, leading to further reduction of eligible children in this category.

- Section 31 (1) states that 'no recognized school shall be required to admit children under this section in a number exceeding 20% of the total strength of the school in any class'. Since the Bill does not specify a minimum percentage of seats in such schools to be made available to the poor children free of cost, it is likely that a school may not admit even one such child.
- Under Section 31 (2), it is the Local Elementary Education Authority (LEEA) that is authorized to chose children for admission in such schools in the prescribed manner. Which official of LEEA (operating probably at Block level) would dare to chose children against the wishes of the powerful lobby of the private unaided schools in a rural area? The situation will be much worse for the LEEA official in feudal zones wherein the feudal forces will be supporting the above lobby. It would be easier for LEEA to open an additional EGS Centre for the poor children or even authorize, under Section 26 (2) of the Bill, the defaulting private school itself to open one such centre, as is the current practice by the elite public schools in metro cities.

Why has the Government introduced such a farcical provision in the Bill? Obviously not to benefit the deprived children, as must be clear from the above analysis. The only purpose seems to be to divert public attention from the growing demand for education of equitable quality which can only be provided if the Bill promotes the Common School System for all children without any discrimination whatsoever. This is obviously not the agenda pursued in the Bill. To be sure, even if the above escape routes are closed, the benefit to deprived children will be minimal as the 'recognized but not substantially aided schools' still constitute barely 8-10% of the total school system, thereby making the entire exercise of not much consequence for UEE, except if the agenda was to confuse the debate on the failure of the official policy to build a genuine Common School System.

**10. Lack of Accountability of the State and Effective Grievance Redressal for Citizens:** There is hardly any provision in the Bill by which the citizens can hold the Central Government, State Governments or any of the designated authorities accountable for their failure to provide 'free and compulsory elementary education' of equitable quality for all children within the specified period of 'not exceeding three years' and seek justice in courts for their offences. Yet, the Bill has clear provisions for cognizing offences of the poor parents for not sending their children to schools and levying heavy penalties on them. Even the Grievance Redressal Mechanism provided in Section 25 [Draft II] is limited to Sections 4 and 5 only and designed in such manner that the parents seeking grievance redressal are unlikely to get any benefit for their children before it is too late.

**11. Violation of Concurrency in Education: Section 32 [Draft II] of the Bill states:**

“(1) Central Government may give general directions to State Governments regarding implementation of this Act.”

- Draft II, Section 32 (1)

The above provision blatantly violates the concurrency in education guaranteed by the Constitution. It must be viewed as a cynical attempt to interfere with the federal polity of India.

**12. Politics of Notification of the Bill:** The Bill significantly empowers the Central Government such that ‘different dates may be appointed for different provisions of the Act, and for different parts of the country’ [Draft II, Section 1 (3)]. This means that the Government intends to take a fragmented view of the Bill depending upon its convenience, political or otherwise. Since Draft II was released on December 10, 2003 - within six days of the electoral victory of BJP in three States – it should surprise no one if the Central Government, apparently certain of lasting in power for the next five years, would notify the Bill only in those states where it is in power so that it can use the parallel structure of designated authorities to control education through Sangh Parivar’s dedicated cadre of Vidya Bharati and Saraswati Shishu Mandirs. It is no mere coincidence that both the provisions for notification on different dates ‘for different parts of the country’ and for creating a parallel structure of designated authorities from State-level down to the level of habitations were introduced in Draft II; these were not in Draft I!

### **Alternative Framework**

Let us begin the task of building up the alternative framework for a genuinely pro-people Bill by re-iterating how the draft Bill *violates some of the basic provisions of the Constitution* and, at the same time, completely fails to fulfill the guarantee of giving all children a Fundamental Right to *elementary education of equitable quality*. The above analysis has shown that both the drafts are violative of the Article 14 (equality before law), Article 15 (prohibition of discrimination on grounds of religion, race, caste, sex, place of birth or any of them), Article 16 (equality of opportunity in matters of public employment), Article 21 (protection of life and personal liberty) and finally Article 21A (Fundamental Right to education for the 6-14 age group), all these Articles belonging to the Part III (Fundamental Rights) of the Constitution. Both the drafts also violate several Articles in Part IV (Directive Principles of State Policy) of the Constitution as well that relate to children, education and deprived sections of society. These include Article 39f (development of children in a healthy manner and in conditions of freedom and dignity; protection of childhood against exploitation and moral and material abandonment), Article 45 as amended through 86<sup>th</sup> amendment (early childhood care and education for the 0-6 age group) and Article 46 (promotion of educational and economic interests of SCs, STs and other weaker sections).

The above analysis has further established that the Bill, in its present framework, will promote inequality, injustice and disharmony in society by denying elementary education of equitable quality to all children. The Bill lacks a commitment to the Common School System (a policy commitment made thrice - once through a Cabinet resolution and twice by the Parliament) in the following significant ways:

- It seeks to legitimise unequal multiple tracks of elementary education.
- It promotes the undesirable sociological principle of establishing a separate stream of education for different sections of society, rather than bringing together children of different socio-economic, cultural, religious, ethnic and linguistic backgrounds in integrated schools.
- It dilutes the Constitutional and policy commitments and international conventions calling for inclusive education for all children with special needs, including the physically and mentally disabled children as well as those belonging to the socially and culturally marginalized sections of society.
- Instead of focusing political attention on a policy for improving the quality and relevance of education in the government, local body and government-aided school system, the Bill diverts attention from this central task by providing for EGS Centres, Alternative Schools and correspondence courses for 6-14 age group children.
- The Bill attempts to provide escape routes to the 'recognised but not substantially aided schools' (i.e. the so-called public schools) from fulfilling their Constitutional obligations towards free elementary education of those children who can ill-afford to pay fees charged by them.
- It makes no commitment to transform all schools into genuine neighbourhood schools.

The de-construction of the Bill reveals the following negative trends in the Bill that promote abdication by the State of its Constitutional obligation towards education of all children, as also dictated by IMF-World Bank's Structural Adjustment Programme:

- By establishing low-quality parallel tracks of education, the Bill reduces the financial obligation of the State under the Constitution.
- The Bill has provisions which enable the State/UT governments as well as the parallel designated authorities to increase pressure on the community to make contribution in terms of money, kind and labour to the school system to gradually substitute for the State funding of elementary education.
- It attempts to shift responsibility for collapse of the official policies since independence in ensuring 'free and compulsory elementary education' for all children by making it an offence if the parents do not send their children to non-functioning, low quality or irrelevant schools/parallel streams, levying heavy penalties on them for not falling in line. In contrast, the Bill has no provisions for cognizing the failure of the various authorities in fulfilling their Constitutional obligations as an offence and for punishing the concerned authorities and officials.

- The Bill promotes as well as legitimises increasing privatization of elementary education.
- There is neither a Financial Memorandum attached to the Bill nor any obligation to provide adequate resources; there is no provision for punitive action against the authorities if they fail to provide the necessary resources within a reasonable time limit.

In light of the de-construction of the Bill undertaken in this paper, the following features emerge that help define *an alternative framework for a Bill* for fulfilling the Constitutional obligations and policy commitments:

- i) Keeping the federal polity of India and the concurrency of education in mind, any Central legislation can be no more than a Model Act (as was the case with 73<sup>rd</sup> and 74<sup>th</sup> amendments) aimed at persuading and guiding the State/UTs to draft similar legislations adapted in the context of their particular social history, socio-economic conditions, educational situation and other aspects of their contemporary reality.
- ii) The Bill will aim at ensuring education of equitable quality for all children up to 18 years of age, including early childhood care and pre-primary education for children in the 0-6 age group.
- iii) The Bill's central theme should be to establish a Common School System, including the 'recognised but not substantially aided' schools, for all children within a specified time frame, to begin with up to class VIII with provision to extend the system up to class XII.
- iv) The Bill should provide for eventually transforming all schools, within a specified time frame, into genuine neighbourhood schools wherein all children living in a designated neighbourhood, irrespective of their backgrounds, can learn and socialize together in a harmonious environment without discrimination of any kind.
- v) The Bill should ensure inclusive education for all children with special needs, including physically and mentally challenged children as well as those belonging to the socially and culturally marginalized sections of society.
- vi) The Bill should have provision for compulsion on the State to ensure flow of adequate resources for meeting the needs of building up a Common School System that will ensure education of equitable quality for all children within a specified time frame.
- vii) The Bill should provide for cognizing offence of the authorities and concerned officials for their failure to fulfill their Constitutional obligations in the framework of such a Bill along with provision for appropriate punitive action.
- viii) The Bill should duly empower and authorize only the Constitutional authorities such as the State/UT Governments and the Panchayati Raj Institutions under the 73<sup>rd</sup> and 74<sup>th</sup> Amendments; no parallel structure of authorities is called for.

ix) The Bill must distinguish between the concerned community, grass roots and parental groups, on the one hand, and NGOs and 'civil society organisations', on the other, for assigning roles for fulfilling the UEE agenda; the NGOs and 'civil society organizations' can't substitute for the former.

x) There should be specific provisions in the Bill to effectively eliminate the practice of social, cultural, religious, ethnic, linguistic and gender discrimination in schools.

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Extracted from 'Exclusion and Inequality in Education: The State Policy and Globalisation' by Anil Sadgopal published in *Contemporary India*, Journal of the Nehru Memorial Museum & Library, Vol. 2, No. 3 (July-September 2003).

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### Legitimising Exclusion and Inequality in Education

Back to the 93<sup>rd</sup> (now called as 86<sup>th</sup>) Amendment debate in Lok Sabha. The amendment Bill had the following four major lacunae:

i) The Bill sought to exclude almost 17 crore children up to six years of age from the provision of Fundamental Right to *free* early childhood care and pre-school education. This was in contravention of NPE-1986 (As modified in 1992) which considered this support during childhood as being crucial for child development and preparation for elementary education (Sections 5.1 to 5.4). The implication was clear: early childhood care and pre-school education will be denied to not less than 40% of the children in this age group, two-thirds of them being girls, whose parents barely manage to earn minimum wages. This will also prevent girls in the 6-14 age group, belonging to the same sections of society, from receiving elementary education as they will be engaged in sibling care.

ii) The Bill made the provision of Fundamental Right to education even for the 6-14 age group children conditional by introducing the phrase '*as the State may, by law, determine*' in the new Article 21A. The implications of this phrase will be discussed below.

iii) The Bill shifted the Constitutional obligation towards 'free and compulsory education' from the State to the parents or guardians by making it a Fundamental Duty of the latter under Article 51A (k) to '*provide opportunities for education*' to their children in the 6-14 age group. This purpose is now sought to be achieved by promoting and legitimizing 'community participation' in raising resources for elementary education (GOI, 2003b,c), yet another measure towards abdication by the State.

iv) The Financial Memorandum attached to the Bill provided for only Rs. 9,800 crores per annum (i.e. 0.44% of GDP in 2002-03) over a ten year period for implementing the provisions under the Bill. This commitment was far from being adequate, as it was 30% less than what was estimated by the Tapas Majumdar Committee in 1999 to provide elementary education to all the out-of-school children through *regular formal schools*. This lower estimate was made possible by depending on low-quality parallel tracks of education and lowering several other critically important infrastructural and pedagogic norms for deprived sections of society (Tilak, 2003 and Sadgopal, 2003c).

Detailed critiques of the 93<sup>rd</sup> Amendment Bill contended that the lacunae were deliberate, rather than being a result of an oversight (see Sadgopal 2001a,b,c,d and 2002a; Swaminathan, 2001). The amendment was being made, these writings sought to establish.

not to make elementary education a Fundamental Right, but to fulfill the dictates of IMF-World Bank's Structural Adjustment Programme that demanded reduction in public expenditure on social sector. The lack of guarantee of free early childhood care and pre-school education will not only result in underdevelopment of the deprived children during childhood but will also adversely affect their learning capacity during school education.

In particular, the above critiques focused upon the implications of the phrase '*as the State may, by law, determine*'. No such conditionality existed in the original Article 45. It is contended that the phrase was introduced in order to legitimize the low-budget low-quality multiple and parallel tracks of so-called educational facilities for poor children as well as other forms of policy dilutions discussed above. This phrase also legitimizes the increasing abdication by the State of its Constitutional obligation towards ensuring elementary education of *equitable* quality for all children.

To the agitated MPs from various political parties who criticized the Bill in both Houses of the Parliament, an assurance was repeatedly given by the Minister that the lacunae in the Bill will be taken care of by enacting a new law. How would a law take care of the lacunae introduced in the Constitution through an amendment? If the Government intended to rectify the lacunae later through a law, why was it bent upon introducing these in the Constitution in the first place? The leadership of various political parties neither raised nor pursued such uncomfortable questions in the Parliament. The assurance of a law to be enacted later seemed to have led to a curious consensus in the Parliament on the Constitutional amendment (now termed the 86th amendment), in spite of its unambiguous bias against crores of children (girl children in particular) belonging to various deprived sections of society (Sadgopal, 2001d, 2002a) and violations of several provisions in the Constitution relating to Parts III and IV.

### **Free and Compulsory Education Bill, 2003**

Finally, let us also briefly examine the law that is now before us in the form of the draft 'Free and Compulsory Education Bill, 2003' (Government of India, 2003b,c, Drafts I & II respectively). This is the law that was promised by the Government in Parliament presumably to take care of the lacunae in the 93rd (now called 86th) Amendment Bill. Ironically, a careful scrutiny by several academics, teachers, advocates and voluntary organizations reveals that, instead of 'taking care of the lacunae' in the 86th Amendment, the aforementioned draft Bill increases the lacunae on several grounds (Social Jurist, 2003). We will not go into all those issues in this paper but it would suffice to refer to the relevant portions of Schedule A of the draft Bill which provides for *three types* of centres for 'imparting education', specifying their minimum norms.

#### Schedule A

##### A. Regular School:

Provides for:

- 'At least two teachers in primary school';
- 'at least one room for every teacher'; and



- Qualification of teachers 'as approved by National Council of Teacher Education (NCTE)' i.e. the prevailing minimum qualifications for regular properly qualified and trained teachers.

#### B. EGS Centres/Alternate Schools:

- 'At least 4 hours of teaching every-day';
- Qualification of teachers: Class X certificate (Class VIII in the case of women) along with mere 30 days' training will be adequate;
- Yet, the curriculum will be 'same as the curriculum prescribed for recognized schools'.

*[In this specification on curriculum, we have an uncanny reflection of the NFE discourse of late eighties, evident in NPE-1986 and POA-1986, as documented earlier in this paper. Also, as expected, there are no norms for physical infrastructure since the EGS Centres Alternate Schools will be provided none!]*

#### C. Open Schooling Centres

- Based on 'The Free and Compulsory Education for Children Bill' Draft I (GOI. 2003b).

The mindset of the State is further revealed by comparing Drafts I and II (GOI, 2003b and 2003c respectively). Although the Draft II of the Bill is still not fully official, it enables us to see the likely direction in which the legislation may be moving. Three points may be briefly noted in this regard:

- The minimum, though nominal, norm for training of 'at least 30 days' for teachers to be recruited for EGS Centres/Alternate Schools in Draft I has been further diluted in Draft II which states:  
 "Training: Should have been trained for at least 30 days *either before or within 6 months* of appointment" (emphasis added)
- The minimum norm of 'at least 4 hours of teaching every day' for EGS Centres/Alternate Schools in Draft I has been diluted in Draft II by replacing it with 'As may be prescribed in the approved scheme' (emphasis added).
- Draft II places the provision of boundary wall or fencing, playground, *toilets and drinking water*, child-friendly elements (?) and sports equipment in the category called 'Desirable' even for the 'Regular Approved Schools' (emphasis added)!

The draft Bill is both ambiguous and weak on inclusion of the physically and mentally disabled children in the regular approved schools. Its provisions will encourage as well as facilitate violation of the policy commitment for inclusive education which is integral to the fulfillment of Constitutional obligation for equality in education and for building up the Common School System (Jha, 2003). As noted by Jha (2003), the Bill might even promote privatization and commercialization of the education of the disabled.

The draft Bill thus fully legitimizes the discriminatory low quality multiple and parallel tracks of education, already institutionalized in the operating policy and programmes, for the deprived sections of society. In a sense, the Bill will carry forward the process of abdication by the State of its Constitutional obligation for which a legitimate space was created by the 86th Amendment by introducing the conditionality i.e. '*as the State may, by law, determine*' for provision of free and compulsory education for children in the 6-14 age group.

The draft Bill, when passed by the Parliament, will fully protect and also 'guarantee' the exclusion and discrimination designed by Sarva Shiksha Abhiyan in its following statement:

"All children in school, Education Guarantee Scheme (EGS) centre, alternate school, 'back-to-school camp' by 2003." (GOI, 2003a, p. 27)

With this guarantee for protection, the Indian government persists in its refusal to reprioritise national economy and continues its campaign for seeking increased external aid, thereby further subjugating nation's education system and policies to the control of the global market.

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*From the Section entitled 'The Communal Assault'*

We may also recognize that emergence of this design for communalization of knowledge in curriculum and promoting fascist thinking is not an isolated act of academic institutions such as NCERT, ICHR, ICPR or ICSSR alone. This design will be incomplete if it is not fully supported and co-ordinated with other branches of the State. Let me cite two pieces of recent evidence. You would recall my earlier reference to the draft Free and Compulsory Education Bill (Draft I) which was in circulation since June 2003. Within six days of the announcement on 4th December last year of BJP's electoral victory in three states viz. Rajasthan, Madhya Pradesh and Chhattisgarh, the Government introduced the Draft II of the Bill. The new draft had the following two additional features:

- a) A "Competent Academic Authority"<sup>1</sup> which will mean "an authority empowered by law or by the Central or an appropriate (i.e. State) government, or recognized by such government, for prescribing *curriculum*<sup>2</sup> for the elementary stage." [Draft II, Section 2 (1) (f)] (emphasis added)
- b) A set of provisions for constituting elementary education authorities from the state-level down to the level of District, Block and even a village hamlet (termed Habitation) that will be parallel to the Constitutional authorities of the state government as well as the Panchayati Raj Institutions or municipal bodies under the 73<sup>rd</sup> and 74<sup>th</sup> Amendments (Draft II, Sections 16-20). This parallel structure will be fully empowered for the purpose of financing, promoting and planning, giving recognition, regulating, guiding, monitoring and providing academic or technical support to elementary education. The state-level parallel authority will be empowered for even "formulation of policy, laying down of priorities . . . . . and mobilization and allocation of resources" and, of course, also for "promotion of use of information technology and distance education" [Draft II, Section 20 (3) (iii) & (vi)].

I need not comment on the 'hidden agenda'. It would now make it possible for the forces of communalization to marginalize the Constitutional authorities and set up a parallel structure under their direct control to manipulate elementary education. In order to ensure that this provision is not used by secular political formations in various states, a clever mechanism has been built in for the manner of notifying the Bill. The Section I (3) of Draft II provides for the following:

"It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint and different dates may be appointed for different provisions of the Act, and for different parts of the country." (emphasis added)

- 'The Free and Compulsory Education Bill, 2003', Section I (3)  
(Draft II dated 10<sup>th</sup> December 2003)

Note: The phrase in italics was not there in Draft I. It was added in Draft II following BJP's electoral gains in three states and is retained in Draft III.<sup>3</sup>

As if this was not enough, a Draft III of the Bill was issued on 8th January this year. This latest Draft III has provisions that will make it obligatory for the state governments or the Competent Academic Authorities to follow the National Curriculum Framework and 'essential levels of learning' notified by NCERT (Draft III, Section 30). As of today, due to the concurrent status of education, the state governments are under no such obligation and are free to follow their own curriculum framework and prepare text materials.<sup>1</sup> This new provision aims at not just imposing a communalized curriculum but also at destroying, from the back door, the federal character of the Indian Constitution. This 'deconstructed reading' of the Bill reveals the mind of the State on its intention to push the joint agenda of 'globalization-communalisation'. For reasons that must be obvious, the NDA Government is waiting for more convenient circumstances to present the Bill to the Parliament but the instrument for furthering the combined agenda of the Hindutva-cum-market forces into Indian education is ready.<sup>2</sup>

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### Notes

*(added for the consultation organized by the Ministry on August 05, 2004)*

<sup>1</sup> If 'Competent Academic Authority' is going to be constituted by the Central and State Governments, what is going to be the role of NCERT, SCERTs, DIETs and all Boards of Examinations (including CBSE)? Does the Government plans to render all of these duly empowered bodies, wherein thousands of crores of rupees have been invested, redundant? The Bill does not resolve this issue.

<sup>2</sup> In Draft III, the reference to "curriculum" has been replaced by "syllabus, essential levels of learning, mode of examination, and such other academic matters". Two concerns need to be raised. First, who would be responsible for framing and prescribing the "curriculum" as per Draft III? The Draft Bill fails to provide an answer. Second, the concept of "essential levels of learning" has not been defined or elaborated upon in any publicly known policy or curricular document so far. The Ministry has instead defined the Minimum Levels of Learning (NCERT, 1991) which have been criticized widely on pedagogic and epistemological grounds. Does the Government intend to further dilute and/or distort the MLLs? Will 'essential levels of learning' mean merely 'literacy levels' in line with the Jomtien-Dakar Framework? Is this an evidence of

reductionism becoming a dominant feature of educational planning by the State in the 21<sup>st</sup> century, at least for the under-privileged? The Ministry needs to clarify its position.

<sup>3</sup> One can see through the anti-Constitutional political objectives of the *Hindutva* forces in the previous NDA Government in providing the option of notifying different dates for “different provisions of the Act, and for different parts of the country”, as discussed above. However, what political objectives, one wonders, does the UPA Government wishes to serve by retaining this provision?

<sup>4</sup> NCERT is an agency of the Union Government and its formulations do not automatically become mandatory for the States/UTs unless some credible democratic process of consulting the States/UTs has been followed and their consent obtained. This is precisely the role of CBE which we have suggested should be made into a statutory body on a priority basis. In view of the federal structure of the Constitution and the concurrent status of education, how can NCERT be authorized to notify its curriculum framework, ‘essential levels of learning’ etc. without a due process being undertaken by the Union Government? This was the basis of the nation-wide criticism of the NDA Government’s ill-conceived move to impose NCERT’s curriculum framework (2000) as the national curriculum framework and this should have been an adequate and legitimate basis for the UPA Government for rejecting the so-called National Curriculum Framework (NCF) drafted by a handful of NCERT’s staff, advisors and consultants. Section 30 (1) of the Draft Bill is designed to legitimize NDA Government’s agenda of using NCERT to impose its *Hindutva*-cum-market ideology on the whole nation. Why is UPA Government supporting this move?

<sup>5</sup> Three additional concerns need to be addressed. First, Section 30 reveals a total confusion between the concepts of curriculum framework, curriculum, syllabus and the undefined ‘essential levels of learning’ and the respective roles of the State-level and District-level bodies in their formulation and notification. Second, what is the legal implication of the requirement of “*keeping in view the documents*” by the State-level and District-level bodies, unless it is a clever method for imposing NCERT’s formulations over the whole country, down to the level of habitations? Third, what is the purpose of keeping the “recognized schools” (i.e. the unaided fee-charging private schools) *outside the purview of Section 30*? The alarming contradictions between Section 30 and Section 31 further imply that the unaided fee-charging private schools will *not* be required to “strictly conform to the ideals, values, and principles enshrined in the Constitution, especially as articulated in its Preamble . . . .” and also will not be required to “aim to develop children into citizens fully cognizant of their fundamental duties as specified in Article 51-A thereof”!

**ANALYSIS OF THE PREMISES UNDERLYING  
'THE FREE AND COMPULSORY EDUCATION BILL, 2004'**

<b>No.</b>	<b>Premises Underlying the Draft Bill</b>	<b>Premises for the New Bill</b>
1.	<p>'Compulsory Education' means compulsion on the parents or guardians to ensure that their children regularly attend school.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• Ambiguity with respect to provisions for the Government to provide adequate resources. [Section 21 (1)]</li> <li>• No Financial Memorandum is required to be attached with the Bill.</li> <li>• Penalty on parents/ guardians if their wards do not attend school regularly. [Section 33 (1)]</li> <li>• Public officials can find excuses to escape punishment for dereliction of their duty by citing parent's or guardian's failure to ensure attendance of their wards; provisions for protecting the public officials. [Sections 39 &amp; 40]</li> <li>• No obligation to improve access, social relevance, quality (i.e. curriculum, pedagogy, evaluation, assessment etc.) or ambience of the school system since it is assumed that the <i>fault lies with the children or their parents/ guardians and not the education system.</i></li> </ul>	<p>'Compulsory Education' means compulsion on the State to provide adequate resources and all essential facilities for quality education.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• Unequivocal obligation on the State to provide adequate resources and facilities for quality education.</li> <li>• A Financial Memorandum with the Bill becomes a requirement.</li> <li>• Failure to fulfill the aforesaid obligation gives a right to the parents/ guardians children to seek enforcement through courts.</li> <li>• Dereliction of duty on the part of the public officials becomes a punishable offence.</li> <li>• Persistence of high incidence of out-of-school children or 'drop outs' and/or low levels of learning will force the State to <i>change its policies with the aim of ensuring equity, quality and relevance of education in the mainstream school system.</i> rather than taking escape routes through parallel educational streams as it has since 1986.</li> </ul>
2.	<p>(a) In combination with the new Article 51A (k), the State can 'legitimately' shift its obligation under Article 21A to the parents/ guardians or the community.</p> <p>(b) The notions of 'community participation' and 'public-private partnership' is dangerously used to promote abdication by the State of its obligations flowing from Article 21A.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The authorities constituted under the Act from habitation-level upwards to the State-level can be <i>required</i> to mobilize resources for elementary education. [Sections 16-20]</li> </ul>	<p>(a) Article 51A (k) is considered to be in violation of the basic spirit of the Constitution and can't be used to shift State's obligation flowing from Article 21A. This contention is especially valid in light of the failure of the State to provide 'free and compulsory education' to all children by 1960 which gives an unmitigated right to the parents/ guardians or the children to seek enforcement of the obligation.</p> <p>(b) Community participation is necessary for improving management of the education system but this can't be used to promote abdication by the State of its obligations under Article 21A.</p>

<ul style="list-style-type: none"> <li>• While being ambiguous with respect to State's obligation to provide adequate resources, the State can be specifically empowered to raise resources from the community on a 'voluntary' basis to fund elementary education. [Section 25 (1)]</li> <li>• Evidence of gradual but systematic abdication of the State's obligation: Section 16 (5) (iii) requires the local authority to mobilize resources and the State shall provide funds "to the extent they cannot be locally mobilized." (emphasis added)</li> <li>• Franchising of the State's obligation is extended by allowing any NGO (including a corporate house and/or a religious body) to take responsibility for any area for providing elementary education [Section 25 (2)] and for setting up of 'transitional schools' [Section 27 (2)].</li> </ul>	<p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The local authorities can be made responsible as well as accountable for the management of the education system but can't be <i>required</i> to mobilize resources for elementary education, unless of course they are authorized to collect revenue in place of the Central or State Governments.</li> <li>• Raising of resources through voluntary contribution does not need any legal powers being vested into the State unless it is envisaged as a substitute for the State's obligation to provide adequate resources in which case it loses its voluntary character.</li> <li>• No measures, implicit or otherwise, to abdicate the obligation of the State can be permitted or provided for in the Bill.</li> <li>• No franchising of State's obligation can be permitted.</li> </ul>
<p>3. The concept of 'free education' need not be guaranteed i.e. ensured without any conditionalities.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The Bill becomes equivocal in guaranteeing 'free education' by making it "subject to rules made in this behalf, freedom for the parent or guardian from liability to incur expenditure, wholly or partly, . . . . as may be prescribed." [Section 2 (1) (t)]</li> </ul>	<p>The concept of 'free education' is to be guaranteed as an unmitigated right of the child.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• 'Free education' is to be guaranteed without any conditionalities whatsoever.</li> <li>• In view of the fact that the notion of Minimum Wages does not provide for education and other minimum needs of a family and even this can't be guaranteed by the State, the 'opportunity cost' of sending children to schools in case of the families dependent on Minimum Wages must be included in the notion of 'free education'.</li> </ul>
<p>4. The concept of 'compulsory education' is equivalent to mere attendance in the school and need not include any commitment to the quality of education.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The reference to compulsory education as an obligation on the State can be withdrawn from its definition. The obligation for quality education is missing but certain ambiguous notions of attendance with "minimum regularity" and completion of elementary education are introduced. [Section 2 (1) (k)]</li> </ul>	<p>The concept of 'compulsory education' can't be reduced to mere attendance and is incomplete without an unequivocal commitment to the quality of education, making it necessary to define quality in unambiguous terms.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The State is obliged to fulfill its obligation towards quality education and the parents/ guardians can seek its enforcement through the courts; this requires that quality education is clearly defined in the Bill.</li> </ul>



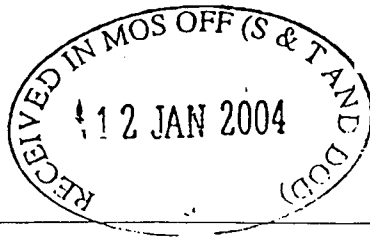
5.	<p>The definition of 'school age' excludes all children under six years of age as well as those in the 14-18 age group.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• A farcical attempt is made by including a) ECCE for the 0-6 age group in the 'Desirable', rather than the 'Minimum', category of norms for schools [Schedules I &amp; II]; and b) the 14-18 age group for completing merely <i>elementary</i> education, rather than <i>High School and/or 10+2 education</i>. [Section 37]</li> </ul>	<p>The definition of 'school age' includes all children under six years of age as well as those in the 14-18 age group in consonance with UN Convention of the Right of the Child to which the Govt. of India is a signatory.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• ECCE for the 0-6 age group and 'free and compulsory education' up to 10-2 stage is integral to the concept of right to education, apart from being a minimum condition for equitable social development for all sections of society under the prevailing conditions.</li> </ul>
6.	<p>It is possible to guarantee right to education through parallel streams of education of differential quality (i.e. with differential norms) viz. regular schools, EGS Centres/ Alternative Schools and "alternative arrangements" (e.g. 'back to school camps' in SSA) for the 6-14 age group.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• Legitimation of the principle of 'a separate educational stream for each social strata.'</li> <li>• Violation of the principles of equality and social justice as enshrined in several Articles of the Constitution.</li> <li>• Continued attrition of the Common School System promised in the National Policy on Education – 1986 (as modified in 1992), leading to further deterioration of the public-funded school system, thereby promoting the market-driven fee-charging private school system for the privileged sections of society.</li> <li>• Lack of commitment to education of <i>equitable quality</i> will result in persistence of the high incidence of out-of-school children and 'drop-outs', as has been the case throughout the Nineties when the <i>multiple track education</i> was practiced as the key strategy for UEE.</li> </ul>	<p>Right to education can't be guaranteed without an obligation to provide education of <i>equitable quality</i> for all children for which the 1986 policy imperative of Common School System (Section 3.2) is the only historic option for the nation.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• A ten-year plan to move towards a <i>Common School System at least until the High School stage</i> through the instrumentality of <i>neighbourhood schools</i>, irrespective of the type of school management or its source of income funds, with the aim of ensuring <i>education of equitable quality</i> for all children: this is to be achieved by establishing certain commonly applied basic infrastructural, quality-related and pedagogic norms, including a <i>rational language policy</i>.</li> </ul>
7.	<p>The federal structure of the Indian Union and the concurrent status of education can be marginalized, diluted and/or destroyed altogether.</p>	<p>The federal structure of the Indian Union and the concurrent status of education is the foundation of all educational planning and policy formulation and also</p>

	<p><i>Implications:</i> The power given to the Central Govt. to give directions to the State Govt. regarding implementation of the Act violates the concurrent status of education in the federal structure of Indian polity. It also takes away the initiative from the State/UT Govts. - Sections 38 (1), 41 &amp; 44.</p>	<p>the strategic basis for implementing right to education. <i>Implications:</i> The State Govt. and its various educational agencies and structures are strengthened to become the chief vehicles for implementing the right to education.</p>
8.	<p>The Constitutional authorities can be marginalised and undermined with the aim of ultimately replacing them by arbitrary authorities. <i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The definition of 'Competent Authority' allows that the Director of Education (or any other equivalent officer) of the State Govt. can be replaced by any NGO, corporate body or religious organization for the purpose of giving recognition to schools. [Section 2 (1) (i)]</li> <li>• In total violation of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments, a whole range of authorities are constituted from the level of local habitations upwards to the District and Metropolitan levels; the State Govt. is empowered to replace the existing Constitutional authorities (e.g. Panchayati Raj Institutions and municipal bodies) with arbitrarily constituted authorities at different levels to implement the proposed Act. [Sections 16-19]</li> <li>• The State Govt. is empowered to replace the Directorate of Education (or any other such govt. authority) with a newly constituted authority for the purpose of the proposed Act. [Section 20 (1)] As a <i>special concession to the World Bank conditionality</i> (as practiced in several states in DPEP), Section 20 (2) provides for the appropriate govt. to designate, <i>if it so desires</i>, a pre-existing autonomous society, established by the same govt. for this purpose.</li> </ul>	<p>The Constitutional authorities need to be fully empowered and vested with all necessary legal powers and resources in order to carry out their duties effectively. <i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The powers, accountability and role of all of the existing Constitutional authorities (including Panchayati Raj Institutions and municipal bodies) are maintained and further strengthened.</li> <li>• Voluntary bodies are provided appropriate space for strengthening the mainstream school system, rather than weakening it through parallel streams.</li> </ul>
9.	<p>Extra-Constitutional bodies can be given authority for decision-making in academic matters. <i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The Central/appropriate govt. is given arbitrary powers to recognize any agency (NGO, corporate house or a</li> </ul>	<p>No space can be provided for <i>back door</i> entry of NGOs, corporate houses or religious bodies for prescribing curriculum or any aspect thereof. <i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The duly created Constitutional authorities are further strengthened to</li> </ul>

	<p>religious body), as a 'Competent Academic Authority' for the purpose of prescribing "syllabus, essential levels of learning, mode of examination, and such other academic matters . . . ." for elementary and secondary stages. The govt. is allowed to replace academic bodies such as NCERT, NIEPA, NCTE, SCERTs and Boards of Examinations with bodies of its arbitrary choice. [Sections 2 (1) (h), (p), (gg) &amp; (hh)]</p>	<p>fulfill their obligations for prescribing any aspect of curriculum and improving the quality of education and made accountable for its decisions.</p>
<p>10.</p>	<p>The practice of child labour may not only continue but be legitimized through the Bill.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>The Bill is not designed to eliminate child labour but to co-exist with it. The employer of child labour is required to send a notice to the approved school and the concerned habitation-level authority including particulars about "hours of the day, and days of the week when the child is employed or permitted to work" [Section 7 (2) (ii)]. The purpose is apparently to enable the State to adjust the timings of the 'alternative arrangements', including EGS centres and Alternative Schools, with the convenience of the employer.</li> </ul>	<p>The practice of child labour needs to be eliminated unconditionally.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>Make provisions, create laws and ensure all necessary conditions that will enable the children engaged in child labour to complete their education through regular formal schools.</li> </ul>

- Anil Sadgopal  
August 05, 2004

Prof. Anil Sadgopal



E-13, Kalindi  
New Delhi 110 065

January 10, 2005

Dear Shri Kapil Sibal ji,

This is with reference to an issue that you raised towards the end of the second meeting of the CABE Committee on 'Free and Compulsory Education Bill and Other Issues Related to Elementary Education' held on 24th December 2004 in New Delhi. While summing up the deliberations, you touched upon the role of the State in regulation of the private unaided schools in India. You had opined that it was neither feasible nor desirable for the State to legislate for the private unaided schools as they do not take any financial support from the government. There was a brief discussion on this subject during which the issue of 'hidden' subsidies extended by the government to such schools was also raised. It was in this connection that reference was made to some of the recent judgments of the Delhi High Court and the Supreme Court.

I have been since wondering about this matter. The Indian State legislates for all sorts of private business entities and activities, such as the share market, lotteries, property, flow of foreign capital, banking and insurance, ICT industry and even roadside *dhabas*, *pan shops* and cycle rikshaws. Why is one of the fastest growing commercial activities in the country viz. the private unaided schools being viewed as an exception to this rule? I would like to argue that the task of legislating for such schools should receive the highest priority as they mould the future generation of the privileged classes and, in the process, play a dominant role in curricular and pedagogic decision making, often to the detriment of the education of the majority of the people. I have already pointed out in my written submission to the Committee that the Draft Bill of the previous government had a provision 'freeing' such schools from the requirement to conform to the ideal, values and principles enshrined in the Constitution. The fact that such an idea could even be mooted for the Parliament is a dangerous sign. This puts the entire nation at risk.

You are one of the most reputed judicial minds in the country today as well as a senior leader of the Congress Party which resolved in 1906 and 1938 to build a national system of education. I urge upon you to kindly enlighten the Committee on the questions raised by me and accordingly advise the Sub-Committee working under the chairpersonship of Prof. A.K. Sharma (formerly Director, NCERT) on a 'roadmap' for the new legislation to be drafted by us.

With warm regards,

Yours sincerely,

Anil Sadgopal

Member, CABE Committee on 'Free and Compulsory Education Bill and Other Issues Related to Elementary Education'

To,  
Shri Kapil Sibal  
Chairperson, CABE Committee on 'Free and Compulsory Education Bill and Other Issues Related to Elementary Education'  
Minister of State for Science & Technology  
Govt. of India, New Delhi

Cc.: 1. Shri K.M. Acharya, Member-Secretary, CABE Committee on 'Free and Compulsory Education Bill and Other Issues Related to Elementary Education' & Jt. Secretary, Deptt. of Elementary Education and Literacy, Ministry of HRD.  
2. Prof. A.K. Sharma, Chairperson, Sub-Committee of the aforesaid CABE Committee.

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**General Comments on the Emerging Draft of 19 February 2005  
Prepared by the Prof. AK Sharma Sub-Committee\***

1. This Bill should be drafted with the aim of giving the people of India an instrument in their hands for fighting for their educational rights in a dynamic and incremental manner and compelling the State to fulfill its Constitutional obligations. The emerging draft does not reflect this perspective. Instead, it has features that empower the State at the cost of the people, thereby permitting the State to impose its authority arbitrarily. For instance, there are no punitive provisions which the people can utilize when the Central or the Appropriate Governments or the Local Bodies fail to fulfill their Constitutional obligations. Each provision needs to be scrutinized from this perspective. The perception of the kind of data to be collected and reporting issues is also State-centric (clause 16). So are the mechanically prescribed PTR norms and other parameters in the Schedule which do not envision a dynamic role for Gram Sabhas, PRIs and other local bodies in evolving the idea of a well-functioning school, contributing their knowledge and skills and managing educational institutions with a sense of social accountability.
2. The brightest (if not the only one) spot in the draft output of 17 February was the unambiguous and bold definition of 'Compulsory Education' for which the sub-committee deserved compliments. However, there is an attempt (see the red lettered formulation for clause 2.5) to replace this with the conventional definition which does not empower the people. Is the sub-committee not aware of the Saikia Committee and Law Commission's observations? Or the observations in Supreme Court's Unnikrishnan Judgment (1993)? All these hold the view that the failure of the State to fulfill its obligation under the original Article 45 for almost 40 years has made the provision of elementary education a matter of "compulsion on the State", rather than on the people. This is precisely what your original formulation in 17 February draft said. Why is the sub-committee getting ready to take a retrogressive step when the entire credibility of CABE is at stake?
3. The previous draft of January 2004 (as prepared by the NDA government) attempted to by-pass the PRIs by proposing a range of extra-Constitutional alternative parallel bodies. The draft was widely criticised for this. The emerging draft too has provisions which end up leaving it to the Appropriate Governments to arbitrarily decide whether to violate 73<sup>rd</sup> and 74<sup>th</sup> amendments or not. Like the 2004 draft, this new draft will also allow the Appropriate Governments to by-pass PRIs and constitute parallel bodies

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\* These comments are *in addition* to the letter dated 19.02.2005 sent to Prof. A.K. Sharma and other members of the sub-committee along with a detailed clause-wise feedback on the then emerging draft output of 17 February 2005.

(combined effect of clauses 7.2, 10 and sub-clauses of the Sandhu draft provision). Why is there no clear reference to the 73<sup>rd</sup> and 74<sup>th</sup> amendments? We also must reflect with sensitivity on the Constitutional provisions under Schedules V and VI in this context (refer to our commitment to India's diversity in the Preamble to the emerging Draft Bill). Another matter relates to the need to provide for Managing Committees for the Government and Local Body schools as well in order to institute autonomy with accountability wherein the PRIs and DIETs will have a legitimate role, along the lines of the private schools' Managing Committees. Please consider this if you wish to break the stranglehold of centralized administration which is identified as the prime cause of the deterioration of the quality of government schools. This will be a revolutionary contribution of CAGE in building up a genuine well-functioning Common School System.

4. The definition of the child as given in clause 2.2 violates the amended Article 45 (for the 0-6 age group; read Unnikrishnan Judgment) and the commitment India has given under the UN Convention on the Rights of the Child for all persons upto the age of 18 years, 86<sup>th</sup> Amendment notwithstanding. This is apart from the fact that there is a universal consensus among the educationists that ECCE during the first six years of the child is critical for child development and her access to elementary education (also held by 1986 policy). Denial of this guarantee implies denial of educational rights to almost 17 crore children in this age group. Also, the subcommittee has access to documents which contend that, without guaranteeing secondary education to the 14-18 age group, even the elementary education loses its relevance in the changed socio-economic conditions. Fortunately, CAGE has recognized the significance of this contention by constituting a committee for universalizing secondary education. The sub-committee may take note of this fact.
5. The definitions of 'child with special needs' and 'disability' are highly restrictive (as was the January 2004 Draft Bill) and ignore the emerging international discourse on this subject (these documents have also been made available to the sub-committee in the Background Papers). These definitions do great injustice to the physically and mentally disabled children (at least 6-8% of the 6-14 age group) and entirely ignore the issue of special needs arising out of the economic, social, and cultural discrimination.
6. It may be noted that the categorization of children in clause 3.3.1 is entirely unnecessary and will open floodgates to misuse by the State to institute discriminatory programmes as has already been done in the flawed SSA. This is why we must also review the otherwise well-intended provision for 'special programme' and 'residential bridge courses' in clauses 15 (ii) and (iii) respectively for "Out-of-School Children". Let such implementation strategies, successfully demonstrated by various activist groups, remain in the domain of what can be negotiated between the State and the people; these need not be legislated for. The simpler the law, the better it would be!

7. The concept of neighbourhood school needs to be placed in the perspective of the Common School System and Inclusive Education (the relevant policy and advocacy documents along with research evidence have also been made available to the sub-committee in the Background Papers). Without this commitment, the prevailing tendency of the State to institutionalize a multi-track education system for the poor is likely to overtake.
8. The only justiciable manner of referring to elementary education is to refer to the concept of “*elementary education of equitable quality*”. How would an ambiguous construct like “satisfactory quality” (clause 3.3) become justiciable? Just give this justiciable right under Article 21A and see how the people will take this instrument into their hands to compel the State to fulfill its obligations, provided you also have punitive clauses (missing from the present emerging draft).
9. Why has the sub-committee made no reference to the language issue in elementary education? Can the neighbourhood schools function without a rational language policy in a Common School System? What about Article 350A of the Constitution (the precise number of the Article needs to be checked; I am writing out of memory) which gives a right to every child to study through her mother tongue? Is this not part of educational rights?
10. The most alarming set of provisions in the emerging draft relate to the issue of financial allocation. It is necessary to reproduce the proposed clause 8:
  - (i) The level of per student expenditure on elementary education in real terms shall not be less than the highest of the last five years preceding the commencement of this Act
  - (ii) The rate of growth in per student expenditure on elementary education will be at least equal to the rate of growth in state / local body revenue, and
  - (iii) The share of expenditure on elementary education in the total expenditure will not be less than the highest of the last five years.

This clause has to be read in conjunction with clauses 7, 9 and 10. What do these imply? The last five years (and also the previous years in 1990s) represent the impact of Structural Adjustment Programme under the IMF-World Bank regime as a result of which the Central Government diluted the Operation Blackboard norms, introduced EGS Centres, multi-grade teaching and the farcical ‘bridge courses’ and replaced the regular teacher by a para-teacher (in violation of the NCTE Act). How can this be the norm for fulfilling the State’s obligation to ensure right to education? These five years are also the period when the Central Government ignored the Tapas Majumdar Committee Report which is the only publicly available scientific estimate of the financial requirement for bringing the out-of-school children into the school system (documents showing the dilution of these norms are also available in the Background Papers).

The simplest and the best way to deal with this issue is to merely refer to the requirement of “adequate financial allocation” since this will give an instrument

to the people to incrementally seek higher provisions as per the need to procure right to “elementary education of equitable quality” (the repeated petitions in the Delhi High Court are good examples of how people seek their rights; the Andhra Pradesh Court also gave a similar judgment in 1997). In case, someone insists on referring to some norms, the only available norm will require us to go back to the Kothari Commission in combination with the 1986 Policy (Section 11.4). This calls for a commitment to ensure that the allocation will “uniformly *exceed* 6 per cent of national income” and the allocation to elementary education will *not be less than half* of this outlay. Please mark the italicized expression *exceed* which is indicative of under-investment in education for the past four decades i.e. since Kothari Commission’s recommendation, thereby leading to ever-widening cumulative gap of investment. The Tapas Majumdar Committee estimates may be viewed as a logical exercise in estimating this cumulative gap, requiring an additional investment of less than 0.6% of GDP (at 2005-06 levels) annually for the next ten years. The sub-committee will be treading on a dangerous path if it tries to invent new norms at this stage inspite of an established discourse on this subject (all relevant documents are available in the Background Papers). Please remember that, apart from the political parties and the Parliament, all teachers’ and students’ organisations and social movements are committed to ensure that the public outlay will “uniformly *exceed* 6 per cent of national income”. Do you want to open a pandora’s box merely to legitimize the policy of abdication by the State as practiced during the neo-liberal phase (without a human face) of the Nineties and the beginning of this century?

Lastly, a Financial Memorandum, based on the Tapas Majumdar Committee estimates, must be attached to this Bill. Nothing less than the Tapas Majumdar Committee norms (there is a strong case for certain additional norms) can be considered at this stage. If the sub-committee has access to an alternative financial study on this matter, this study has not yet been made available in the Background Papers. Without doing this, the sub-committee does not have a right to impose new norms arbitrarily.

**Note:** The sub-committee is requested to take into consideration the voluminous policy-related documents, research evidence and advocacy material furnished by various bodies to this CAFE Committee and made available in the Background papers. A specific reference is being made here to the material submitted by the Public Study Group on CAFE Committee, Tamil Nadu FORCES, teachers’ organisations, activist groups and individual academics. The sub-committee is obliged under the democratic process of CAFE to furnish counter-evidence and counter-arguments if it desires to chart a divergent path; it can not just impose its arbitrary ideas without a sound logical and academic basis.

Bhopal,  
22 February 2005

- Prof. Anil Sadgopal  
Member, CAFE Committee  
on Free and Compulsory Education Bill



**Some Selected Questions Posed to the CABE Committee on  
“Free and Compulsory Education Bill  
and Other Issues Related to Elementary Education”**

**Ref.:** Essential Provisions of the Draft Bill recommended by the Sub-committee (Chairperson: Prof. A.K. Sharma) as constituted by the CABE Committee and discussed at its meeting held on 16 April 2005 under the Chairpersonship of Shri Kapil Sibal.

1. Since the above-mentioned recommended essential provisions of the draft Bill (henceforth referred to merely as the 'draft Bill') are based on the premise that Fundamental Right to Education can be given only to the children in the age group of 6-14 years, does this imply that the Committee is going to recommend to the Government **to violate the UN Convention of the Right of the Child**, as ratified by the Indian Parliament, which defines child as “every human being below the age of eighteen years”? Or does it mean that the Committee would expect the Government **to request the Parliament to de-ratify** the above-mentioned UN Convention in the near future and inform the UN of the same?
2. The draft Bill recognizes the following categories of neighbourhood schools:
  - a. Schools wholly funded by the State and obliged to “provide free education to all children studying therein”;
  - b. Schools “substantially funded by the State” i.e. those receiving “more than fifty percent of its [their] annual expenditure” from the State and obliged to “provide free education to all children studying therein”;
  - c. Schools neither wholly nor substantially funded by the State i.e. those receiving “fifty percent or less than fifty percent of its [their] annual expenditure” from the State (including the private unaided schools) and obliged to provide free education to “at least 25% children admitted to class I” or if the school has a pre-primary section, to also “at least 25% of children admitted to the pre-primary section” from among children “belonging to disadvantaged groups and residing within the neighbourhood”;
  - d. “Specified category” of State-funded schools, as may be notified by the Appropriate Government, **not obliged to provide free education to any child residing in the neighbourhood** (the Specified Category will presumably include Navodaya Vidyalayas, Kendriya Vidyalayas, State Government’s residential schools or other types of specially nurtured schools for specific categories of children).

The following questions may be posed:

- Does this mean that the Government has essentially rejected the recommendation of the Education Commission (1964-66) for building a Common School System of Public Education which is founded on the premise that the education system has the responsibility “to bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society”?

- Does this mean that the neighbourhood school concept, as advocated by the Education Commission (1964-66), stand negated since it implied that “each school should be attended by *all* children in the neighbourhood irrespective of caste, creed, community, religion, economic condition or social status, so that there would be no segregation in schools”?
- Does this mean that the Government henceforth will violate the National Policy on Education – 1986 (as modified in 1992) which directed it to take “effective measures . . . . in the direction of the Common School System recommended in the 1968 policy” (NPE-1986, Section 3.2)?
- Does this mean that the Government will also violate the principle of equality as enshrined in the Constitution?

3. The following concerns may be noted:

- i. The privately managed unaided school will have the obligation to provide free education to “at least 25% children admitted to class I” *only if* “a **free school is not available within the prescribed distance**” [Section 11 of the draft Bill read in conjunction with Section 4]. Effectively speaking, this provision **will take away the gains made through the recent Delhi High Court judgment** requiring all private unaided schools of Delhi to provide free education to 25% of the enrolled children as there would be at least one State-funded school in the neighbourhood of the said private school throughout the Delhi State. This is likely to be the case not just in all major cities as well but also the rural areas all over India, except in remote tribal regions. No such conditionality existed in the Delhi High Court judgment making it mandatory for *all* private schools to fulfill this obligation irrespective of whether they had received government land at subsidized rate or not and whether there was a government school in the neighbourhood or not.
- ii. The provision in the recommended draft to reimburse the private unaided schools or the schools not substantially funded by the State for providing free education to 25% of its enrolled students at “a rate equal to the per child expenditure in free schools” further **dilutes the impact of the judgment of the Delhi High Court** which did not have any such provision for reimbursement. This would not have been the case had the recommended draft asked this category of schools to provide free education to all the admitted children and if these children were drawn *entirely from the neighbourhood*, thereby including these schools in the Common School System while maintaining their private management.
- iii. The category (c) in Para 2 above implies that a privately managed aided school can manage to **reduce its obligation** to provide free education to only 25% of its enrolment in class 1 and/or the pre-primary section **by limiting the State aid to 50% or less of its annual expenditure**.

The above concerns lead to the questions posed below:

Can it not be then justifiably held that the emerging draft Bill will end up diluting the impact of the Delhi High Court judgment (and similar judgments that are likely

to be delivered by other High Courts as well), just as was the case with the 86<sup>th</sup> Constitutional Amendment which diluted the impact of the Unnikrishnan Judgment of the Supreme Court (1993)?

Further, does it not imply that a school being funded by the State up to 50% of its annual expenditure will also be reimbursed for providing free education to 25% of its enrolled children, just as would be the case with the private unaided schools? Is that fair?

4. Does the recommended draft Bill assume that elementary education of *equitable quality* can be guaranteed without guaranteeing a right to (a) *free ECCE including pre-school education* up to the age of six years as conceived in NPE-1986; (b) receiving education through the *mother tongue*, including the mother tongue of the children belonging to linguistic minority groups as per Article 350A of the Constitution; and (c) studying in a Common School System of Public Education (including all categories of schools) wherein a *rational language policy based upon the three-language formula* is practiced? In case the answer to this question or any part thereof is in the negative, where and how has the recommended draft Bill made adequate provision to ensure such a right to all children up to 18 years of age?
5. Section 14 of the recommended draft Bill prohibits the deployment of a teacher of a school "wholly or substantially funded by the State . . . . . for any non-educational purpose except for decennial population census, election to local authorities, State legislatures and Parliament, and disaster relief duties." By its silence with regard to the teachers of the *schools not substantially funded by the State (including the private unaided schools)*, this provision gives rise to two kinds of questions:
  - a. Is the draft Bill not concerned about the deployment of teachers for non-educational purposes in the above category of private schools which can happen as per whims of the school management, especially because the draft Bill does not provide for regulation of services of the teachers in such schools? The ambiguity in this matter implies that the draft Bill ignores one of the most critical concerns of the Education Commission (1964-66) that was reflected in recommending the Common School System of Public Education (see Commission's Report, Section 10.05).
  - b. Is the draft Bill not concerned that non-deployment of the teachers of the *schools not substantially funded by the State (including the private unaided schools)* for national duties such as "decennial population census, election to local authorities, State legislatures and Parliament, and disaster relief duties" implies discrimination against the children of the schools of *wholly or substantially funded by the State* who have to frequently 'sacrifice' their studies when their teachers are deployed on such national duties for period ranging from weeks to months? Is it not expected that the draft Bill makes provisions for **ensuring equality in terms of the 'sacrifice'** that the children have to make for the nation, irrespective of the category of schools they study in?

Note: It is time that we acknowledge that all such anomalies will disappear the moment we accept the **Common School System of Public Education as the principal means of guaranteeing right to elementary education of equitable quality** for all children, irrespective of their caste, creed, community, religion, language, region, gender, economic condition or social status. Does the CABE Committee have any other option to achieving this objective that is one of the fundamental concerns of the Constitution? What are the reasons for not accepting the rationality of the only option before India today – i.e. the Common School System of Public Education which will have to be necessarily a far more evolved form than what was conceived by the Education Commission four decades ago?

6. Section 5 (i) of the recommended draft Bill read in conjunction with Sections 8 and 9 gives rise to the following set of questions with regard to the **Constitutional obligation of the State for providing adequate funds for guaranteeing elementary education of equitable quality to all children**:
  - a. Can the State **devolve its Constitutional obligation** to provide adequate funds for guaranteeing elementary education of equitable quality all the way down to the School Management Committees (and presumably to Local Bodies, though this is not specified) – all in the name of getting School Development Plans prepared locally?
  - b. Does this not amount to an attempt to abdicate the State's Constitutional obligation under the rhetoric of *decentralization and people's participation*, as was intended by 86<sup>th</sup> Constitutional Amendment through the addition of Sub-clause (k) of Article 51A in the name of parental duties?
  - c. Are we not concerned about the manner in which caste and class hierarchy and other forms of socio-cultural and gender discrimination operating at local levels will dilute the school development plans and the financial planning? Are we not confusing the progressive role that the State is expected to play in using education as a means of social transformation with the role of the local authorities in preparing decentralized detailed plans for proper utilization of funds and implementation of programmes?
  - d. Is there no need to distinguish between *non-statutory* School Management Committee and *statutory* Local Bodies?
  - e. By assigning the National Commission for Elementary Education a decisive role in apportioning funds between the Central and State/UT Governments, is the draft Bill not attempting to **marginalize the role of the Finance Commission** as provided under the Constitution?

- Prof. Anil Sadgopal  
Member, CABE Committee on  
"Free and Compulsory Education Bill and Other Issues Related to Elementary Education"

09 May 2005,  
Bhopal.

**Some Selected Proposals for Modifications on  
Essential Provisions of the Bill on Free and Compulsory Education\***  
(as recommended by Prof. A.K. Sharma Sub-Committee on 16<sup>th</sup> April 2005)

**A. PREAMBLE**

1. Insert the following two paragraphs after the second paragraph:

And whereas the Government of India acceded to the U.N. Convention of the Right of the Child on December 11, 1992 wherein the child is defined as "every human being below the age of 18 years";

And whereas the Supreme Court of India, in the case of *Unnilrishnan J.P. vs. State of Andhra Pradesh and others* (S.C. 2178, 1993), gave all children a Fundamental Right to "free and compulsory education" until they "complete the age of fourteen years" and stated that this right "flows from Article 21". Further, the Supreme Court in the same judgment ruled that, after the age of fourteen years, the Fundamental Right to education continues to exist but is "subject to limits of economic capacity and development of the State";

2. a) Third paragraph, first line: Delete the phrase "to remedy this situation".  
b) Third paragraph, last line: Add the following phrase in continuation of "under Article 21A of the Constitution" –

"in such manner as the State may, by law, determine;"

3. Re-write the fourth paragraph as proposed below:

And whereas the above Act under the amended Article 45 directs the State to "endeavour to provide early childhood care and education for all children until they complete the age of six years" which, read in conjunction with Article 21 of the Constitution and National Policy on Education – 1986 (Sections 5.1 to 5.4), makes holistic child care and pre-primary education a Fundamental Right for all children in this age group;

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\*This is not an exhaustive proposal for modifications in the draft Bill as recommended by Prof. A.K. Sharma Sub-Committee and discussed by the CABE Committee on 16 April 2005. The proposed modifications relate to only some selected provisions that seem to be determining the central character of the recommended draft. All these concerns have been raised time and again in various meetings and through written submissions. Once these are accepted, wholly or partly, it would become necessary to make a range of associated or follow-up changes in the rest of the draft as well. In addition, a great deal of fine tuning and editorial changes are required elsewhere too in order to make the draft Bill an effective instrument in the hands of the people.

## **B. DEFINITIONS**

### **1. Section 2 (1) (c)**

Re-write the definition of "child" as proposed below:

#### **"Child"**

means a person who has not completed the eighteenth year of age.

### **2. Introduce Definition of Common School System**

Add the following after Section 2 (1) (e):

#### **"Common School System"**

means the National System of Education that is founded on the principles and values enshrined in the Constitution and, as stated in the National Policy on Education – 1986, provides education of a comparable quality to all children irrespective of their caste, creed, language, economic or ethnic background, location or sex, and wherein all categories of schools – i.e. government, local body or private, aided or unaided, or otherwise – will be under obligation to fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms, as may be prescribed under this Act and/or Rules framed from time to time, while having adequate flexibility and academic freedom to explore, innovate and be creative within the broad policy guidelines and the National Curriculum Framework.

### **3. Section 2 (1) (k)**

Re-write the definition of "Fee-Charging School" as proposed below:

#### **"Fee-charging School"**

means a school which, subject to such social and other obligations as may be prescribed, is not obliged under this Act to provide free education to all children studying therein, its participation in the Common School System and role as a neighbourhood school notwithstanding.

### **4. Section 2 (1) (t)**

Re-write the definition of "Neighbourhood School, in relation to a child" as proposed below:

#### **"Neighbourhood School, in relation to a child"**

means a school (including all privately managed and duly recognized government-aided or unaided schools), being part of the Common School System, around the child's residence either within the walking distance or accessible through free and appropriate transport facility, as may be prescribed from time to time under this Act, while giving due consideration to factors such as gender, age, disability (physical or mental), physical terrain, pedagogic quality, linguistic requirements and other socio-economic or cultural constraints that mitigate the neighbourhoodness of a school.

### **C. Sections 3 (2) and 3 (3): Child's Right to Free and Compulsory Education of Equitable Quality**

Section 3 (2) may be re-written as follows:

"A child who is past the age of six years but continues to be out-of-school at the commencement of this Act, shall, in addition to the right specified in Section 3 (1), have the right to be admitted to an age-appropriate grade in a neighbourhood school within one year of the commencement of this Act and provided all necessary support and facilities in order to enable her to participate in and complete the full course of elementary education of equitable quality with the expected educational attainment."

Section 3 (3) is unnecessary and may be deleted as the proposed notion of "special programmes within the neighbourhood school" (including "residential bridge course", as per Section 4A) for the non-enrolled children in the age group of 9-14 years is suggestive of merely a scheme or strategy which can vary from region to region or reformulated from time to time. The law need not restrict the choices or the creativity of the concerned Governments/ Local Bodies/ VECs/ SMCs by specifying a scheme or a strategy. The simpler and less prescriptive is the law, the more effective it is likely to be. This point was made at the second meeting of the Committee held on 24.12.2004.

### **D. Section 4: General Responsibility of the State**

Section 4 may be replaced by the following:

"It shall be the responsibility of the State:

- (1) To either provide or ensure the availability of a neighbourhood school up to elementary stage for every child as part of the Common School System within two years of the commencement of the Act.
- (2) To ensure that every child is provided free elementary education of equitable quality in a neighbourhood school for which purpose she is enrolled in a school in her neighbourhood within a year of the commencement of the Act and then provided all the necessary support – moral, socio-economic, cultural, pedagogic, linguistic or otherwise – to participate in and complete her full course of elementary education of equitable quality with the expected educational attainment.
- (3) To take all necessary measures in order to ensure that all schools (including privately managed and duly recognized government-aided or unaided schools)

are included in the Common School System and participate in the national programme of universalization of elementary education by acting as neighbourhood schools and providing free elementary education of equitable quality to the children in their neighbourhood as prescribed under this Act, irrespective of the type of their management, sources of their income or the Board of Examination with which they might be affiliated.

- (4) To ensure that all schools as part of the Common School System (a) provide education of equitable quality; (b) conform to values enshrined in the Constitution; (c) follow a rational language policy based upon the three-language formula as provided for in the National Policy on Education – 1986 and (d) enable all children to enroll in the neighbourhood school, participate in the educational process and complete the full course of elementary education of equitable quality with the expected educational attainment.
- (5) To take all necessary measures in order to ensure that economic, social, cultural, linguistic, gender, infrastructural, administrative, locational, disability-related or such other barriers do not prevent children from participating in and completing elementary education of equitable quality with the expected educational attainment.”

#### **E. Sections 4B, 4C and 5 (i)**

The above-named Sections 4B (Provision of Facilities for ECCE), 4C (Provision of Facilities to Young Persons to Complete Elementary Education) and 5 (i) regarding provision of financial support to be replaced by the following:

#### **4B. Special Responsibilities of the State**

##### **4B.1 Provision of Facilities for ECCE including Pre-Primary Education**

“It shall be the responsibility of the State:

- (1) To provide for all children below the age of six years free facilities for holistic child care including support for nutrition, health, and social, mental, physical, moral and emotional development as part of integrated early childhood care and education, in each habitation within a maximum period of three years from the commencement of this Act.
- (2) To provide free crèche and two years of pre-primary education in each neighbourhood school as part of integrated early childhood care and education within a maximum period of three years from the commencement of this Act.”

##### **4B.2 Provision of Facilities to Adolescents to Complete Elementary Education**

“If an adolescent has, for whatever reason, been unable to complete elementary education by the age of fourteen years but is continuing her education in a school at that age, she shall continue to be provided free



education in such school till she completes elementary education or attains the age of eighteen years or whichever is earlier.”

#### **4B.3 Provision of Facilities to Adolescents to Complete Secondary and Senior Secondary Education**

“It shall be the responsibility of the State to provide universal and free facilities for secondary and senior secondary education for the children in the 14-18 year age group, with due consideration for various deprived sections of society and focus on the girls and the disabled in each of these sections.”

#### **4B.4 Financial Obligation of the State**

“The Central and Appropriate Governments will have the concurrent obligation to ensure that adequate funds are provided for implementation of this Act for which purpose it shall be ensured that,

- a. the annual public outlay on education as a whole “uniformly exceeds six per cent of the national income”, as provided for in the National Policy on Education – 1986;
- b. at least half of this annual public outlay is allocated to elementary education;
- c. the public outlay for elementary education is adequate for meeting the demands of the cumulative gap of investment building up for decades and resulting in under-provisioning in various aspects of school education, particularly with regard to infrastructural facilities, number of schools provided, number of teachers’ posts created, teacher training facilities, supply of textbooks, resource material and teaching aids and others;
- d. additional funds are allocated as per specially created financial norms for the development of elementary education in the resource-poor States/UTs including the north-eastern States, Scheduled Areas (Fifth Schedule) and Scheduled Districts (Sixth Schedule);
- e. the proportion of the non-salary component of the elementary education budget, indicative of the State’s commitment to improving the quality of education, rises at a rate that is higher than the rate of growth of national GDP, without adversely affecting the remuneration levels and service conditions of the teachers and other school staff; and
- f. the annual expenditure on elementary education by the State rises at a rate that is at least equal to the rate of growth of national GDP.”

#### **F. Section 11: Responsibility of Neighbourhood Schools**

Section 11 is replaced by the following:

“(1) All neighbourhood schools shall provide free elementary education of equitable quality to children in the manner specified below:

- (i) Schools wholly or substantially funded by the State, except schools of specified categories, to all admitted children residing in the neighbourhood; and
- (ii) All schools, not covered under the above sub-clause (i) of Section 11 (1) but including the schools of specified categories, to at least half of the children admitted in class I in the first academic year following the commencement of this Act and each successive year from then onwards, from among children belonging to the disadvantaged groups and residing within the neighbourhood, randomly selected in such manner as may be prescribed under this Act.

[Explanation: “Specified category” in this context means such categories of state-funded schools as may be notified by either the Central Government or the Appropriate Government, as the case may be, and may include Navodaya Vidyalayas, Kendriya Vidyalayas, Sainik Schools, State Government’s residential schools and such other special purpose schools.]

Provided that if a school covered under the above sub-clause (ii) of Section 11 (1) has a pre-primary section, at least half of the children admitted to the pre-primary section shall also be admitted, in addition to those admitted as per sub-clause (ii), in the first academic year following the commencement of this Act and each successive year from then onwards, from among children belonging to the disadvantaged groups and residing within the neighbourhood, randomly selected in such manner as may be prescribed under this Act, and shall receive free pre-primary education of at least two years.

(2) For every child admitted in pursuance of Section 11 (1) (ii), the Appropriate Government/ Local Body shall reimburse the concerned school at a rate equal to the per child annual expenditure incurred by the State (averaged out for the state-funded schools of the relevant State/UT, including overhead costs) for providing free elementary education of equitable quality as well as for the state-funded ECCE centres in such manner as may be prescribed under this Act.

Provided that if a school is under obligation to either the Central Government or the Appropriate Government or any of the authorities/ agencies representing or acting on their behalf as a consequence of having received land/ building/ equipment/ other facilities either free of cost or at subsidized rates, such schools shall not be entitled for reimbursement under Section 11 (2) to the extent they are obliged under the law to provide free education to the children belonging to the disadvantaged groups residing in the neighbourhood of the school.

Provided also that if a school or the Society/ Trust/ Body owning the school has benefited, directly or indirectly, from grants/ loans/ tax exemption/ subsidies/ other financial benefits extended, wholly or partly, by the State, reimbursement under Section 11 (2) will be discounted proportionately as may be prescribed under this Act.”

**Note:** The Alternate Formulation under Section 11 of the draft Bill is unacceptable as it violates the Constitutional principle of equality, apart from also contradicting the Common school System. The Government will have neither the moral nor the legal ground to ask the private unaided

schools to shoulder their national obligation under this Act if it continues to prevent the state-funded school systems from fulfilling the same obligation.

### **G. Section 14: Prohibition of Deployment of Teachers for Non-educational Purpose**

Section 14 of the recommended draft Bill is discriminatory to the children of the Government/ Local Body/ government-aided privately managed schools and, therefore, needs to be replaced by the following:

“No teacher or any other staff member of a neighbourhood school that is part of the Common School System, including the privately managed and duly recognized aided or unaided schools, shall be deployed for any non-educational purpose except for the decennial population census, election to Local Bodies, State Legislatures or the Parliament, and disaster relief duties, as and when duly notified by the Central or Appropriate Government/ Local Body.”

“Further, while issuing notification for deployment, the Central or Appropriate Government/ Local Body shall not discriminate, in whatsoever manner, among the teachers and other staff members of various categories of neighbourhood schools on account of the type of school's management, sources of school's income or the Boards of Examinations with which the schools under its jurisdiction may be affiliated.”

### **H. Provision for Punitive Action Against the State and its Authorities/ Officials/ Representatives**

The following provision needs to be added in order to empower parents/ guardians and the children to take appropriate punitive action, in case of violation of the Act, against the Central Government, Appropriate Government and the Local Bodies and their authorities/ officials/ representatives:

“In case the Central Government, Appropriate Government or the Local Body or any of the authorities/ officials/ representatives acting on their behalf either fail to take appropriate action as per the provisions of this Act or violate the Act in letter or spirit, the affected parents/ guardians or the concerned children or a public interest organisation or any other person or group of persons with a *locus standi* shall have the right to move the relevant court of law for punitive action against the authorities/ officials/ representatives in question and seek appropriate compensation as well as punitive damages.”

- Prof. Anil Sadgopal  
Member, CABE Committee on

“Free and Compulsory Education Bill and Other Issues Related to Elementary Education”

27 May 2005,  
Bhopal.

**Some Implications of  
165th Report of the Law Commission of India (November 1998)**  
[Ref.: Draft Bill of 27<sup>th</sup> May 2005 – Sections 13 (1) (ii) and (iii) ]

“6.6.2 The unaided institutions should be made aware that recognition, affiliation or permission to send their children to appear for the Government/Board examination also casts a corresponding social obligation upon them towards the society. The recognition/ affiliation/ permission aforesaid is meant to enable them to supplement the effort of the State and not to enable them to make money. Since they exist and function effectively because of such recognition/ affiliation/ permission granted by public authorities, they must and are bound to serve the public interest. For this reason, the unaided educational institutions must be made **to impart free education to 50% of the students** admitted to their institutions. This principle has already been applied to medical, engineering and other colleges imparting professional education and there is no reason why the schools imparting primary/ elementary education should not be placed under the same obligation (emphasis ours).”

- Law Commission of India  
165<sup>th</sup> Report (November 1998), p. 79

The aforesaid extract from the 165<sup>th</sup> Report of the Law Commission of India (November 1998) needs to be viewed in the context of the modifications proposed by me in the Draft Bill dated 27<sup>th</sup> May 2005 vide my 12-page written submission which I presented to the Committee at its meeting held on 5<sup>th</sup> June 2005. Under section entitled “F. Chapter IV” on pp. 9-10 of my submission, I had proposed that the privately managed unaided schools and “schools of specified categories” should be under an obligation to provide free elementary education of equitable quality to “at least half of the children admitted in class I” instead of “at least 25% children admitted in class I” as proposed in the Draft Bill dated 27<sup>th</sup> May 2005. During the meeting, I had raised three objections with respect to the floor level of the obligation of such schools for providing free education being fixed arbitrarily at 25% level and not considering a higher level of obligation. Let me elaborate on each of them:

- i. The figure of 25% has no sanctity in the context of this Bill whatsoever as this figure has its origin in an entirely different context of the recent Delhi High Court judgment based upon the agreement between the Delhi Government or DDA and the private unaided schools in Delhi which had received land either free of cost or at highly subsidized rates. Such unaided schools are obliged under the agreement to provide free education all the way up to class XII (not just till class VIII) to the children from deprived sections of society to the extent of 20% to 25% of the school enrolment. Further, please note that this free education is to be provided *without any reimbursement from the government* whatsoever – entirely at the cost of the school management.

- ii. The 165<sup>th</sup> Report of the Law Commission of India, as cited above, had recommended that 50% of the students admitted in the unaided schools be given free education as an obligation of such schools. At this point, the Member-Secretary of this CABE Committee referred to the Free and Compulsory Education Bill proposed by the Law Commission in Annexure A of the aforesaid report wherein the “recognized school” (presumably unaided) shall provide free education to “twenty per cent of the students admitted to any class upto and inclusive of eighth standard.” The Member-Secretary had asked me to provide reference to the 50% requirement in the Law Commission’s report. Now that I have provided the precise extract above from the report, may I also take this opportunity to explain the cause of origin of the 20% figure in the Bill proposed by the Commission. The Commission was under pressure to contend with the clause (3) of Article 21A as proposed under Constitution (Eighty-Third Amendment) Bill, 1997, which read as follows:

“(3) The State shall not make any law, for free and compulsory education under clause (2), in relation to the educational institutions not maintained by the State or not receiving aid out of State funds.”

This said clause was fiercely opposed by various public interest groups and academics during the public hearings arranged by the Department-related Parliamentary Standing Committee in October-November 1997. Even then, the Ministry had preferred to “lobby” against any provision requiring the unaided schools to fulfill their national obligation flowing out of Fundamental Right to Education. While referring to this stand of the Ministry in Section 6.1.4 (p. 66), the Law Commission made the following observation on this matter:

“However, applying the ratio of Unnikrishnan case, it is perfectly legitimate for the State or the affiliating Board, as the case may be, to require the institution *to admit and impart free education to fifty per cent of the students* as a condition for affiliation or for permitting their students for the Government/ Board examination. *To start with, the percentage can be prescribed as twenty. . . .* This proposal would enable the unaided institutions *to join* the national endeavour to provide education to the children of India and to that extent will also help reduce the financial burden upon the State (emphasis ours).”

By *starting* with 20%, the unaided schools are enabled *to merely join* the national endeavour but, in order to fulfill the national obligation, the Law Commission opined that 50% of the admitted students be drawn from the deprived sections and provided free education, *without any reimbursement of the cost* from the State whatsoever!

- iii. The floor level figure of 25% is too small a figure in an unaided school where the remaining 75% of the children will come from the privileged sections and would tend to dominate (and also discriminate against) the underprivileged

children and act as being 'superior' to them. Indeed, a whole range of such reactions were reported by the Principals of such so-called 'public' schools in news papers in the wake of the Delhi High Court judgment i.e. in 2003-2004 indicating that the under-privileged child is likely to be made to feel inferior in their schools (the Principals were not even apologetic in making such claims about this most undesirable character of their schools). It is precisely for this reason that a figure like "at least 50% of the admitted students" makes the situation somewhat equal for both sections of students and, therefore, relatively more just for the underprivileged. The underprivileged children, if constituting at least 50% of the enrolment, may even manage to impact on the socio-cultural ambience of the school in their favour (and also in favour of the privileged children) – i.e. this situation is far more equal, just and humane (for both the under-privileged and privileged sections) than the situation could ever be with the figure of 25%.

Now, I turn my attention to the issue of re-imburement by the government for the students admitted in privately managed unaided schools for free education. The proponents of re-imburement in this committee have argued that there are a large number of low fee-charging schools that barely manage to meet their expenses, especially in non-metro situations. It is for them, they argued, that re-imburement becomes a necessary condition in order to enable them to provide free education to certain minimum percentage of the admitted students. The argument against the provision of re-imburement, however, flows out of ethical and legal foundations of such schools. These schools, being run by Societies or Trusts registered under the 1860 Act or the Trust Acts, are founded with a philanthropic motive i.e. to promote education as a social cause. This calls upon the concerned Societies or Trusts to ensure that the philanthropic motive is never lost sight of which includes provision of free education to a minimum percentage of students, as also observed by the Law Commission in Section 6.1.4 cited above. This ethical and legal expectation holds even for the low fee-charging "small town" privately managed schools. Provision of free education is integral to the philanthropic motive for which the schools were started in the first place. The Law Commission was unambiguous in not providing for re-imburement. However, the draft Bill of 27<sup>th</sup> May 2005 violates this principle by providing for re-imburement not only for the unaided schools but also for the "schools of specified categories" that include State-funded schools such as Kendriya Vidyalayas and Navodaya Vidyalayas. Ironically, the reimbursement provided for in the Draft Bill would amount to dilution of the impact of the Delhi High Court judgment as it required the unaided schools that had received land free of cost or at subsidized rates from the government to provide free education at their cost. Nothing could be more irrational!

This takes me to the issue of the "schools of specified categories" which has been the source of much debate and tension in the committee. This category includes schools like Kendriya Vidyalayas and Navodaya Vidyalayas started by the Central Government as well as the range of special-purpose schools operated by the State/UT Governments (e.g. residential schools of Andhra Pradesh or Sarvodaya/

Pratibha Vidyalayas of Delhi or Utkrishta Vidyalayas of Madhya Pradesh). Such schools are clearly a consequence of (a) the lack of a Common School System in the country; (b) poor quality of education imparted in government schools; (c) violation of the three-language formula and (d) false notions of “talent”, “intelligence” and IQ as also educationally untenable ideas of designing special schools for such so-called “talented” children. The Committee would certainly benefit by examining the debate on the questionable premises underlying Navodaya Vidyalayas as documented in the Report of the NPE Review Committee or Acharya Ramamurti Committee (1990). There is yet another dimension to the dominant tendency both at the Centre and the States/UTs to establish such special category schools. This is with regard to the undesirable policy of either establishing a tiny number of better quality schools at high per child cost for a handful of children or improving the quality of a tiny number of the existing schools at the cost of the majority of the schools, instead of adopting a rational and universal policy and/or programme of improving the quality of all schools. Such a tendency amounts to escaping from the State’s obligation to universally improve the quality of all schools for all children and thus move towards a Common School System. This preferred political practice may seem like a short-term populist measure but does not lead to universal improvement of the quality of education. At best, these special purpose schools need to be viewed as historical aberrations of policy making in India. It is an irony that the draft Bill of 27<sup>th</sup> May 2005 attempts to legitimize such unsound policies. In case the government representatives in the committee/ drafting group have some inexplicable compulsions to continue these unsound policies, I would suggest that the draft Bill may limit the damage by specifying the existing institutions that are intended to be covered under this category, instead of leaving it open for future governments (both at the Centre and the States/ UTs) to arbitrarily add new type of institutions through notification, as and when it suits them. Or else, the process of notification of categories of schools under this provision should be made contingent upon a prior approval in the State Legislature or the Parliament, as the case may be, to be followed by permission of an external body like the National Commission for Elementary Education proposed in the Draft Bill.

I have already pointed to the irrationality of the provision for the aided schools to provide free education to “at least such proportion of their admitted children as its annual recurring aid bears to its annual recurring expenses subject to a minimum of 25 per cent” [Section 13 (1) (ii)]. Most of the aided schools in the country are fully aided schools and are already acting essentially as government schools in providing free education to all the admitted children, while maintaining their private management and initiative. The purpose of this provision, therefore, is not clear at all. This provision was also not present in the previous two drafts. There was indeed no real need for adding a provision for such a proportionate exercise in the third draft. I am afraid that this provision is likely to be misused by the aided schools to manipulate their budgets and expenditure statements to falsely claim that the proportion of the annual aid from the government is a much smaller proportion of the total recurring expenditure than what appears to be the case today. In other words, this provision will be used to reduce or dilute the obligation of the aided

schools that they are at present fulfilling by providing free education to all the admitted children.

There is one more issue in this context that requires reconsideration. The Draft Bill of 27<sup>th</sup> May 2005 requires the unaided schools and schools of specified categories to provide free education to “at least 25% children admitted to class 1”[Section 13 (1) (iii)]. Why is the Draft Bill ambiguous with respect to the future of the children after they have been admitted in class I under this provision? I hope it is only an inadvertent error that was also present in the Draft Bills discussed at the meetings of the committee held on 12<sup>th</sup> March 2005 and 16<sup>th</sup> April 2005 respectively. I have already provided specific formulation in my submission on 5<sup>th</sup> June 2005 (p. 10) to take care of this ambiguity. Apart from this, I wish to point out that it would take these schools at least eight years after the commencement of this Act in order to have 25% of the admitted children from the deprived sections residing in the neighbourhood if the proposed principle is followed. This implies that these schools will become ‘genuine’ neighbourhood schools only after eight years have elapsed after the Act; even then they would have a majority of their students not necessarily from the neighbourhood. Is this what is intended? The solution lies in not limiting admission to only class I but to provide for **admission to the children from the neighbourhood in any class up to class VIII** on the basis of their eligibility but adhering to the principle of random selection and giving the unaided schools a timeframe of a maximum of three years from the commencement of the Act to fulfill this long-standing obligation.

In light of the above observations, I appeal to the Chairperson to make all the consequent changes in the Draft Bill of 27<sup>th</sup> May 2005 before it is submitted to the Union Minister of Human Resource Development. To this extent, the formulations submitted by me on 5<sup>th</sup> June 2005 also stand modified.

The rest of the modifications I proposed vide my submission on 5<sup>th</sup> June 2005, especially those with respect to the Preamble, Common School System, right of the 0-6 year and 14-18 year age group children and financial provisions, continue to be valid. I sincerely hope that these proposals as also all the previous submissions made by me will be fully considered while finalizing the Draft Bill.

- Prof. Anil Sadgopal  
Member, CABE Committee on  
“Free and Compulsory Education Bill and Other Issues Related to Elementary Education”

14 June 2005,  
Bhopal.



**Revision of Modifications Proposed in the Draft Bill  
of 27<sup>th</sup> May 2005**

**Ref.:** Modifications proposed by Anil Sadgopal, Member, CABE Committee, in the Draft Bill of 27<sup>th</sup> May 2005 through a 12-page submission dated 4<sup>th</sup> June 2005.

**Sub.:** Revision of the aforesaid modifications in light of the deliberations at the fifth meeting of the CABE Committee held on 5<sup>th</sup> June 2005.

Please refer to the 12-page submission (dated 4<sup>th</sup> June 2005) by me proposing modifications with respect to the Draft Bill of 27<sup>th</sup> May 2005. These were discussed at the fifth meeting of the CABE Committee held on 5<sup>th</sup> June 2005. In light of these deliberations, I would like to suggest the following revisions in the modifications proposed by me vide my 12-page submission dated 4<sup>th</sup> June 2005. Only the revisions considered necessary in the aforesaid proposed modifications are indicated below. The remaining text of my 12-page submission remains unaltered.

Page 3

**4. Introduce Definition of Common School System**

Insert the following improved definition after Section 2 (1) (e):

**"Common School System"**

means the National System of Education that is founded on the principles and values enshrined in the Constitution and provides education of a comparable quality to all children in an equitable manner irrespective of their caste, creed, language, gender, economic or ethnic background, location or disability (physical or mental), and wherein all categories of schools – i.e. government, local body or private, aided or unaided, or otherwise – will be under obligation to (a) fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms and (b) ensure free education to the children in a specified neighbourhood from an age group and/or up to a stage, as may be prescribed under this Act and/or Rules framed from time to time, while having adequate flexibility and academic freedom to explore, innovate and be creative and appropriately reflecting the geo-cultural and linguistic diversity of the country, within the broad policy guidelines and the National Curriculum Framework for School Education as approved by the Central Advisory Board of Education.

**Page 6 – Insert this modification after “18. Section 2 (1) (ee)”**

**Section 2 (1) (ff)**

**“Specified Category”**

means Kendriya Vidyalayas, Navodaya Vidyalayas and other such categories of state-funded schools as may be notified by the appropriate government with prior approval of the National Commission for Elementary Education to be followed by ratification by the State Legislature or the Parliament, as the case may be.

[Rationale for the change of definition as proposed above: The issue of the “schools of specified categories” has been the source of much debate and tension in the committee. This category includes schools like Kendriya Vidyalayas and Navodaya Vidyalayas started and funded by the Central Government as well as the range of special-purpose schools operated by the State/UT Governments (e.g. residential schools of Andhra Pradesh or Sarvodaya/ Pratibha Vidyalayas of Delhi or Utkrishta Vidyalayas of Madhya Pradesh). Such schools are clearly a consequence of (a) the lack of a Common School System in the country; (b) poor quality of education imparted in government schools; (c) violation of the three-language formula and (d) false notions of “talent”, “intelligence” and IQ as also educationally untenable ideas of designing special schools for such so-called “talented” children. The committee would certainly benefit by examining the debate on the questionable premises underlying Navodaya Vidyalayas as documented in the Report of the NPE Review Committee (1990). There is yet another dimension to the dominant tendency both at the Centre and the States/UTs of establishing such special category schools. This is with regard to the undesirable policy of either establishing a tiny number of better quality schools at high per child cost for a handful of children or improving the quality of a tiny number of the existing schools at the cost of the majority of the schools, instead of adopting a rational and universal policy and/or programme of improving the quality of all schools. Such a tendency amounts to escaping from the State's obligation to universally improve the quality of all schools for all children and thus move towards a Common School System. This preferred political practice may seem like a short-term populist measure but does not lead to universal improvement of the quality of education. At best, these special purpose schools need to be viewed as historical aberrations of policy making in India. It is an irony that the draft Bill of 27<sup>th</sup> May 2005 attempts to legitimize such unsound policies. In case the government representatives in the committee/ drafting group have some inexplicable compulsions to continue these unsound policies, I would suggest that the draft Bill may limit the damage by specifying the existing institutions that are intended to be covered under this category, rather than leaving it open for future governments (both at the Centre and the States/UTs) to add new type of institutions through notification, as and when it suits them. Or else, the process of notification of categories of schools under this provision should be made contingent upon a prior approval in the State Legislature or the Parliament, as the case may be, to be followed by permission of an external body like the National Commission for Elementary Education.]

**Page 7**

**Insert a new clause (6) in Section 5**

(6) To institute and implement an effective mechanism through the appropriate government for regular monitoring of enrolment, participation and the attainment status

of every child, and taking all necessary corrective measures, wherever and whenever required, so that every child completes the prescribed course of elementary education, and to make such information available in the public domain both through an online interactive internet facility accessible to the public at all times and print medium in all the official languages of the Union and the concerned State/UT.

[First Note: The aforesaid clause is a modified version of the existing clause (3) of Section 5 in the draft Bill of 27<sup>th</sup> May 2005.]

[Second Note: Attention is drawn to Section 20A, p. 24, of the Draft Bill of 2<sup>nd</sup> April 2005, which provided for an online Register of Children for "all children in the 0-14 year age group" to be "created and maintained" by an "autonomous National/State Child Data Authority". This was an excellent provision, entirely in consonance with the concept of Right to Information and was aimed at empowering the citizens in general and parents/guardians in particular *vis-à-vis* the State. Why was this not retained in the latest draft of 27<sup>th</sup> May 2005? I recall that this matter was raised twice at the fifth meeting but the response each time was rather evasive. Let me plead with the Chairperson to bring back this provision, thereby institutionalizing a democratic mechanism for social intervention in elementary education.]

Page 8

## 7.2 Provision of Facilities to Adolescents to Complete Elementary Education – 4<sup>th</sup> Line

Insert the word "course" after "prescribed".

Page 9

### Chapter III: Obligation of the State

Insert the following new Section between the existing Sections 8 and 9:

"8A. The Central and Appropriate Governments shall be jointly responsible for ensuring that no existing school campus and/or building or any other related infrastructural facility or any part thereof, belonging to a State-owned or State-funded school, will be either disposed off, through sale, lease or otherwise, or contracted out to a private body, be it a Trust/Society, non-government/voluntary organization, corporation or otherwise, for whatever purpose, including educational, without prior approval of the National Commission for Elementary Education to be followed by ratification by the State Legislature or the Parliament, as the case may be.

[Rationale for the insertion of a new Section as proposed above: For the past 6-7 years, there have been increasing number of reports from different States/UTs of the appropriate governments being in a hurry to dispose of the prime property belonging to the State-owned or State-funded schools, especially in urban areas, under varying pretexts. Often, the negotiations begin under the pretext of handing over the school campus to a corporation for maintenance purpose or leasing a part thereof for setting up a kitchen-cum-store for mid-day meals or such other reasons. Later, however, these arrangements end up in either the sale or lease of the campus and its infrastructure (in some cases along with the teachers) to private bodies having no

experience whatsoever of educating children from the deprived sections of society. Some of the state governments have recently unabashedly put out advertisements calling for tenders to take over the government school infrastructure. This is an alarming trend in the name of "public-private partnership", promoted by the same lobbies that are now lobbying with this CABE Committee against inclusion of even the rather weak provision for giving free education to "at least 25% of the children admitted in class I". An unambiguous provision is required to put a stop to this political practice of dubious value that will pre-empt all the gains to be made through this Bill. The matter is of such great priority that, if necessary, a special meeting may be convened to deliberate on this matter.]

## Pages 9-10

### Section 13: Responsibility of Schools

The 165<sup>th</sup> Report of the Law Commission of India (November 1998) had recommended that "the unaided educational institutions must be made to impart free education to 50% of the students admitted to their institutions. (Section 6.6.2, p. 79)" This recommendation has a major implication for the provision in Section 13 (1) (iii) which requires the "unaided schools and the schools of specified categories" to provide free education to "at least 25% children admitted to class I". The Law Commission also did not recommend any re-imbursement to the unaided schools from the government for the free education provided by them, unlike Section 13 (2) which makes such a provision. The issue of the "schools of specified categories" has been discussed earlier under Section 2 (1) (ff) regarding the definition of "specified category". These and other related issues have been elaborated in the companion document entitled, "Some Implications of 165th Report of the Law Commission of India (November 1998)". In light of this, it is critical that the entire Section 13 is re-cast to ensure the following:

- i. The obligation of the "unaided schools and schools of specified categories" to provide free education to "at least 25% of the admitted children" be raised to "at least 50% of the admitted children" and such admission must not be restricted to only class I but must be allowed in all classes up to class VIII as per rules to be prescribed under the Act.
- ii. Section 13 (1) (i) on State school may include the aided schools as well and Section 13 (1) (ii) may be deleted altogether.
- iii. There is no reason whatsoever for the provision for reimbursing either the unaided schools or the "schools of specified categories" by the government for free education provided by them. The clause (2) of Section 13 may, therefore, be deleted.
- iv. It is inexplicable as to why the obligation of the State for providing Early Childhood Care and Education (ECCE), as provided for in the previous Draft Bill of 2<sup>nd</sup> April, has been eliminated and pre-school education which formed part of ECCE, has been shifted to Section 13 of the latest version of 27<sup>th</sup> May 2005 as a responsibility of the schools under its clause (3). Such a deliberate shift of obligation *from the State to the schools* has no rational basis whatsoever. Also, pre-school education would make sense only if it is provided for the duration of at least two years for children between the ages of four to six years. This clause (3) may also be recast in accordance with the proposed modification

entitled "7.1 Provision of Facilities for ECCE including Pre-Primary Education" (cf. page 8 of my 12-page submission dated 4<sup>th</sup> June 2005).

## Page 11

### **Section 17: Prohibition of Deployment of Teachers for Non-educational Purpose**

This Section attempting to limit the non-educational deployment of government school teachers to only the "the decennial population census, election to local authorities, State Legislatures and Parliament, and disaster relief duties" is discriminatory to the children studying in the state-funded schools as their teachers will be required to be frequently absent from the schools. However, there will be no such adverse impact on the education of the children studying in the unaided schools. There should be no discrimination between the children of the state-funded schools and unaided schools. When this matter was brought up at the fifth meeting of the Committee, the Chairperson informed that this would require a Constitutional amendment as the Constitution required that only the government machinery be deployed on election duties; no such restriction is placed, however, for decennial census and disaster relief duties. It is proposed that Section 17 of the draft Bill be amended right away to cover the teachers and other staff of the unaided schools at least for the decennial census and disaster relief duties. For the election duties, the committee may recommend unambiguously that the necessary amendment may be made in the Constitution so that the children of both the state-funded and unaided schools make the same sacrifice for the sake of India's democracy – a concern so eloquently articulated by Prof. Krishna Kumar, Director, NCERT, at one of the meetings of the committee.

## Page 11

The queries raised with respect to the teachers' appointment, qualifications and remuneration and accountability under Sections 20 (1), 22 and 24 respectively were not deliberated upon at the fifth meeting of the Committee apparently due to paucity of time. This is most unfortunate as there is no opportunity to discuss these issues before submission of the report. How will this matter be resolved democratically?

## Page 12

### **Sections 26 (ii) (c) and Section 27**

The afore-mentioned Sections deal with the use of mother tongue as the medium of education at the primary stage. Four major concerns were listed in my 12-page submission but again these were not discussed due to apparent shortage of time. This is a central issue and must be given due priority. It is unclear as to how the matter can be resolved rationally without the combined framework of the Common School System and practice of three-language formula.

Page 12

**Provision for Punitive Action Against the State and its Authorities/ Officials/ Representatives**

There has been no focused discussion at any of the meetings on the need to empower *the parents/ guardians or the children* to take punitive action against the State or any of its authorities/ officials/ representatives for violation of the Act or dereliction of duty. A provision for payment of suitable compensation by a defaulting appropriate government or the local authority was included in the previous draft Bill of 2<sup>nd</sup> April 2005 but was removed when the latest version of 27<sup>th</sup> May 2005 was prepared. Why? In case the proposed National Commission for Elementary Education was not found to be an appropriate body to deal with this responsibility, as was suggested in the previous draft Bill, why was not an alternative provision formulated with the same intention? The committee has also not deliberated upon requirement for any punitive provision against those "unaided schools and schools of specified categories" which do not fulfill their obligations as provided for in Chapter IV of the Act. These are major lacunae. In a country with a history of the State not fulfilling the Constitutional Directives under the original Article 45 for more than half a century after independence and implicit State support to the rapid growth of the private school lobby since the 1970s (including the "back door" permissions being granted quietly in recent years to international private bodies to open/ affiliate schools, without any public debate whatsoever), these lacunae amount to alarming collusion between the State and the global market forces attempting to create a legitimate space for profit through school education. Concrete documentary evidence in support of such a phenomenon has come to light in the CAGE Committee on Universalisation of Secondary Education.

It must be noted that this Act cannot become an effective instrument of law unless it empowers the parents/ guardians/ children with appropriate powers and mechanisms to seek punitive action against the authorities or claim compensatory damages (including punitive damages) from them for violation of the Act and/or dereliction of duty.

On the contrary, a retrogressive provision of punishment has been included in Section 19 (3) of the latest draft *against the parents* who "consistently default in facilitating the participation of their child/ward in elementary education." This is indeed an unfortunate addition. Several members of the Committee have correctly reiterated at various meetings that the State has no right in envisaging a provision of punishment against the so-called "defaulting" parents when it has itself failed to fulfill its Constitutional obligations flowing from Articles 39, 41, 43 and 46 in general and the original Article 45 in particular by not,

- (a) ensuring that "the tender age of children [is] not abused" and the citizens are "not forced by economic necessity to enter avocations unsuited to their age or strength" (Article 39e);
- (b) ensuring that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" (Article 39f);
- (c) taking adequate measures for making "right to an adequate means of livelihood" available to its citizens (Article 39a);

- (d) making effective provision, within the limits of its economic capacity and development, for securing right to work and education (Article 41);
- (e) securing even bare Minimum Wage for various category of workers (which provides neither for education nor for health) while Article 43, in contrast, directs the State to secure "a living wage" for a dignified life; incidentally, this issue is an important element of the Common Minimum Programme of the UPA Government as well;
- (f) providing universal elementary education of equitable quality to all children; and
- (g) promoting "with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes . . . . ." (Article 46).

One must recall, even at the risk of being repetitive, that all the afore-mentioned Articles, though placed in Part IV of the Constitution, must be read in conjunction with Article 21, as per Supreme Court's judgment in the Unnikrishnan case (1993). As long as the above obligations are not fulfilled, the State has no moral right to provide for punishment to the parents, irrespective of howsoever mild the proposed punishment might be. Apart from this, such punishment is likely to be counter-productive and unlikely to help in moving towards UEE. This ethical principle, however, is of primary significance and must be respected in letter and spirit.

- Prof. Anil Sadgopal  
Member, CABE Committee on

"Free and Compulsory Education Bill and Other Issues Related to Elementary Education"

14 June 2005,  
Bhopal.

On Saturday, 19 Feb. 2005/2:15 AM, Anil Sadgopal wrote:

Dear Prof. Sharma,

Dr. Shantha Sinha e-mailed to me the output of your 17 Feb meeting and sought my comments. Since I saw the e-mail at 10 PM yesterday (i.e. 18 Feb), I had no option but to work overnight in order to ensure that it reaches you before you begin your meeting on 19 Feb at 11 AM. In this hurry, I have not been able to think deeply and holistically on this important matter but I have inserted (through a Window programme) about 57 comments in colour in the margins of the Draft Bill for your kind attention. I hope one of the computers available to you at home or NIEPA or MHRD will have the necessary programme to read my comments (some computers lack this programme).

I suggest the following name for the Bill for your consideration:

**“The Children’s Right to Education (with Equitable Quality, Social Justice and Dignity) Bill, 2005”.**

This name places the Bill firmly in the framework of child rights.

Let me add that there is no need to have a provision on ‘content and process’ as this cannot be (and should not be) legislated for. Any legislation can be misused to push partisan agenda. It would suffice to say that that the ‘no aspect of the school curriculum will violate the values and principles enshrined in the Constitution’. If you wish, you may further add that ‘the teachers and schools would have the flexibility of pursuing a curriculum as long as it is within the framework of the Constitution and is in consonance with the National Curriculum Framework as approved by the CIBE and the core curriculum as specified in the National Policy of Education. Nothing more. Please consider this viewpoint. At the full committee meeting I would be willing to further explain this point.

The financial norm mentioned is entirely unacceptable as it legitimizes the abdication by the State during the 1990s. There should be a Financial Memorandum attached to the Bill along the lines of the Tapas Majumdar Committee Report unless you wish to add more financial components not considered by the Tapas Majumdar Committee.

Why have you not mentioned the Common School System? I think it could be referred to appropriately in the preamble of the Act. This will give meaning to the Neighbourhood clause.

No punitive clauses for the authorities or the government have been provided so far in the Draft. I am sure that you would take care of this aspect.

I wish to compliment you and your group for a powerful definition of ‘Compulsory Education’. If we maintain this, the Act drafted by us will make historic amends to the wrongs inflicted by the State on the children of India during the past 57 years. Please



stick to this definition and also ensure that no provision or phrase later in the Act will dilute the impact of this definition (I sense such dilution at some places).

Do let me have your feedback.

Regards and best wishes for the meeting,

Yours sincerely,

Anil Sadgopal

Attachment: Draft Bill with comments in colour in the margins.

To,

Prof. A.K. Sharma

Chairperson, Sub-Committee constitute by CABE Committee on  
"Free and Compulsory Education Bill and Other Issues Related to Elementary  
Education"

Cc.: Sh. K.M. Acharya, Member-Secretary, CABE Committee on Free and Compulsory Education Bill and  
Dr. Nalini Juneja, NIEPA with request to make this letter and my comments available to the sub-committee  
members for their deliberations.

On Tuesday, 22 Feb. 2005/11:00 AM, Anil Sadgopal wrote:

Dear Prof. Sharma,

I am happy to learn that my letter dated 19<sup>th</sup> February 2005 along with the clause-wise comments on the 17<sup>th</sup> February draft prepared by your sub-committee was shared with the members at the meeting held later on the same forenoon. Thank you, indeed, for making this possible.

However, I find that none of my comments seem to have made any impact on the output of the 19<sup>th</sup> February meeting. Now that you are meeting again today (i.e. 22<sup>nd</sup> February) in the afternoon, I take this opportunity to share my views on the emerging draft (see Attachment No. 1). This time I will not give you my clause-wise comments. This is because the comments I sent you on 19<sup>th</sup> February still stand since hardly anything substantive has been changed except for a disturbing attempt being made to replace the definition of compulsory education (possibly the only bright spot in the 17<sup>th</sup> February draft) and the draft provision (being numbered as clause 11) as prepared by Mrs. Sandhu. On the latter draft provision as drafted by Mrs. Sandhu, I am attaching my clause-wise comments (see Attachment No. 2).

I would like to record here that you are not merely chairing a routine government sub-committee. You are guiding a historic process in the reconstruction of India as conceived

by our rich freedom struggle against imperialism. The CAFE Committee on drafting a new Bill was set up by CAFE in order to make up for the lapse since independence to fulfill the dream of the freedom struggle that culminated in the Constitution. We have gained this opportunity only because of the great mandate given by the people of India last year against (a) communal and divisive politics; and (b) globalization without a human face (to use Prime Minister Dr. Manmohan Singh's bold expression). The history will not forgive us if we dither at this juncture.

I say this as I am also part of the CAFE Committee which constituted the sub-committee under your leadership.

With warm regards,

Yours sincerely,

Anil Sadgopal

Attachments:

1. General observations on the emerging draft Bill of 19<sup>th</sup> February 2005.
2. Clause-wise comments on the draft provision (being numbered as Clause 11), as drafted by Mrs. Sandhu.

To,  
 Prof. A.K. Sharma  
 Chairperson, Sub-committee,  
 CAFE Committee on Free and Compulsory Education Bill  
 New Delhi

Cc.: Sh. K.M. Acharya, Member-Secretary, CAFE Committee on Free and Compulsory Education Bill and Dr. Nalini Juneja, NIEPA, with request to make this letter and the two attachments available to the sub-committee members for their deliberations.

On Sat, 07 May 2005, Anil Sadgopal wrote:

Dear Shri Acharya,

I wish to put on record that I made the following points towards the end of the fourth meeting of the CAFE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" held on 16<sup>th</sup> April 2005:

1. When will the Regional Meetings on the draft Bill be held as decided in the first meeting of the committee?
2. The draft Bill should be put on the website before it is sent to CAFE as also discussed (but probably not recorded) in the first meeting of the committee.

when I repeat the same request at the fourth meeting on 16th April 2005, it is not recorded. This makes me somewhat uncomfortable, especially when the decision to do so is being postponed and the responses are rather ambiguous. Please advise.

You must have by now seen my e-mail sent to you yesterday enclosing some selected questions for the consideration of both the new group headed by Shri Kapil Sibal and the full committee. For the time being, this is what I could do to share my views with the committee.

Let us surely meet at the earliest and discuss all matters of mutual concern, as suggested by you.

Regards,

Yours sincerely,

Anil Sadgopal

Cc.:

1. Sh. Kapil Sibal, Chairperson, CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" & Minister of State for Science and Technology, Anusandhan Bhavan, Rafi Marg, New Delhi 110 001.
2. Dr. Nalini Juneja, NIEPA, New Delhi 110 016.

3. What is the redressal mechanism for those members of the committee whose suggestions are not being heeded?

Apart from all the other issues raised by me during the above meeting, I hope, the above-mentioned points made by me along with the chairperson's responses would also be included in the Minutes.

You would soon hear from me again with regard to my other suggestions on the draft Bill discussed on 16<sup>th</sup> April.

Thanks for your kind co-operation and with regards,

Yours sincerely,

Anil Sadgopal

To,

Sh. K.M. Acharya

Member-Secretary

CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" & Joint Secy., Deptt. Of Elementary Education & Literacy, Ministry of HRD, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi 110 001.

Cc.:

1. Sh. Kapil Sibal, Chairperson, CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" & Minister of State for Science and Technology, Anusandhan Bhavan, Rafi Marg, New Delhi 110 001.
2. Dr. Nalini Juneja, NIEPA, New Delhi 110 016.

On Tue, 10 May 2005, Anil Sadgopal wrote:

Dear Shri Acharya,

I had spoken to Dr. Nalini Juneja in person at NIEPA on 5th May afternoon about these points expressed by me at the fourth meeting of the CABE Committee and she advised me to write to you. Now that you say the Minutes have been approved by the chairperson and dispatched, I request you to kindly rectify the Minutes in light of my points as already conveyed to you on 7th May. I won't be able to write to you again on this matter as I work single-handedly without any support staff or office. As you know, I am engaged in three CABE Committees and two of NCERT committees and I barely manage my affairs. I hope you would be kind to me and take care of my request to rectify the Minutes.

I reread the Minutes of the first meeting held on 22 November 2004 and notice that my suggestion regarding placing of the draft report on the website was not recorded. Again,

**Revision of Modifications Proposed in the Draft Bill  
of 27<sup>th</sup> May 2005**

**Ref.:** Modifications proposed by Anil Sadgopal, Member, CABE Committee, in the Draft Bill of 27<sup>th</sup> May 2005 through a 12-page submission dated 4<sup>th</sup> June 2005.

**Sub.:** Revision of the aforesaid modifications in light of the deliberations at the fifth meeting of the CABE Committee held on 5<sup>th</sup> June 2005.

Please refer to the 12-page submission (dated 4<sup>th</sup> June 2005) by me proposing modifications with respect to the Draft Bill of 27<sup>th</sup> May 2005. These were discussed at the fifth meeting of the CABE Committee held on 5<sup>th</sup> June 2005. In light of these deliberations, I would like to suggest the following revisions in the modifications proposed by me vide my 12-page submission dated 4<sup>th</sup> June 2005. Only the revisions considered necessary in the aforesaid proposed modifications are indicated below. The remaining text of my 12-page submission remains unaltered.

Page 3

**4. Introduce Definition of Common School System**

Insert the following improved definition after Section 2 (1) (e):

**"Common School System"**

means the National System of Education that is founded on the principles and values enshrined in the Constitution and provides education of a comparable quality to all children in an equitable manner irrespective of their caste, creed, language, gender, economic or ethnic background, location or disability (physical or mental), and wherein all categories of schools – i.e. government, local body or private, aided or unaided, or otherwise – will be under obligation to (a) fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms and (b) ensure free education to the children in a specified neighbourhood from an age group and/or up to a stage, as may be prescribed under this Act and/or Rules framed from time to time, while having adequate flexibility and academic freedom to explore, innovate and be creative and appropriately reflecting the geo-cultural and linguistic diversity of the country, within the broad policy guidelines and the National Curriculum Framework for School Education as approved by the Central Advisory Board of Education.

**Page 6 – Insert this modification after “18. Section 2 (1) (ee)”**

**Section 2 (1) (ff)**

**“Specified Category”**

means Kendriya Vidyalayas, Navodaya Vidyalayas and other such categories of state-funded schools as may be notified by the appropriate government with prior approval of the National Commission for Elementary Education to be followed by ratification by the State Legislature or the Parliament, as the case may be.

[Rationale for the change of definition as proposed above: The issue of the “schools of specified categories” has been the source of much debate and tension in the committee. This category includes schools like Kendriya Vidyalayas and Navodaya Vidyalayas started and funded by the Central Government as well as the range of special-purpose schools operated by the State/UT Governments (e.g. residential schools of Andhra Pradesh or Sarvodaya/ Pratibha Vidyalayas of Delhi or Utkrishta Vidyalayas of Madhya Pradesh). Such schools are clearly a consequence of (a) the lack of a Common School System in the country; (b) poor quality of education imparted in government schools; (c) violation of the three-language formula and (d) false notions of “talent”, “intelligence” and IQ as also educationally untenable ideas of designing special schools for such so-called “talented” children. The committee would certainly benefit by examining the debate on the questionable premises underlying Navodaya Vidyalayas as documented in the Report of the NPE Review Committee (1990). There is yet another dimension to the dominant tendency both at the Centre and the States/UTs of establishing such special category schools. This is with regard to the undesirable policy of either establishing a tiny number of better quality schools at high per child cost for a handful of children or improving the quality of a tiny number of the existing schools at the cost of the majority of the schools, instead of adopting a rational and universal policy and/or programme of improving the quality of all schools. Such a tendency amounts to escaping from the State's obligation to universally improve the quality of all schools for all children and thus move towards a Common School System. This preferred political practice may seem like a short-term populist measure but does not lead to universal improvement of the quality of education. At best, these special purpose schools need to be viewed as historical aberrations of policy making in India. It is an irony that the draft Bill of 27<sup>th</sup> May 2005 attempts to legitimize such unsound policies. In case the government representatives in the committee/ drafting group have some inexplicable compulsions to continue these unsound policies, I would suggest that the draft Bill may limit the damage by specifying the existing institutions that are intended to be covered under this category, rather than leaving it open for future governments (both at the Centre and the States/UTs) to add new type of institutions through notification, as and when it suits them. Or else, the process of notification of categories of schools under this provision should be made contingent upon a prior approval in the State Legislature or the Parliament, as the case may be, to be followed by permission of an external body like the National Commission for Elementary Education.]

**Page 7**

**Insert a new clause (6) in Section 5**

(6) To institute and implement an effective mechanism through the appropriate government for regular monitoring of enrolment, participation and the attainment status

of every child, and taking all necessary corrective measures, wherever and whenever required, so that every child completes the prescribed course of elementary education, and to make such information available in the public domain both through an online interactive internet facility accessible to the public at all times and print medium in all the official languages of the Union and the concerned State/UT.

[First Note: The aforesaid clause is a modified version of the existing clause (3) of Section 5 in the draft Bill of 27<sup>th</sup> May 2005.]

[Second Note: Attention is drawn to Section 20A, p. 24, of the Draft Bill of 2<sup>nd</sup> April 2005, which provided for an online Register of Children for "all children in the 0-14 year age group" to be "created and maintained" by an "autonomous National/State Child Data Authority". This was an excellent provision, entirely in consonance with the concept of Right to Information and was aimed at empowering the citizens in general and parents/guardians in particular *vis-à-vis* the State. Why was this not retained in the latest draft of 27<sup>th</sup> May 2005? I recall that this matter was raised twice at the fifth meeting but the response each time was rather evasive. Let me plead with the Chairperson to bring back this provision, thereby institutionalizing a democratic mechanism for social intervention in elementary education.]

Page 8

## 7.2 Provision of Facilities to Adolescents to Complete Elementary Education – 4<sup>th</sup> Line

Insert the word "course" after "prescribed".

Page 9

### Chapter III: Obligation of the State

Insert the following new Section between the existing Sections 8 and 9:

"8A. The Central and Appropriate Governments shall be jointly responsible for ensuring that no existing school campus and/or building or any other related infrastructural facility or any part thereof, belonging to a State-owned or State-funded school, will be either disposed off, through sale, lease or otherwise, or contracted out to a private body, be it a Trust/Society, non-government/voluntary organization, corporation or otherwise, for whatever purpose, including educational, without prior approval of the National Commission for Elementary Education to be followed by ratification by the State Legislature or the Parliament, as the case may be.

[Rationale for the insertion of a new Section as proposed above: For the past 6-7 years, there have been increasing number of reports from different States/UTs of the appropriate governments being in a hurry to dispose of the prime property belonging to the State-owned or State-funded schools, especially in urban areas, under varying pretexts. Often, the negotiations begin under the pretext of handing over the school campus to a corporation for maintenance purpose or leasing a part thereof for setting up a kitchen-cum-store for mid-day meals or such other reasons. Later, however, these arrangements end up in either the sale or lease of the campus and its infrastructure (in some cases along with the teachers) to private bodies having no

experience whatsoever of educating children from the deprived sections of society. Some of the state governments have recently unabashedly put out advertisements calling for tenders to take over the government school infrastructure. This is an alarming trend in the name of "public-private partnership", promoted by the same lobbies that are now lobbying with this CABE Committee against inclusion of even the rather weak provision for giving free education to "at least 25% of the children admitted in class I". An unambiguous provision is required to put a stop to this political practice of dubious value that will pre-empt all the gains to be made through this Bill. The matter is of such great priority that, if necessary, a special meeting may be convened to deliberate on this matter.]

## Pages 9-10

### Section 13: Responsibility of Schools

The 165<sup>th</sup> Report of the Law Commission of India (November 1998) had recommended that "the unaided educational institutions must be made to impart free education to 50% of the students admitted to their institutions. (Section 6.6.2, p. 79)" This recommendation has a major implication for the provision in Section 13 (1) (iii) which requires the "unaided schools and the schools of specified categories" to provide free education to "at least 25% children admitted to class I". The Law Commission also did not recommend any re-imbursement to the unaided schools from the government for the free education provided by them, unlike Section 13 (2) which makes such a provision. The issue of the "schools of specified categories" has been discussed earlier under Section 2 (1) (ff) regarding the definition of "specified category". These and other related issues have been elaborated in the companion document entitled, "Some Implications of 165th Report of the Law Commission of India (November 1998)". In light of this, it is critical that the entire Section 13 is re-cast to ensure the following:

- i. The obligation of the "unaided schools and schools of specified categories" to provide free education to "at least 25% of the admitted children" be raised to "at least 50% of the admitted children" and such admission must not be restricted to only class I but must be allowed in all classes up to class VIII as per rules to be prescribed under the Act.
- ii. Section 13 (1) (i) on State school may include the aided schools as well and Section 13 (1) (ii) may be deleted altogether.
- iii. There is no reason whatsoever for the provision for reimbursing either the unaided schools or the "schools of specified categories" by the government for free education provided by them. The clause (2) of Section 13 may, therefore, be deleted.
- iv. It is inexplicable as to why the obligation of the State for providing Early Childhood Care and Education (ECCE), as provided for in the previous Draft Bill of 2<sup>nd</sup> April, has been eliminated and pre-school education which formed part of ECCE, has been shifted to Section 13 of the latest version of 27<sup>th</sup> May 2005 as a responsibility of the schools under its clause (3). Such a deliberate shift of obligation from the State to the schools has no rational basis whatsoever. Also, pre-school education would make sense only if it is provided for the duration of at least two years for children between the ages of four to six years. This clause (3) may also be recast in accordance with the proposed modification



entitled "7.1 Provision of Facilities for ECCE including Pre-Primary Education" (cf. page 8 of my 12-page submission dated 4<sup>th</sup> June 2005).

## Page 11

### Section 17: Prohibition of Deployment of Teachers for Non-educational Purpose

This Section attempting to limit the non-educational deployment of government school teachers to only the "the decennial population census, election to local authorities, State Legislatures and Parliament, and disaster relief duties" is discriminatory to the children studying in the state-funded schools as their teachers will be required to be frequently absent from the schools. However, there will be no such adverse impact on the education of the children studying in the unaided schools. There should be no discrimination between the children of the state-funded schools and unaided schools. When this matter was brought up at the fifth meeting of the Committee, the Chairperson informed that this would require a Constitutional amendment as the Constitution required that only the government machinery be deployed on election duties; no such restriction is placed, however, for decennial census and disaster relief duties. It is proposed that Section 17 of the draft Bill be amended right away to cover the teachers and other staff of the unaided schools at least for the decennial census and disaster relief duties. For the election duties, the committee may recommend unambiguously that the necessary amendment may be made in the Constitution so that the children of both the state-funded and unaided schools make the same sacrifice for the sake of India's democracy – a concern so eloquently articulated by Prof. Krishna Kumar, Director, NCERT, at one of the meetings of the committee.

## Page 11

The queries raised with respect to the teachers' appointment, qualifications and remuneration and accountability under Sections 20 (1), 22 and 24 respectively were not deliberated upon at the fifth meeting of the Committee apparently due to paucity of time. This is most unfortunate as there is no opportunity to discuss these issues before submission of the report. How will this matter be resolved democratically?

## Page 12

### Sections 26 (ii) (c) and Section 27

The afore-mentioned Sections deal with the use of mother tongue as the medium of education at the primary stage. Four major concerns were listed in my 12-page submission but again these were not discussed due to apparent shortage of time. This is a central issue and must be given due priority. It is unclear as to how the matter can be resolved rationally without the combined framework of the Common School System and practice of three-language formula.

Page 12

**Provision for Punitive Action Against the State and its Authorities/ Officials/ Representatives**

There has been no focused discussion at any of the meetings on the need to empower *the parents/ guardians or the children* to take punitive action against the State or any of its authorities/ officials/ representatives for violation of the Act or dereliction of duty. A provision for payment of suitable compensation by a defaulting appropriate government or the local authority was included in the previous draft Bill of 2<sup>nd</sup> April 2005 but was removed when the latest version of 27<sup>th</sup> May 2005 was prepared. Why? In case the proposed National Commission for Elementary Education was not found to be an appropriate body to deal with this responsibility, as was suggested in the previous draft Bill, why was not an alternative provision formulated with the same intention? The committee has also not deliberated upon requirement for any punitive provision against those "unaided schools and schools of specified categories" which do not fulfill their obligations as provided for in Chapter IV of the Act. These are major lacunae. In a country with a history of the State not fulfilling the Constitutional Directives under the original Article 45 for more than half a century after independence and implicit State support to the rapid growth of the private school lobby since the 1970s (including the "back door" permissions being granted quietly in recent years to international private bodies to open/ affiliate schools, without any public debate whatsoever), these lacunae amount to alarming collusion between the State and the global market forces attempting to create a legitimate space for profit through school education. Concrete documentary evidence in support of such a phenomenon has come to light in the CBE Committee on Universalisation of Secondary Education.

It must be noted that this Act cannot become an effective instrument of law unless it empowers the parents/ guardians/ children with appropriate powers and mechanisms to seek punitive action against the authorities or claim compensatory damages (including punitive damages) from them for violation of the Act and/or dereliction of duty.

On the contrary, a retrogressive provision of punishment has been included in Section 19 (3) of the latest draft *against the parents* who "consistently default in facilitating the participation of their child/ward in elementary education." This is indeed an unfortunate addition. Several members of the Committee have correctly reiterated at various meetings that the State has no right in envisaging a provision of punishment against the so-called "defaulting" parents when it has itself failed to fulfill its Constitutional obligations flowing from Articles 39, 41, 43 and 46 in general and the original Article 45 in particular by not,

- (a) ensuring that "the tender age of children [is] not abused" and the citizens are "not forced by economic necessity to enter avocations unsuited to their age or strength" (Article 39e);
- (b) ensuring that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" (Article 39f);
- (c) taking adequate measures for making "right to an adequate means of livelihood" available to its citizens (Article 39a);

- (d) making effective provision, within the limits of its economic capacity and development, for securing right to work and education (Article 41);
- (e) securing even bare Minimum Wage for various category of workers (which provides neither for education nor for health) while Article 43, in contrast, directs the State to secure "a living wage" for a dignified life; incidentally, this issue is an important element of the Common Minimum Programme of the UPA Government as well;
- (f) providing universal elementary education of equitable quality to all children; and
- (g) promoting "with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes . . . ." (Article 46).

One must recall, even at the risk of being repetitive, that all the afore-mentioned Articles, though placed in Part IV of the Constitution, must be read in conjunction with Article 21, as per Supreme Court's judgment in the Unnikrishnan case (1993). As long as the above obligations are not fulfilled, the State has no moral right to provide for punishment to the parents, irrespective of howsoever mild the proposed punishment might be. Apart from this, such punishment is likely to be counter-productive and unlikely to help in moving towards UEE. This ethical principle, however, is of primary significance and must be respected in letter and spirit.

- Prof. Anil Sadgopal  
Member, CABE Committee on

"Free and Compulsory Education Bill and Other Issues Related to Elementary Education"

14 June 2005,  
Bhopal.

On Saturday, 19 Feb. 2005/2:15 AM, Anil Sadgopal wrote:

Dear Prof. Sharma,

Dr. Shantha Sinha e-mailed to me the output of your 17 Feb meeting and sought my comments. Since I saw the e-mail at 10 PM yesterday (i.e. 18 Feb), I had no option but to work overnight in order to ensure that it reaches you before you begin your meeting on 19 Feb at 11 AM. In this hurry, I have not been able to think deeply and holistically on this important matter but I have inserted (through a Window programme) about 57 comments in colour in the margins of the Draft Bill for your kind attention. I hope one of the computers available to you at home or NIEPA or MHRD will have the necessary programme to read my comments (some computers lack this programme).

I suggest the following name for the Bill for your consideration:

**“The Children’s Right to Education (with Equitable Quality, Social Justice and Dignity) Bill, 2005”.**

This name places the Bill firmly in the framework of child rights.

Let me add that there is no need to have a provision on ‘content and process’ as this cannot be (and should not be) legislated for. Any legislation can be misused to push partisan agenda. It would suffice to say that that the ‘no aspect of the school curriculum will violate the values and principles enshrined in the Constitution’. If you wish, you may further add that ‘the teachers and schools would have the flexibility of pursuing a curriculum as long as it is within the framework of the Constitution and is in consonance with the National Curriculum Framework as approved by the CIBE and the core curriculum as specified in the National Policy of Education. Nothing more. Please consider this viewpoint. At the full committee meeting I would be willing to further explain this point.

The financial norm mentioned is entirely unacceptable as it legitimizes the abdication by the State during the 1990s. There should be a Financial Memorandum attached to the Bill along the lines of the Tapas Majumdar Committee Report unless you wish to add more financial components not considered by the Tapas Majumdar Committee.

Why have you not mentioned the Common School System? I think it could be referred to appropriately in the preamble of the Act. This will give meaning to the Neighbourhood clause.

No punitive clauses for the authorities or the government have been provided so far in the Draft. I am sure that you would take care of this aspect.

I wish to compliment you and your group for a powerful definition of ‘Compulsory Education’. If we maintain this, the Act drafted by us will make historic amends to the wrongs inflicted by the State on the children of India during the past 57 years. Please

stick to this definition and also ensure that no provision or phrase later in the Act will dilute the impact of this definition (I sense such dilution at some places).

Do let me have your feedback.

Regards and best wishes for the meeting,

Yours sincerely,

Anil Sadgopal

Attachment: Draft Bill with comments in colour in the margins.

To,  
Prof. A.K. Sharma  
Chairperson, Sub-Committee constitute by CABE Committee on  
“Free and Compulsory Education Bill and Other Issues Related to Elementary Education”

Cc.: Sh. K.M. Acharya, Member-Secretary, CABE Committee on Free and Compulsory Education Bill and Dr. Nalini Juneja, NIEPA with request to make this letter and my comments available to the sub-committee members for their deliberations.

On Tuesday, 22 Feb. 2005/11:00 AM, Anil Sadgopal wrote:

Dear Prof. Sharma,

I am happy to learn that my letter dated 19<sup>th</sup> February 2005 along with the clause-wise comments on the 17<sup>th</sup> February draft prepared by your sub-committee was shared with the members at the meeting held later on the same forenoon. Thank you, indeed, for making this possible.

However, I find that none of my comments seem to have made any impact on the output of the 19<sup>th</sup> February meeting. Now that you are meeting again today (i.e. 22<sup>nd</sup> February) in the afternoon, I take this opportunity to share my views on the emerging draft (see Attachment No. 1). This time I will not give you my clause-wise comments. This is because the comments I sent you on 19<sup>th</sup> February still stand since hardly anything substantive has been changed except for a disturbing attempt being made to replace the definition of compulsory education (possibly the only bright spot in the 17<sup>th</sup> February draft) and the draft provision (being numbered as clause 11) as prepared by Mrs. Sandhu. On the latter draft provision as drafted by Mrs. Sandhu, I am attaching my clause-wise comments (see Attachment No. 2).

I would like to record here that you are not merely chairing a routine government sub-committee. You are guiding a historic process in the reconstruction of India as conceived

by our rich freedom struggle against imperialism. The CAFE Committee on drafting a new Bill was set up by CAFE in order to make up for the lapse since independence to fulfill the dream of the freedom struggle that culminated in the Constitution. We have gained this opportunity only because of the great mandate given by the people of India last year against (a) communal and divisive politics; and (b) globalization without a human face (to use Prime Minister Dr. Manmohan Singh's bold expression). The history will not forgive us if we dither at this juncture.

I say this as I am also part of the CAFE Committee which constituted the sub-committee under your leadership.

With warm regards,

Yours sincerely,

Anil Sadgopal

Attachments:

1. General observations on the emerging draft Bill of 19<sup>th</sup> February 2005.
2. Clause-wise comments on the draft provision (being numbered as Clause 11), as drafted by Mrs. Sandhu.

To,

Prof. A.K. Sharma

Chairperson, Sub-committee,

CAFE Committee on Free and Compulsory Education Bill

New Delhi

Cc.: Sh. K.M. Acharya, Member-Secretary, CAFE Committee on Free and Compulsory Education Bill and Dr. Nalini Juneja, NIEPA, with request to make this letter and the two attachments available to the sub-committee members for their deliberations.

On Sat, 07 May 2005, Anil Sadgopal wrote:

Dear Shri Acharya,

I wish to put on record that I made the following points towards the end of the fourth meeting of the CAFE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" held on 16<sup>th</sup> April 2005:

1. When will the Regional Meetings on the draft Bill be held as decided in the first meeting of the committee?
2. The draft Bill should be put on the website before it is sent to CAFE as also discussed (but probably not recorded) in the first meeting of the committee.

3. What is the redressal mechanism for those members of the committee whose suggestions are not being heeded?

Apart from all the other issues raised by me during the above meeting, I hope, the above-mentioned points made by me along with the chairperson's responses would also be included in the Minutes.

You would soon hear from me again with regard to my other suggestions on the draft Bill discussed on 16<sup>th</sup> April.

Thanks for your kind co-operation and with regards,

Yours sincerely,

Anil Sadgopal

To,  
Sh. K.M. Acharya  
Member-Secretary  
CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" & Joint Secy., Deptt. Of Elementary Education & Literacy, Ministry of HRD, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi 110 001.

Cc.:

1. Sh. Kapil Sibal, Chairperson, CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" & Minister of State for Science and Technology, Anusandhan Bhavan, Rafi Marg, New Delhi 110 001.
2. Dr. Nalini Juneja, NIEPA, New Delhi 110 016.

On Tue, 10 May 2005, Anil Sadgopal wrote:

Dear Shri Acharya,

I had spoken to Dr. Nalini Juneja in person at NIEPA on 5th May afternoon about these points expressed by me at the fourth meeting of the CABE Committee and she advised me to write to you. Now that you say the Minutes have been approved by the chairperson and dispatched, I request you to kindly rectify the Minutes in light of my points as already conveyed to you on 7th May. I won't be able to write to you again on this matter as I work single-handedly without any support staff or office. As you know, I am engaged in three CABE Committees and two of NCERT committees and I barely manage my affairs. I hope you would be kind to me and take care of my request to rectify the Minutes.

I reread the Minutes of the first meeting held on 22 November 2004 and notice that my suggestion regarding placing of the draft report on the website was not recorded. Again,

when I repeat the same request at the fourth meeting on 16th April 2005, it is not recorded. This makes me somewhat uncomfortable, especially when the decision to do so is being postponed and the responses are rather ambiguous. Please advise.

You must have by now seen my e-mail sent to you yesterday enclosing some selected questions for the consideration of both the new group headed by Shri Kapil Sibal and the full committee. For the time being, this is what I could do to share my views with the committee.

Let us surely meet at the earliest and discuss all matters of mutual concern, as suggested by you.

Regards,

Yours sincerely,

Anil Sadgopal

Cc.:

1. Sh. Kapil Sibal, Chairperson, CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education" & Minister of State for Science and Technology, Anusandhan Bhavan, Rafi Marg, New Delhi 110 001.
2. Dr. Nalini Juneja, NIEPA, New Delhi 110 016.



Submission from Dr. Shaulha Saha

## 1. THE NEED FOR LINKING ABOLITION OF CHILD LABOR WITH EDUCATION UP TO THE AGE OF 14.

### Article 36

**Pandit Lakshmi Kanta Maitra:** (West Bengal: General): Mr. Vice-President, Sir I beg to move:

" That in article 36, the words ' every citizen is entitled to free primary education and ' be deleted."

Sir, I will strictly obey the injunction given by you regarding curtailment of speeches. I will put in half a dozen sentences to explain the purpose of this amendment. If this amendment is accepted by the House, as I hope it will be, then the article will read as follows: " **The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.**" .....

**Mr. Naziruddin Ahmad :** (West Bengal : Muslim) : Sir, I beg to move:

" That in article 36, for the word ' education ', the words ' primary education ' be substituted."

**The Honourable Dr. B. R. Ambedkar :** Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words " every citizen is entitled to free primary education and ". But I am not prepared to accept the amendment of my Friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my Honourable Friend, [29] Mr. Naziruddin Ahmad had referred to article 18, which forms part of the Fundamental Rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word " primary " is quite inappropriate in that particular clause, and I therefore oppose his amendment.

*[The motion of Pandit Maitra was adopted. The motion of Naziruddin Ahmad was negatived.]*

Article 36, as amended, was added to the Constitution.

**2 THE NEED TO RESPECT ARTICLES UNDER FUNDAMENTAL RIGHTS AS SUPREME AND ANY OTHER LAW ENACTED PRIOR TO THAT WHICH IS INCONSISTENT WITH THE FUNDAMENTAL RIGHTS STANDS ABROGATED. IN OUR CONTEXT THEREFORE WE NEED TO AMEND THE CHILD LABOR PROHIBITION (AND REGULATION) ACT 1986, AS IT IS INCONSISTENT WITH THE PROPOSED DRAFT ON FREE AND COMPULSORY EDUCATION AND INTRODUCE THE PROVISIONS FOR A TOTAL ABOLITION OF CHILD LABOR IN ALL ITS FORMS IN THE TEXT OF THE NEW DRAFT.**

The Honourable Dr. B. R. Ambedkar : From the speeches which have been made on article 13 and article 8 and the words " existing law " which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8, which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law " occurring in the sub-clauses to article 13, would read " existing law " in so far as it is not inconsistent with the fundamental rights. There is no doubt that that is the way in which the phrase " existing law " in the subclauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase " existing law " occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using the phrase " existing law " in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading " existing law ", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to be caused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6) I will read for illustration sub-clause (3) with my amendment.

" Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order. "

I am accepting Mr. Bhargava's amendment and so I will add the word " reasonable " also.

" Imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause. "

Now, the words " in so far as it imposes " to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only if it is not in conflict with the Fundamental Rights.

### 3. THE NEED FOR COMMON SCHOOL SYSTEM

#### ARTICLE 35

With regard to amendment No. 323 moved by Professor K. T. Shah, the object of which is to add " Scheduled Castes " and " Scheduled Tribes " along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the Scheduled Castes and Scheduled tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, " Well, we are making special provision for the Scheduled Castes ". To my mind they can safely say so by taking shelter under the article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment.

**Amit-Kaushik**

**From:** mvfindia [mvfindia@mvfindia.com]  
**Sent:** 31 May 2005 2:58 PM  
**To:** anil sadgopal  
**Cc:** amit.edu@sb.nic.in; aks\_edu1@vsnl.net; rgovinda@niepa.org; nalinijuneja@niepa.org; kmacharya@sb.nic.in; kmacharya@nic.in; kapilsibal@hotmail.com  
**Subject:** 27th May Draft

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Shantha\_Sinha\_s\_C  
omments-2.doc...

Dear Mr. Acharya  
I see this as our last chance. I may have reopened some issues but find that they are all important. Enclosed are my comments.  
Regards,  
Shantha

On Sat, 28 May 2005 anil sadgopal wrote :  
> On Sat, 27 May 2005, Anil Sadgopal wrote:  
>  
> Dear Shri Acharya,  
>  
> Please refer to my e-mail message dated 09 May 2005  
> attaching therewith some of the selected questions I  
> wished to pose before the CABE Committee with regard to  
> the essential provisions of the draft Bill as  
> recommended by the Sub-Committee chaired by Prof. A.K.  
> Sharma and discussed at the fourth meeting of the  
> committee held on 16 April 2005 (see second attachment)  
> . I sincerely hope that those questions have been  
> helpful to the group being chaired by Shri Kapil Sibal  
> at present to work out the next draft recommendations.  
>  
> You would recall that you had suggested to me to work  
> out specific formulations which I would like the  
> Committee to consider for improvement in the draft  
> recommendations. I am, therefore, attaching a 7-page  
> document containing some selected proposals for  
> modifications (see first attachment). These proposals  
> relate to only such provisions that seem to be  
> determining the central character of the draft  
> recommendations discussed on 16 April 2005. Essentially,  
> all these proposals relate to the concerns I have  
> repeatedly raised at the meetings and through written  
> submissions. This document is yet another attempt in a  
> format suggested by yourself to convey my concerns and  
> views to the Committee. I would like to think that this  
> time I would be more effective than I have been in the  
> past.  
>  
> At this juncture I would like to refer to my 4-page  
> general comments dated 22 February 2005 that I sent to  
> Prof A.K. Sharma Sub-Committee with reference to the  
> then emerging draft recommendations of 19 February  
> 2005. These comments provide the necessary perspective  
> in which modifications being proposed in the current  
> document can be appreciated. For ready reference, I am  
> attaching herewith the general comments of 22 February  
> as well (see third attachment).

JS (EE) I

E-mail from Mr  
Shantha Sinha, in  
attachment, may  
be seen for info.  
direction.

✓  
Shantha

31/5  
Enclosed comments  
recd. from Mr Sinha  
may also be circulated  
in the 5th June meeting

Secy, EEM

At 31

1.6  
JS (EE) I  
as per  
A.K.S. 31.6

...e you have any queries, please do not hesitate to  
...act me by telephone (0755-2560438).

I wish to assure you that I would be happy to assist in  
> finalization of the final recommendations in any manner  
> the Committee deems fit, as long as certain basic  
> principles, values and policy guidelines are adhered to.

> As before, I would be grateful if a copy of this e-mail  
> and attachment is provided to Smt. Kumud Bansal,  
> Secretary, Deptt. of Elementary Education and Literacy  
> whose e-mail id is still not available with me. Could  
> you please send me Smt. Bansal's e-mail id so that I  
> won't bother you with this request in future? Thank you.

> With regards,

> Yours sincerely,

> Anil Sadgopal

> Three attachments.

> Copies to:

- > 1. Sh. Kapil Sibal, Chairperson, CABE Committee on  
> "Free and Compulsory Education Bill and Other Issues  
> Related to Elementary Education" & Minister of State  
> for Science and Technology, Anusandhan Bhavan, Rafi  
> Marg, New Delhi 110 001.
- > 2. Smt. Kumud Bansal, Secretary, Deptt. of EE &  
> Literacy, MHRD and Member, Group headed by Shri Kapil  
> Sibal.
- > 3. Prof. A.K. Sharma, Former Director, NCERT and Member,  
> Group headed by Shri Kapil Sibal.
- > 4. Prof. R. Govinda, NIEPA and Member, Group headed by  
> Shri Kapil Sibal.
- > 5. Dr. Nalini Juneja, NIEPA and In-charge, CABE  
> Committee Secretariat.
- > 6. Prof. Krishna Kumar, Director, NCERT.
- > 6. Other non-official members of the Committee.

> To,

> Sh. K.M. Acharya

> Member-Secretary

> CABE Committee on "Free and Compulsory Education Bill  
> and Other Issues Related to Elementary Education" &  
> Joint Secy., Deptt. Of Elementary Education & Literacy,  
> Ministry of HRD, Shastri Bhavan, Dr. Rajendra Prasad  
> Road, New Delhi 110 001.

> A

Comments on the CABE Committees Draft on Right to Education Bill 2005  
27<sup>th</sup> May 2005

(Shantha Sinha)

We are drafting a historic Act. This would transform not just the lives of children but the democratic fabric of our great nation.

This Act cannot be a statement that formalizes all the existing anomalies in the system in the name of being 'practical or impractical'.

It must soar to a high ethical plane and send a clear and straightforward message that 'no matter what all our children will be in schools for equity and justice and this is a non-negotiable'.

Therefore all the comments made by Prof. Anil Sadgopal must be considered seriously.

In addition to the comments of Prof. Anil Sadgopal I have the following remarks:

1. Must 'elementary education' not be replaced by 'school education up to class X'? Considering the fast changing and globalized world, education up to class 8 is not enough.  
Also considering the need to educate children up to the time they reach 18 years it must include education up to class 10.
2. In chapter II (6.ii) there is a mention of striking off the child's name from the rolls. Why this clause at all? What happens to the child after her name is struck off? What is the State's obligation towards that child? How can this child re-enter school if she is motivated to do so?
3. In chapter III under clause (9.2) to add that 'the appropriate government shall take every step to bring modifications in school governance systems, in order to retain the child in school. The appropriate government shall not make any rules that would lead pushing a child out of school'.
4. Also under 9.2 to add 'The appropriate government shall respond to and fund all the plans made by the local bodies within a stipulated period of time'  
In chapter IV clause (3) regarding preschool children the age must be read as 'between the ages of 3 and 6' In any case one is saying that every school shall *endeavor* and not shall *provide*.'
5. In chapter IV Clause 19.3 must be deleted. Nothing can be achieved without reposing full faith in parents and their capacities to make enormous sacrifices to send their children to schools. If they have to be cajoled and corrected it must be done through motivation and not through a constitutional 'whip', however mild.

If penalizing parents, in a mild form has to be conceded then it must be *only after* the State has fulfilled all its obligations in providing for necessary facilities and physical infrastructure as defined in this Act.

6. In chapter VII Clause (3) –why should this provision be restricted to class one alone? A provision must be made about ‘children not being denied admission into any class, at anytime during the academic session.’ In fact such a policy is already being implemented in States like Andhra Pradesh, Madhya Pradesh, Karnataka and Tamil Nadu. This has enabled some hundreds of thousands of older children, who have been school dropouts, long absentees; never enrolled children rejoin schools without having to wait for a new academic session to begin.

Unless the schools and the education department are equipped to handle the backlog of children who have been left out of schools and make flexible arrangements to integrate them into an age appropriate class their right to education will never be accomplished. In fact the challenge that needs to be taken into account is in making it possible for each and every child enter schools and continue to be in school without any disruption until she reaches class 10.

## Why, What and How should our Children Learn?

Vinod Raina

*(text of the presentation made to the CABE subcommittee on Free and Compulsory Education Bill at its meeting on November 22, 2004)*

Where as the What and How in the title could be considered as relevant queries in relation to education of children, the question 'Why should children learn' might look banal, and even silly, since the answer is so obvious. Far from being irrelevant the question is quite vital in the Indian context since it is curiously linked to an extremely important debate that took place while our Constitution was being written.

### Why

The debate was about governance itself; whether or not to incorporate universal adult franchise in the Indian Constitution. The opponents' argument was based on the premise that allowing the right to vote to every ~~citizen in a country where most were illiterate might negate the power of the vote and distort the democratic governance system.~~ The argument of the proponents is easily guessed. The consensus was finally achieved by agreeing to insert the directive principle, Article 45, that made it the duty of the state to provide free and compulsory education to all children up to age 14 *within ten years* after the adoption of the Constitution, which should have been by 1960. The ten-year stipulation is highly significant since it is the only time-barred directive principle in the entire constitution. The reason is simple; the leaders of the country were prepared to give no more than ten years for the democratic governance process of the country to be based on the bed rock of universal education; and the state was directed to accomplish his task. Article 45 was therefore not guided only by considerations of education, but by the more important aspect of healthy democracy and quality governance. Why children should learn therefore has a much greater significance under the Indian Constitution.

1960 happened 44 years ago, and realistic estimates suggest that nearly half the children from the 6-14 age group, a staggering 100 million are not in schools; they are either never or fictitiously enrolled, or drop outs. Of the 100 million that are in schools, large scale studies and surveys suggest that



only a quarter of them may be considered to have achieved some basic education, the rest are in varying degrees of illiteracy; a consequence of the abysmally poor quality of education they are provided with.

Apart from questions regarding education, this raises a few uncomfortable queries about our governance system itself. Given the fact that a large voting population since 1960 has continued to remain illiterate, constitutional experts need to inform us whether the elected representatives of the country, and the Governments that they formed since 1960 were in fact valid or in violation of the letter and spirit of the Constitution.

In educational terms, Article 45 clearly failed to persuade the successive Governments to fulfill their constitutional duty. With increasing public pressure, the Parliament decided to increase the constitutional compulsion by bringing in the 86<sup>th</sup> Constitutional amendment to make education a Fundamental Right, and a Free and Compulsory Bill is presently being debated to provide rules and regulations to the 86<sup>th</sup> amendment. The question is: will the 86<sup>th</sup> amendment actually prove to be more persuasive to the governments than Article 45? In fact it can be argued that the amendment is actually already a dilution of Article 45, since it removes the 0-6 age group children, and effectively transfers the compulsion to the parents. One test of how seriously the Government takes the 8<sup>th</sup> amendment is in its financial allocation. Instead of providing the minimum 6% of the budget to education, a recommendation as old as 1968, governments are increasingly relying on credits from multilateral institutions, and schemes, like the DPEP and Sarva Shiksha Abhiyan to mop up funds, and now even through a cess. But the combined figures are well below the 6% of the GDP recommendation. This raises a larger question: how can the governments be made to fulfill their constitutional duties; particularly since the founding father's had made education of the population as a pre-requisite for the democratic electoral process itself?

A legislative answer would be to ensure that the upcoming bill on Free and Compulsory Education is so drafted that it leaves no choice for the government to make excuses, and hide under escape clauses based on words such as 'endeavour', 'might', 'will try its best', 'within its limitations' and so on. We could simply forget the existing draft prepared by the previous NDA government and start afresh, so that the bill clearly defines:

- a) the basic minimum quality of education that is acceptable, and translate that into physical quality of infrastructure and the quality of human resources (teachers etc)
- b) the acceptable content and process
- c) the nature of participation of the community
- d) the compulsion on the government to raise appropriate funds.

In order to better grasp the question of quality from the viewpoint of content and process, we must address the philosophical aspects of 'Why' too. Rabindranath Tagore's view on 'Why Education' continues to remain relevant and persuasive. Every person is born with the potential to be a creative person, he said, and it is the task of education to realize this human potential. Gramsci put the same thing somewhat differently – that every individual is a philosopher, and his or her socialization provides him or her with a 'common sense'. The scientists' science, the artists' art make up 'good sense' and the purpose of education is to assimilate this 'good sense' with the 'common sense', in order to produce, what he called, an organic intellectual, someone who could then be a change agent in the society.

How much of such philosophy has found its way into our schools. That requires us to examine the What and How of the teaching-learning process.

## What

What principles should be adopted to decide on the content of our children's education? As of now we teach children subjects – mathematics, languages, social science, science and so on. This constitutes aspects of the 'good sense'. The creative seeds that Tagore talked of or the 'common sense' of Gramsci is inherent in the language that the child learns before she comes to the school, the culture in which the child is located, the physical and social environment of the child, and the skills and knowledge associated with the productive skills that the child's family may be involved in. The dalit, adivasi, farmer's and artisan's child brings such a composite and vivid bag of 'common sense' to the school. But the school has no use for it; the legitimate bag in the school is the one she carries on the back, and that burdens her physically and psychologically, since there is no link or assimilation between the bag on her back and the one that constitutes her 'common sense'. Worse, she is constantly reminded that her cultural, linguistic and economic location is the cause of her 'backwardness' and she

must expunge it as quickly as possible to move up and compete in the 'civilised' world.

That in spite of its linguistic, cultural, religious, ethnic, culinary, geographical and other diversities, India is a single nation with a democratic form of governance continues to amaze one and all. It is truly remarkable. But the burden of keeping the nation together seems to be the major task of its educational content. Quite naturally, the creative seeds and the 'common sense' of India's children is as diverse as these socio-cultural attributes. But somewhere and sometime, the Indian state decided that it would be a danger to the country's unity if children's education was to be located in such diversity, and decided therefore that education must always be located in the 'National'. So history taught must be national, not regional or local, and so must everything else address itself to the National Indian Child. But who exactly is He or She? The upcoming review of the National Curricular Framework must grapple with this question head on since for long it has been swept under the carpet. Not only does such an artificial construction of the National impede the use of pedagogies that would take difference into account, they also provide ready made platforms for particular narrow definitions of the National, as was witnessed in the past five to six years, in rewriting-history and other subjects from parochial, fundamentalist points of view by calling them National. The translation of 'patriotism' into the school process has long been flawed, it needs correction now.

The other aspect of the What refers to the change in the very definition of Education that the Government introduced many years ago that continues to mock, for example, Tagore's view of education. It was to redefine the purpose of education as developing a human resource for development, thus reducing education to the creation of human beings fit for the labour market. The changed nomenclature of the Ministry from Education to Human Resource Development is the constant reminder of this shift in definition. Even if we were to appraise the How of our education from this very reductionist and narrow framework, have we approached it with a reasonable degree of logic? The answer would have to be a no. The labour pool of the country is estimated to be of about 35 crore people. Does the content of our school education link up with the knowledge and skills of this pool, if human resource development is the *raison de etre* of education?

That requires a closer look at this labour pool. Of these 35 crores, only about 2.7 crores constitute the formal sector, the rest, about 32 crores are our

farmers, artisans, weavers, handicraft makers, carpenters, masons, small traders, *chai* and *dhabha* wallas, automobile repair *ustads* and so on. They contribute nearly as much to the country's economy as the formal industry and service sector. Superimposed with the content of the school education, one can quite easily deduce that the content, the What of the school system at best caters to the skill and knowledge base of the tiny formal sector; it has virtually no relation with the knowledge and skills of the vast informal sector. No wonder therefore that children coming from families of this sector find the school irrelevant, since it reflects no aspect of their life and society, or the productive skills and knowledge of their livelihoods. If they drop out after a while, can one blame them?

We have gone far off from the principle of assimilating the 'common sense' with the 'good sense' in our content, and have thereby quite violently suppressed the creative potentials Tagore was concerned with. It is also true that to combine these aspects, it is not only the content that is necessary, but also the methodology, the How, that must be appropriate. It is ultimately the method and process of teaching-learning that bridges the known to the child with the unknown.

## How

Though Gandhi and Tagore had some essential differences to the purpose of education, which they debated in the most dignified and inspiring manner, there was commonality in them that the Brahminical manner of imparting education was a major fault in the Indian educational system. The notion of the all knowing guru, the fountainhead of knowledge, from which pupils must drink uncritically, without question and debate, because the guru knows all and can never be wrong was quite clearly unacceptable to Gandhi since he believed that the head and the hand must both be used for learning, and to Tagore who saw nature as a major source of learning. But this brahminical tradition has dominated the Indian mass education system. The always correct book, particularly if it is the product of the NCERT, and the authoritative school teacher, are the twin sources of knowledge that substitute the guru. An evaluation system that tests the child's short term memory at the end requires no more than due attention to these twin sources.

But bringing 'common sense' into the classroom requires generating knowledge from the pupils; which can just not be there in each book. It also implies that the teacher may not know what the child is able to contribute, or

farmers, artisans, weavers, handicraft makers, carpenters, masons, small traders, *chai* and *dhabha* wallas, automobile repair *ustads* and so on. They contribute nearly as much to the country's economy as the formal industry and service sector. Superimposed with the content of the school education, one can quite easily deduce that the content, the What of the school system at best caters to the skill and knowledge base of the tiny formal sector; it has virtually no relation with the knowledge and skills of the vast informal sector. No wonder therefore that children coming from families of this sector find the school irrelevant, since it reflects no aspect of their life and society, or the productive skills and knowledge of their livelihoods. If they drop out after a while, can one blame them?

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### **How**

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But bringing 'common sense' into the classroom requires generating knowledge from the pupils; which can just not be there in each book. It also implies that the teacher may not know what the child is able to contribute, or

may have no response to the child's query, simply because he has no answer. So the all knowing teacher can not exist in such a methodology, as can not a book that is centrally produced for all children. The use of hand implies activities. Taken together, the implication is an altered use of space, of the way children sit, of going out of the classroom to learn from nature, of debates and questioning, of looking at supplementary sources to questions textbooks can not answer and so on. It ultimately implies an atmosphere where children are free from fear, can laugh, and find the school so interesting that they wish to linger on, and come back tomorrow.

The implication is that the How has to be replaced from an authoritarian, brahminical process to a more democratic process. It is in really such a transactional mode that can instill values of cooperation, debate, tolerance for difference; thus deepening the secular, democratic ethos, rather than producing more and more books that 'teach' such values.

### **Can it be Done**

Most of this is not new in terms of ideas. The question is, having over run by 44 years on the constitutional obligation to provide free and compulsory education to all children till age 14, can these ideas be put into practice to ensure that all children are in proper schools and receive *relevant* and *interesting* education (they being the two signifiers of quality education)? The legislative route outlined above is one course of action. But what does practice have to say about it?

Having worked voluntarily for children's education for 32 years in rural India, in collaboration with state governments, I am convinced and fully optimistic that indeed that is possible. But that requires the educational bureaucracies to change the nature of their control on education. It does not mean the lessening of governmental involvement; the government must fulfill its constitutional obligation without eyeing the private sector to bail it out from such an obligation. But it must be prepared to become a facilitator for a societal mission, involving all those who are prepared to volunteer and contribute, particularly in the teaching-learning; pedagogy and teacher training areas.

In 1989 during Rajiv Gandhi's tenure as the Prime Minister of India, a technology mission on literacy was set up, to use satellite and television for distance education. Some of us initiated an alternative experiment, to

**mobilize thousands of volunteers in a district to make lakhs literate in a campaign mode in a designated period of time – eighteen months. The experiment was done in the Ernakulam district of Kerala. The success was instant. Sam Pitroda saw the experiment and with other officials came to us and said – ‘the Government will change its policy and use the campaign mode all over the country, will you people help and collaborate?’ We did, by setting up the Bharat Gyan Vigyan Samiti. The rest is history. Between 1990 and 2000, twelve million volunteers worked in over 500 districts in literacy campaigns, and the decadal increase in literacy between the two censuses, 1991 to 2001 was an unprecedented 15%. About 150 million people went through the literacy classes.**

**We did quality elementary education in 14 districts of Madhya Pradesh for 30 years and worked out a district model at Hoshangabad, just as was done for literacy in Ernakulam. Combined with other experiences, we can launch district specific elementary education initiatives for fulfilling the constitutional obligation in the next decade, which are distinctly different from the DPEP.**

**But the Government must be prepared to be flexibly responsive as it was in the case of literacy in 1989. Is the UPA government prepared for that?**

**Right to Education Bill 2005 – For discussion within the CABE Committee on Free and Compulsory Education (16 April 2005)**

**Some Comments and Suggestions:**

1. The following terms need to be redefined for greater clarity.

Capitation fee: could be reworded so as to mean any contribution that is required to be paid by children, other than fees that have been publicly notified at the time of admission.

Children with special needs: can actually delete this definition since it actually refers to a category of children larger than children with disabilities and includes slow learners, children with learning disabilities, first generation learners, and so on. Since the bill includes categories such as ‘children with disabilities’ and ‘disadvantaged children’, there is no advantage keeping this category in definition. Moreover, the phrase ‘children with special needs’ does not appear in the text of the Bill. If the definition is to be retained, it should reflect those categories that should be included other than the disabled children.

Equitable quality- the last phrase ‘conditions of success’ is too general and rhetorical and can be deleted.

Fee charging school- could be reworded so as to mean any school under private management which generally charges fees subject to provisions of Sec 11 (1).

Participation – under (ii) could also include participation throughout the academic year.

The following terms need to be defined- Competent Authority (used in various sections), School Management Committee, Early Childhood Care and Education, punishment (for children).

2. Sections 3.4, 3.5, 3.6 need to be brought together to mean: The state shall provide necessary facilities and create appropriate conditions to enable every child’s participation in the school. No child shall be expelled from the school until she completes elementary education. The local authority shall strike off a child’s name from the school register only in the case of [a] a child from seasonally migrant families who has been enrolled in another school by the local authority and [b] a child who has been transferred into another school by parents and guardians.

The Bill on ‘right to education’ should not consider ‘continuous absenteeism’ as a justified reason for expulsion of children from schools.

3. The sections 4.3 and 11.1. ii when read together can be confusing and can give contradictory meaning. When a free school is available, can a child avail 25% quota seats in private schools; or is it only when there is no free school provided by the government? Another way of stating these sections is: all children have a right to receive free education in schools fully or substantially funded by the government. Children from



disadvantaged groups, shall have a right to receive free education in privately managed fee charging schools in the neighbourhood upto 25% of the total seats available in the school. Parents/Guardians from non-disadvantaged groups, who choose to admit their children in private schools, will not have any claim on the State for providing free education.

Since the State would respect choice of the disadvantaged group and not that of the non-disadvantaged child to be admitted to a private school, the definition of disadvantaged group needs to be phrased tightly.

4. Sec 4 or 4 A should include a clear responsibility of the appropriate Government towards ensuring that ‘all children, who are six years of age, are enrolled in a neighbourhood school immediately after the commencement of this Act’

5. If Section 4 B requires the Appropriate Government to provide ECCE within a maximum period of three years, ECCE should not be listed as ‘desirable’ under the Schedule. It should be listed as an ‘essential norm’ subject to provisions of Section 4B.

6. Under section 7.1.i. and 20.A.1. the database should include children from 0-18 years.

7. Section 14A could be re-worded since ‘employer’ or ‘supervisor’ could also mean those who run the tuition classes on commercial basis. Alternate formulation could be: No teacher shall engage in any gainful teaching activity other than that assigned by the school where he/she may be employed.

8. Section 15- Evidence shows the School Development and Management Committees in Karnataka, which are primarily constituted by parents, are more effective in monitoring schools and their functioning than the erstwhile Village Education Committees, which were dominated by the village elite and those who rarely sent their own children to government schools. Suggested re-formulation: The Appropriate Authorities should prescribe formation of School Management Committees for facilitating the overall development and monitoring of free schools. The SMCs should be composed of parents/guardians of children studying in the respective school, and the teachers of the respective school.

9. Section 15 D and E- As per the Bill, the local authority can hire the teachers, impose minor punishments on the teachers and also hear their grievances. This seems to be unfair to the teachers and they need to have some body, other than their hiring/punishing body, that can hear their grievances.

Another suggestion is to make this section less ‘punishment-oriented’ and also consider leaving it to the Appropriate Authorities to decide on this. Having this section does not have much value because firstly, minor punishment has been defined in residual terms, secondly, the Bill has not specified any other penalty, and thirdly, the Bill recognises this under state legislature’s jurisdiction (Sec 15 D iii).

10. Section 16 A, since it applies to 'every school' may get interpreted as referring to private, fee charging schools also. Is this what is implied? If so, compulsion on the schools to provide education in mother tongue will have to be balanced with parental demand/right for English medium schools, both at the private and government school level.

11. Section 18. Suggested re-formulation: Prohibition of any form of punishment, including verbal abuse that offends the dignity of the child.

12. The sections under Chapter VI on monitoring the implementation of the Act need further reflection and substantiation. A review of the existing Commissions related to human rights, women, minorities, SCs and STs shows that the Commissions can be effective, depending on their composition, powers and functions. The composition of the Commission under Section 20 (2) envisages an 'independent commission' comprising of experts. Such kind of an 'independent' Commission is ideal to play the 'ombudsman' role. But the Bill also suggests other critical functions for the Commission such as Section 9 on decisions on sharing of expenditure between Central Government, Appropriate Governments and the local authorities. Can an independent body (with no government representation/participation) take decisions on such matters? Would this function not clash with the functions of bodies such as Finance Commission and/or Planning Commission? The Commission is expected to perform administrative, financial, quasi-judicial and education-oriented functions, which is actually unwieldy in scope. The functions and powers of the Commission, particularly powers related to inquiry, the provision of officers and staff of the Commission, terms of members, grounds for their removal and such other matters need to be specified, if the Commission has to be a serious, high profile body that can deliver its mandate. But the appointments on the Commission can be entirely political unlike the National Human Rights Commission whose members are appointed by the President (with recommendations from Committee for Appointments consisting of Prime Minister, Speaker of Lok Sabha, concerned Minister, Leader of Opposition in Lok Sabha, Leader of Opposition in Rajya Sabha, Deputy Chairman of Rajya Sabha) and unlike the National Commission for Women, whose members are appointed by the Central Government. The proposed National Commission for Children, the NHRC and National Commission for Women all have high ranking government officials as Member Secretaries, whereas the Education Commission would have someone with an 'expertise in educational management', which is an ambivalent criteria for eligibility.

13. The Child Labour (Prohibition and Regulation) Act, 1986 will have to be amended so as to declare all child labour (including non-wage earning activities carried out within family, school establishments as per proviso Section 3 of CLA, 86) as prohibited under law, if the work prevents the child from participating in school. Given the fact that most children may continue to combine work and schooling, the new legislation would have to recognise these newer forms of 'child labour' and dual burden on some school children and address these issues by appropriate provisions for their protection and regulation. If not, the problem of child labour will get pushed under the carpet and exploitation of children who continue to work may go unchecked by law.

14. Section 22- the process of enquiry and determining the age of the child is an extremely difficult and a long drawn process, as evidence on child labour cases informs us. Therefore, even if there is a dispute about the age, the process of enquiry should not prevent the child from attending school immediately.

15. The Schedule should include electricity, and safety norms under point 4 on Buildings.

*Submitted to the Secretariat on 20 April, 2005*

*Archana Mehendale  
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7<sup>th</sup> Cross, 3<sup>rd</sup> Block, Koramangala,  
Bangalore 560034  
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## Public Study Group on CABE Committees

A joint initiative of *Bharat Jan Vigyan Jatha and Council for Social Development*

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20 November 2004

Member Secretary,

CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education".

Dear Shri KM Acharya

Dear Sir,

This is with reference to our earlier letter introducing the Public Study Group on CABE committees. We have been heartened to hear about the reconstitution of CABE and feel that it is an important space for public participation within the area of educational policy making in the country.

The Public Study Group since its formation in September 2004 has organised meetings on free and compulsory education bill.

Enclosed find a summary of our discussions on the policy towards free and compulsory education adopted by the Indian Government since Independence. We would greatly appreciate if you could make copies of the enclosure available to the members of the CABE Committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education".

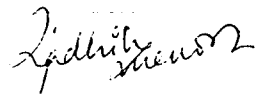
With regards

sd./-

Soumya Dutta

Coordinator

Public Study Group on CABE Committee.



Radhika Menon

Secretary

Public Study Group on CABE Committee.

Enclosure: Submission to the CABE committee on "Free and Compulsory Education Bill and Other Issues Related to Elementary Education".

### -----Core Group Members

Anil Sadgopal, Department of Education, Delhi University & Senior Fellow, Nehru Memorial Museum and Library, also BJVV activist; Dr. Farhat Ali, Lecturer, Institute of Advanced Studies in Education, Jamia Millia Islamia; Soumya Dutta, BJVV activist & environment education coordinator, PSG; Dr. Anita Ghai, Reader in Psychology, Jesus & Mary College, Delhi University); Madan Mohan Jha, Joint Secretary (on study), Ministry of HRD & researcher at Oxford University, Ravi Kumar, Associate Fellow, Council for Social Development; Sanjeev Mathur, BJVV activist and cultural worker; Dr. Bernard D'Mello, Senior Consultant, Planning Commission; Radhika Menon, Ph.D. scholar at Zakir Husain Centre for Educational Studies, JNU (Secretary, PSG); Madhu Prasad, Reader in Philosophy, Zakir Husain College, Delhi University; Dr. Vijender Sharma, Professor in Physics, ARSD College & Member, Executive Council, Delhi University

November 08, 2004

- Sub.:** CABE Committee on 'Free and Compulsory Education Bill and Other Issues Related to Elementary Education'.  
**Ref.:** Member-Secretary's notice (F. No. 1-14/2004-EE.4) of meeting scheduled to be held on 22<sup>nd</sup> November 2004.

Dear Shri Kapil Sibal,

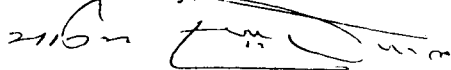
With reference to the meeting of the aforesaid CABE Committee scheduled to be held on 22<sup>nd</sup> November 2004, I wish to submit the following documents for your kind consideration:

1. My article entitled 'Deconstructing Free and Compulsory Education Bill, 2003: A Concept Paper for an Alternative Framework' (submitted to National Consultations on the Bill held in January and April 2004 respectively).
2. An analysis of the Bill excerpted from my article entitled 'Exclusion and Inequality in Education: The State Policy and Globalisation' (*Contemporary India*, Journal of the Nehru Memorial Museum & Library, Vol. 2, No. 3, July-September 2003).
3. An analysis of the Bill excerpted from my Zakir Husain Memorial Lecture (February 2004) entitled 'Globalisation and Education: Defining the Indian Crisis'.
4. A comparative analysis of the premises underlying 'The Free and Compulsory Education Bill, 2004' and an Alternative Bill.
5. A note on the Common School System entitled 'Empowering the Government Schools: A plea for political priority for the only historical option for India' (*Outlook*, December 2000).

I will be grateful if these documents are circulated to the members of the CABE Committee.

Thanking you,

Yours sincerely,

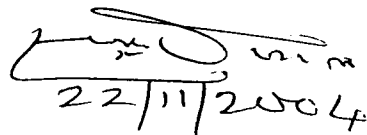


Anil Sadgopal

cc: Member-Secretary, CABE Committee on 'Free and Compulsory Education Bill and Other Issues Related to Elementary Education'.

*Dr. Nalini Juneja, NIEPA.*

To,  
Shri Kapil Sibal  
Minister of State for Science & Technology, Government of India  
New Delhi 110 001

  
22/11/2004

*(Note: This is a preliminary draft of a concept paper I am attempting to write on this matter of critical significance to India's future. I am e-mailing it to MV Foundation as a humble contribution to the praiseworthy initiative Dr. Shantha Sinha has taken to organise a consultation in Hyderabad today in order to mobilize public opinion against this horrendous Bill. This Bill deserves to be in a waste paper basket, rather than in the Parliament of the largest democracy in the world. It is a blot on the nation that claims to become a super-power in Information Technology and the third largest economy of the world by 2020. Apologies for my strong views. Elementary education is one area where we can't afford to be polite any more. Space for politeness and compromises ended in 1960 when we should have achieved universal elementary education as directed by the Constitution and in fulfillment of the promise of India's glorious freedom struggle against imperialism. – Anil Sadgopal, New Delhi, January 10, 2004)*<sup>1</sup>

## **DE-CONSTRUCTING 'FREE AND COMPULSORY EDUCATION BILL, 2003'**

*a concept paper for an alternative framework*

- Prof. Anil Sadgopal  
Professor of Education  
University of Delhi  
& Senior Fellow  
Nehru Memorial Museum and Library

### **Preamble**

Since June 2003, the Government of India (Ministry of Human Resource Development) had been circulating a draft of the 'Free and Compulsory Education Bill, 2003' which was later put on Ministry's website (19<sup>th</sup> September 2003). As per media reports, the Ministry claimed that the Bill fulfills the Government's promise given on the floor of the Lok Sabha on 28<sup>th</sup> November 2001 during the debate on the Constitution (Eighty-Sixth Amendment) Bill, 2001. The promise was made by the Minister of Human Resource Development himself in order to pacify the MPs who criticised the Bill for its various lacunae and bias against the poor parents and their children. Several people's organizations, child rights groups and educationists articulated their criticism in the media, submitted Memoranda to the Union Minister as well as to the leadership of the leading political parties in the Opposition and the Leader of Opposition in the Lok Sabha (Smt. Sonia Gandhi) and the Rajya Sabha (Dr. Manmohan Singh), petitioned the

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<sup>1</sup> This paper was written before the third version of 'The Free and Compulsory Education Bill, 2004' dated January 8, 2004 (Draft III) became available. The Draft III was circulated by the Secretary, Department of Education, Ministry of Human Resource Development, at a meeting of State/UT Secretaries of Departments of Education, held at New Delhi, 15th -16th January 2004. It is now posted on MHRD's website as well. A preliminary analysis of Draft III reveals that it has all the negative aspects of the earlier drafts, apart from adding new provisions designed to violate the federal structure of Indian democracy and furthering the control of the Centre in formulating the curriculum. – Footnote added on April 6, 2004 before submitting it to the follow-up consultation jointly organized by CACL and MV Foundation in Bhubaneswar on April 10, 2004.

<sup>2</sup> In view of the clear mandate given in the General Elections 2004 against both communal politics and economic reforms 'without a human face', it is obligatory for the UPA government to review the Draft Free and Compulsory Education Bill dated January 8, 2004. There is no way in which this Bill can be improved upon by any 'cut and paste' method, as it is based upon premises that violate the Constitution. The only pro-people option for the UPA government is to withdraw the Draft Bill forthwith and undertake a transparent and democratic process for re-writing the Bill afresh. – Footnote added before submitting this paper for the consultation organized by the Ministry of HRD, Govt. of India on August 5, 2004.

Parliamentary Standing Committee on Women and Child Development and organized public rallies, seminars and meetings, seeking ~~redrafting~~ of the Bill. Detailed critiques appeared in the form of articles in the media ~~and~~ academic papers, contending that the lacunae were deliberate, rather than being a result of an oversight (Sadgopal 2001a,b,c,d; 2002; Shahabuddin, 2001; Swaminathan, 2001). ~~The~~ amendment was being made, it was contended, not to make elementary education a Fundamental Right, but *to fulfill the dictates of IMF-World Bank's Structural Adjustment Programme* and to legitimize the increasing *abdication by the State* of its Constitutional obligations towards *elementary education of equitable quality* for all children. ~~All~~ of this protest was ignored and an assurance was repeatedly given by the Minister ~~that~~ the lacunae in the Bill will be taken care of by enacting a new law. How would a law ~~take~~ care of the lacunae introduced in the Constitution through an amendment? If ~~the~~ Government intended to rectify the lacunae later through a law, why was it bent upon ~~introducing~~ these in the Constitution in the first place? The leadership of various political ~~parties~~ neither raised nor pursued such uncomfortable questions in the Parliament. ~~In~~ spite of critical speeches by MPs representing a wide political spectrum, the assurance of a law to be enacted later seemed to have led to a curious consensus in the ~~Parliament~~ on the bias inherent in the Constitutional amendment against children (girl children in particular) belonging to various deprived sections of the society. The Bill ~~was~~ pushed through the Parliament and later signed by the President in December 2002.

Here comes the promised law in the form of ~~the~~ 'Free and Compulsory Education Bill, 2003'. A detailed scrutiny of its provisions ~~revealed~~ that the Bill will have serious adverse implications for the education of India's ~~section~~ in the 6-14 year age group, the group covered under the Article 21A introduced ~~through~~ the 86<sup>th</sup> Amendment to the Constitution. The children likely to be denied ~~their~~ fundamental right in this age group due to the adverse provisions in the Bill will ~~belong~~ largely to the Scheduled Castes, Scheduled Tribes and several communities of the ~~ABCs~~ (including all the children engaged in various forms of child labour) and ~~the~~ cultural and linguistic minorities, as well as those living in the socio-economically ~~backward~~ regions of the country. Further, the Bill is ambiguous in its commitment to ~~ensure~~ inclusive or integrated education for the disabled children. Two-thirds of the out-of-~~school~~ and 'pushed out' children in each of these sections of society and regions to be ~~adversely~~ affected by the Bill will be the girl children. Thus the proportion of children ~~likely~~ to be adversely affected in the 6-14 age group alone will be more than half i.e. ~~about~~ 10 crores. Since the Bill fails to provide any guarantee for Early Childhood Care ~~and~~ pre-primary Education (ECCE) for children under six years of age, all the children of ~~the~~ ~~abovesaid~~ sections of society will be deprived of the necessary nutritional, health ~~care~~ and pre-primary educational support. Thus not less than 8 crore children in the 0-6 age ~~group~~ (the child population in this age group was almost 16 crore in 2001) will be ~~denied~~ what is considered to be critical for their development for elementary education and ~~citizenship~~. Also, as far as the 14-18 age group is concerned, the Bill has no provision ~~whatsoever~~ either for (a) the out-of-school children and those who are 'pushed out' of ~~elementary~~ education mid-way (drop-outs in official parlance) or (b) those who would be ~~finishing~~ elementary education at the age of 14 years and would be keen on continuing ~~into~~ secondary and senior secondary education. Thus almost 9 crore children in the ~~14-18~~ age group will be denied their basic

human rights as per the UN Convention on the Rights of the Child which defines a child as a person up to 18 years of age. In this sense, **the Bill is characterized by severe social, cultural, gender and educational bias against almost 27 crore children up to 18 years of age** out of a total of 44 crore children (the estimates of child population in each age group being based on 2001 census and its projections, Selected Educational Statistics, 2000-2001).

While these negative features in the Draft Bill were being publicly debated and a demand to re-draft the Bill was being articulated (Social Jurist, 2003), the Secretary, Ministry of Human Resource Development, introduced a new draft of the same Bill at a meeting held at NIEPA on 15<sup>th</sup> December 2003. The Secretary informed the meeting that the first Draft was already circulated to the State/UT Governments and their comments were awaited. However, the second draft (dated 10<sup>th</sup> December 2003) is an improved version and would now replace the earlier draft. It is significant that the second draft was prepared within six days of the electoral victory of BJP in three States in the Hindi heartland. Even a cursory comparison will reveal that the second draft is not a result of few additions, deletions or modifications in the first draft but it is entirely a freshly written version. Yet, it carries forward all the negative features of the earlier draft, apart from introducing several new provisions with implications that are far more alarming for India's future than those of the first draft. It would be naïve not to read the second draft in the perspective of the recent electoral gains made by BJP in December 2003, giving the ruling NDA combine at the Centre a sense that its political control at both the Centre and several States/UTs is likely to last longer than one could have predicted a few weeks before the results of the assembly elections were declared. This paper will attempt to examine both the drafts of the Bill (henceforth called Draft I and Draft II respectively) in this light and de-construct them with the objective of deciphering an alternative framework for drafting a pro-people Bill.

Several provisions of the Bill, founded on erroneous premises regarding children, education and Indian reality, are also violative of the Constitution of India, National Policy for Children (1974), National Policy on Education (NPE)-1986 (as modified in 1992) and the UN Convention on the Rights of the Child (signed by the Government of India in December 1992). A detailed scrutiny of the various provisions of the Bill has convinced us that, if implemented in its *present* form, **the Bill will impede India's endeavour to acquire a democratic, egalitarian and secular character, apart from preventing the nation from becoming an enlightened, humane and forward-looking member of the global community.**

## Major Issues

1. **Discrimination through Low-quality Parallel Tracks of Elementary Education:** The Bill legitimises three parallel tracks of elementary education in its Schedule 'A' for children in 6-14 year age group viz. A. Regular school; B. Education Guarantee Scheme (EGS) Centres and Alternative Schools (AS); C. Open Schooling Centres (i.e. correspondence courses). Read along with



Government of India's recent policy-related documents, the norms specified for the EGS Centres and AS provide for *underqualified, untrained (or undertrained) and underpaid teachers* appointed on short-term contracts and essentially no physical infrastructure (not even bare classrooms under thatched roofs or tents). The specification of '*at least 4 hours of teaching every day*' for EGS Centres and AS in Bill's Draft I was diluted in Draft II to read '*as may be prescribed in the approved scheme*'. As per Draft II of the Bill, the minimum number of working days in an academic year in the 'regular approved schools' and 'recognised schools' will be 200. In contrast, the number of working days in an academic year in the case of EGS Centres and AS will be '*as may be prescribed in the approved scheme*' i.e. entirely left to the whims of the educational bureaucracy and the host of parallel local authorities specified in the Bill. Worse is the notion in Schedule 'A' of 'educating' the 6-14 age group children through a correspondence courses (euphemistically called 'Open Schooling Centres') – a concept that is neither pedagogically sound nor backed by any educational research or experience in the case of this age group. Even for the 'regular approved schools' and 'recognised schools', the Operation Blackboard norms approved by the Parliament in the NPE-1986 (as modified in 1992) have been diluted in Schedule 'A': instead of a minimum of *three* teachers and *three* classrooms in a primary school as per Operation Blackboard norms, the Bill provides for only *two* teachers and *two* classrooms. The Operation Blackboard norm of providing at least three teachers in every primary school and '*the number increasing, as early as possible, to one teacher per class*' as well as its specification that '*at least 50 per cent of the teachers recruited in future should be women*' has been ignored by the Bill. There is no reference in the Bill (Schedule 'A') either to the Operation Blackboard commitment to provide a minimum set of teaching aids to every primary and upper primary school. The bare minimum requirement for toilets (a specific commitment under Operation Blackboard norm), drinking water, playground and a boundary wall has been listed in the 'Desirable' category. Basically, the Schedule 'A' and all the other related provisions in the Bill regarding 'approved school' legitimize as well as institutionalize a most undesirable and anti-Constitutional sociological principle of education viz. *a separate stream of education for each segment of society*. This is in total violation of the commitment made thrice by the Parliament through NPE-1968, NPE-1986 and NPE-1986 (as modified in 1992) to the **Common School System**, as recommended by the Education Commission (1964-66). Instead of making education a tool for promoting equality and harmony in society, **this Bill cynically uses education to promote disparity and disharmony.**

**2. Penalising Parents for the Collapse of Official Educational Policies:** The Bill is founded on the false premise that the poor people do not want to send their children to school. Several recent field studies and surveys have revealed that the poor people, by and large, are keen to educate their children provided (a) they have access to a functioning school (not their low-quality alternatives) where their children can learn in a child-friendly environment; (b) their children are not subjected to indignities for being 'first generation learners' belonging to backward

sections of society and the girls are not made to feel inferior due to gender bias inherent in the prevailing school system; (c) the non-tuition cost of education is not beyond their meager and uncertain wages (which is far less than even the minimum wage) and (d) education is relevant to their lives, particularly to their need for a livelihood with dignity. Repeated National Sample Surveys and independent studies of out-of-school children and the so-called drop-outs have established that a substantial proportion of poor children take a conscious decision to keep out of school or quit education mid-way due to any one or more of the above reasons. This tragic state of affairs is now widely recognized by educationists as a consequence of the repeated collapse of official educational policies since independence. Yet, the Bill has provisions that essentially amount to forcing parents to send their children to the so-called 'approved schools' or 'recognised schools' or their low-quality alternatives, without ensuring that any of the above necessary conditions for education are fulfilled [Draft I, Section 7; Draft II, Sections 4, 8, 16 (5) (iv) to (vii), 16 (10), (11)]. In case, the poor parents decide to reject the 'approved school' as not being suitable for their children on any or all of the above four grounds, the Bill has no provision for recognizing their genuine concern as a 'valid reason'. The Bill takes a very narrow view of the 'valid reason' by limiting it to 'non-availability of an approved school within the distance prescribed', thereby entirely confusing the mere physical presence of the 'approved school' for genuine access to quality education [Draft II, Section 8 (2)]. It thus marginalizes the sociological, economic and educational grounds for parental rejection of the school. Yet, the Bill recognizes the decision of the parents not to send their children to such non-viable and even non-educational 'approved schools' or their even poorer alternatives as a penal offence and provides for shockingly severe penalties viz. 'a fine which may extend to One Thousand Rupees and in case of continuing contravention, with an additional fine not exceeding Rs. 50/- for each day during which such contravention continues after conviction' [Draft II, Section 29 (1)]. To be sure, such penalties are provided for not just the employers of child labour [covered under Section 7 (2) (i) of Draft II] but also for the parents as they will be duly covered by the offence specified in Section 7 (1) [Draft II] which states that 'no person shall prevent a child from attending school'. The Bill thus penalises the parents for the collapse of the official policies for building a Common School System that would have ensured quality and relevant education for *all children without discrimination*. This amounts to shifting the Constitutional obligation of the State to the poor parents.

**3. Abdication by the State of its Constitutional Obligation to Provide Adequate Resources for Elementary Education:** The Bill has three sets of provisions specifically designed to enable the State to abdicate, in gradual but decisive steps, its Constitutional obligation towards 'free and compulsory education' for all children. First, it is deliberately ambiguous about the State's obligation to provide *entirely free* elementary education to the 6-14 age group as it is not forthcoming about the commitment to provide non-tuition costs such as textbooks, stationery, uniforms, public transport and such other items. Both the

drafts make the provision of such essential educational support free of cost subject to Government rules, *instead of making it a matter of fundamental right under Article 21A* [Draft I, Section 2 (i); Draft II, Section 2 (m)]. The Draft II is even less committed to ensuring non-tuition educational support as it states that free education ‘may include, subject to rules made in this behalf, freedom from incurring expenditure, *wholly or partly*, on (textbooks, stationery, etc.) . . . . . [Section 2 (m) (i)]. The Bill is bound to have a retrogressive impact on the current policy in many states/UTs of providing such support free of cost, especially to SCs, STs and girls. It is a matter of serious concern that the reference to *health care and nutrition* in the definition of free education in Draft I [Section 2 (i)] has been withdrawn in Draft II [Section 2 (m) (i)], thereby allowing the State to recede from its present commitment to provide even free mid-day meals to all primary school children!

Second, the Bill authorizes the ‘appropriate Government’ to approve ‘a scheme framed by any person, body or institution for setting up Education Guarantee Centres or Alternative Schools . . . . .’ [Draft II, Section 26 (2)]. This provision opens the doors for privatization of even these parallel low-quality tracks of primary education as well as creates a space for unscrupulous non-government agencies to introduce their agenda in education, thereby allowing the State to further abdicate its Constitutional obligation.

Third, the provision in Draft II for designating a wholly parallel structure of Elementary Education Authorities at State-level (SEEA), District-level (DEEA), local (probably Block)-level (LEEA) and habitation-level (HEEA) (metropolitan-level for urban areas to be called MEEA) also provides for mobilization of resources from the community by such authorities at each of the above levels. The intention of the State in making such provisions is revealed in the following provision for the functions of the Habitation-Level Elementary Education Authority (HEEA):

“(iii) mobilizing resources for the plan (i.e. annual plan for free and compulsory education at habitation-level) from the community *to the maximum extent possible*, submission of the plan to the Local Elementary Education Authority two months before commencement of the academic year for obtaining funds *to the extent they can not be locally mobilized* and implementation of the plan with resources mobilized locally and those provided by LEEA and the appropriate government. (emphasis ours)”

- [Draft II, Section 16 (5) (iii)]

By stating that ‘LEEA and the appropriate Government’ will allocate funds to the HEEA ‘*to the extent they can not be locally mobilized*’, the State has revealed its intention that the resources from the community are expected not to *merely supplement* the resources provided by the Government, but eventually to even replace the Government’s resources substantially. This provision dangerously reflects the Structural Adjustment Programme imposed by IMF-World Bank on Indian economy, which calls for reducing public expenditure on education, health and other social welfare programmes in order to maximize privatization in these

sectors. It is in this perspective that the implications of the following provisions need to be examined:

“(1) Subject to the provisions of this Act, education in approved schools shall be free and compulsory;

Provided that genuinely voluntary contribution from parents, guardians and the community for free and compulsory education, in general, and improvement of approved schools, in particular, shall be encouraged.”

- [Draft II, Section 5 (1)]

“The Central Government, all appropriate governments and all authorities constituted under Sections 16-20 of this Act shall implement policies and measures to encourage parents, citizens, students of secondary and higher stages, bodies, organizations, institutions and the community at large to render voluntary support for achieving free and compulsory education, in general, and improvement of approved schools, in particular, by way of money, material, voluntary service or in any other form.”

- [Draft II, Section 24]

It is significant that the Government has thought it necessary to introduce the above provision. There is a rich tradition in all parts of India, in both the pre- and post-independence period, of the community making voluntary contributions through money, labour and voluntary service to the government and local body schools. This tradition is alive even today, especially in rural areas, despite the recent policy stance of the Government gradually diluting its support to the regular school system. This is apart from the community initiatives in setting up educational institutions with entirely philanthropic motive or inspiration to serve the society. This voluntary contribution was made to the schools through the Village Education Committees, parent-teacher associations, *Gram Sabha* or even directly to the Head Master/Principal without having any legal provision. This is why such provisions persuade us to question the eventual motive of the Government.

Given the imperatives of the Structural Adjustment Programme and the role of the market forces in accelerating the withdrawal of the State from the education sector, it is suspected that the Government will use such provisions to gradually build pressure on parallel designated authorities such as HEEA and LEEA to increase resource mobilization from the community, even if it amounts to compelling the community. Thus these provisions legitimise Government's measures to create such conditions which will facilitate abdication by the State of its Constitutional obligation for providing adequate resources for 'free and compulsory education', thereby promoting privatization of even elementary education.

*It is no wonder that there is no Financial Memorandum attached to this Bill.*

**4. Undermining the Constitutional Authorities by Creating a Parallel Structure of Authorities:** The Bill undermines the role of the Constitutional authorities in providing 'free and compulsory education' by designating a parallel structure of authorities from the State-level down to the level of habitations within

a village. Thus the Bill has provisions for an entirely parallel structure of Elementary Education Authorities at State-level (SEEA), District-level (DEEA), local (probably Block)-level (LEEA) and habitation-level (HEEA) which will replace, for all practical purposes, the Constitutional authorities such as the State Governments and the Panchayati Raj Institutions in the elementary education sector (Draft II, Sections 16 to 20). In metropolitan areas, it will be Metropolitan-Level Elementary Education Authority (MEEA) to substitute for municipal local bodies. The Bill empowers these parallel authorities to essentially take over all the critical functions of the State Governments, Panchayati Raj Institutions and municipal local bodies for governing 'free and compulsory education', including obtaining, allocating and channeling Government funds in this sector. The State-Level Elementary Education Authority (SEEA) will not only 'aid and advise the appropriate government in the discharge of its responsibility' but will also have the function of 'formulation of policy, laying down of priorities, raising of public awareness, and mobilization and allocation of resources . . . . . ' [Draft II, Section 20 (3) (i) and (iii)]. There is also a provision for either empowering by law or recognizing a Competent Academic Authority 'for prescribing curriculum for the elementary stage', thereby creating a space for a body other than the Central or State Government for this purpose [Draft II, Section 2 (1) (f)]. Designation of such a parallel structure to essentially substitute for the role of Constitutional authorities is clearly in violation of the provisions for education created under the concurrency arrangement as well as the 73<sup>rd</sup> and 74<sup>th</sup> amendments. Such a provision is also fraught with the danger of intervention by the political forces. **This subtle and gradual undermining of the Constitutional authorities sets an alarming trend with the objective of giving space for extra-Constitutional interference and replacing the State by the global market forces in elementary education sector.**

##### 5. Discrimination Against the Children with Special Needs and the Disabled Children:

*(This section is based upon the writings of Jha, 2002 and 2003)*

The Bill states:

"child with special needs" means a child who is a person with disability as defined in clause (u) of Section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

- [Draft II, Section 2 (1) (e)]

The Bill has erroneously equated the 'child with special needs' with the 'person with disability' as the latter has been defined in Section 2(t) [not in Section 2(u)] of the Persons With Disabilities Act, 1995. In contrast, the UNESCO-convened 'World Conference on Special Educational Needs: Access and Quality' held in Salamanca, Spain in 1994 envisaged that the children with special educational needs would include:

'disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic, or cultural minorities and children from other disadvantaged or marginal areas and groups.'

- [UNESCO: Salamanca Framework for Action. 1994]

The Bill thus takes a very narrow view of 'child with special needs' and excludes crores of India's children who need to be covered under this category. The UNESCO's Salamanca Framework had declared that,

'those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting these needs.'

- [UNESCO: Salamanca Framework for Action. 1994]

Further, the Salamanca Framework called upon all governments to,

'adopt as matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise.'

- [UNESCO: Salamanca Framework for Action. 1994]

An appropriate definition of 'child with special needs' would have necessitated a major change in the policy stance towards the regular school system and rendered the Schedule 'A' of the Bill, prescribing three unequal tracks of education for the 6-14 age group, as null and void. The Bill fails in this respect insofar there is neither a provision nor even a reflection of the awareness relating to the need for transforming the regular schools into genuine inclusive schools. Instead, the Bill attempts to divert attention from this long-awaited central task of educational reconstruction by legitimizing unequal parallel tracks of low-quality facilities (EGS Centres, AS and correspondence courses) which do not even qualify to be called as educational facilities.

Ironically, the Bill also fails to do justice to the children with disabilities. It confuses the 'child with special needs' with the 'person with disability' [see Draft II. Section 2 (1) (e)] as the latter has been defined in Section 2(t) of the Persons With Disabilities Act, 1995 as follows:

'(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority.'

The above definition in the Persons With Disabilities Act, 1995 was formulated for the 'welfare' of the 'persons with disabilities', rather than for their education. Under this definition, a large number of children suffering from disabilities of less than 40% would be excluded from the benefit of 'free and compulsory education'. In particular, all those with learning disability or learning difficulty would fall in this excluded category.

In spite of borrowing a narrow definition of disability from the Person With Disability Act, 1995, the Bill contradicts the same Act by limiting its commitment to disabled children in the *6-14 age group only*. The Person With Disability Act, 1995 directs the appropriate Governments and local authorities to,

'(a) ensure that every child with a disability has access to free education in an appropriate environment *till he attains the age of eighteen years.*' (emphasis ours)  
- Person With Disability Act, 1995. Section 26 (a)

Apart from the disabled children in the 6-14 age group, the above expression of '*till he attains the age of eighteen years*' includes all disabled children in the 0-6 year and 14-18 year age groups as well. The Bill attempts to deprive this large group of disabled children from a guarantee of both Early Childhood Care and pre-primary education and elementary education. How can a Bill be allowed to contradict of the provision of another Act of the Parliament?

The in-built bias in the Bill (Draft II) against the disabled children is further reflected in its Section 8 (2) (ii) which cynically stipulates that '*the child suffering from a physical or mental disability which prevents him from attending school*' will be an adequate 'valid reason' for both the State as well as the parents to deny such children 'free and compulsory education.' With this excuse, the State will have a 'valid reason' for not even attempting to create inclusive environment (physical, cultural and pedagogic) for ensuring inclusive education in regular schools for the disabled children. This discriminatory provision must be rescinded forthwith.

The entire language of the Section 28 (Draft II) of the Bill is such as to allow the parallel designated authorities viz. HEEA and LEEA to escape the obligation to integrate the disabled children in regular schools or even in their low-quality alternatives (e.g. EGS Centres and AS). This provision *merely exhorts* HEEA and LEEA to make 'endeavour to promote integration of children with special needs in normal schools', without stipulating any offence or penalties if the authorities fail to make this 'endeavour' [Section 28 (1)]. This ineffective provision must be replaced by an effective provision. The Section 28 (2) also leaves the critical agenda of integration of the disabled children in regular schools to the whims of the parallel authorities by offering an escape route in '*if the disabilities are such that integration of the child in normal schools is possible.*' The lack of commitment of the Bill to the agenda of inclusive education through a Common School System is further revealed in the blatant manner in which it is promoting 'special schools' through Sections 28 (3) and (4). These latter Sections are liable to be used by the market forces to commercialise education of the disabled children through fee-charging 'special schools' in collusion with the designated parallel authorities.

**In this sense, as far as the agenda of inclusive education of the disabled children is concerned, the Bill violates Articles 14, 15, 16, 21, 21A and 45 of the Constitution.**

6. **Legitimisation of Child Labour:** The Draft II of the Bill has added a provision which stipulates that 'every occupier, in relation to an establishment, who is required to send a written notice to the Inspector under Section 9' of the

Child Labour (Prohibition and Regulation) Act, 1986 about 'employing a child or permitting a child to work' shall also send a copy of the notice to the approved school and to the HEEA along with the following particulars:

- '(a) hours of the day, and days of the week when the child is employed or permitted to work in the establishment, and
- (b) such other particulars as may be prescribed.'

- Draft II, Section 7 (2) (ii) (a) & (b)

The Bill is curiously silent about what measures the approved school and the HEEA are obligated to take on receiving such particulars from those who engage child labour. It can be, therefore, safely assumed that the real purpose of this provision is to enable the designated authorities to adjust the hours and days of the approved school (for all practical purposes, these would be EGS Centres and AS) with the 'hours of the day, and days of the week when the child is employed or permitted to work in the establishment'. It must not be a mere coincidence that the Draft II of the Bill which added this provision also changed the minimum norm for teaching hours per day for EGS Centres and AS from 'at least 4 hours of teaching every day' (Draft I) to 'as may be prescribed in the approved scheme' (Draft II) in order to presumably allow the HEEA to adjust the 'hours of the day, and days of the week' to suit the needs of the employer of child labour in the concerned habitation. It also opens yet another opportunity of collusion between HEEA and the employer of child labour to continue the malpractice. This is a dangerous provision as it allows legitimization of child labour and protects those who engage children in 6-14 age group as labourers.

**7. Deployment of Teachers and Use of Schools for Non-Educational Purposes:** It is long established that the quality of teaching-learning process in government, local body and government-aided schools (henceforth called government schools) suffers due to frequent deployment of teachers and use of schools premises for non-educational purposes (census, surveys, elections etc.) on specific orders of the appropriate government and other authorities. One would have thought that the Bill would provide some relief on this count. However, the Bill has the following farcical provisions:

- "(1) No teacher of an approved school shall be deployed for any non-educational purpose *except under orders of the appropriate government.*
- (2) Premises of an approved school shall not be used for any non-educational purpose *except under orders of the appropriate government.*"

- [Draft II, Section 10]

What difference do these provisions make to the prevailing unfair situation of which the children in the government schools are victims of? None. The *status quo* will be maintained and the teachers and the school premises of government will continue to be used for non-educational purpose *on government orders*. The Bill would have done justice if it had provided for deployment of teachers and use of school premises of the rapidly growing number of private unaided recognized schools (i.e. public schools) for all those non-educational purposes, considered



critical for the nation, for which the government teachers and schools are used. The Bill failed to establish parity between the schools for the rich and those for the poor!

**8. Failure to Provide for Early Childhood Care and Pre-school Education:** The Article 45 (as amended after 86<sup>th</sup> amendment) of the Constitution and the NPE-1986 (as modified in 1992) call for ensuring Early Childhood Care and Pre-school Education for all children in the 0-6 age group as a critical input for proper child development, elementary education and enlightened citizenship. According to the Tenth Plan document, only 20% children in the 0-6 age group are covered under the ICDS programme which, even under the best of conditions, is designed essentially as a nutritional supplement programme, lacking in several other critical dimensions of early childhood care; pre-school education component is conspicuous by its absence. The Bill has entirely ignored the 0-6 age group children, thereby continuing the present situation wherein only the well-to-do can afford this essential input for their children. By denying a guarantee for equal opportunity for holistic development to the vast majority of India's 16 crore children in the 0-6 age group, the Bill has violated Articles 14, 15, 16, 21, 21A, 39 (f), 45 and 46.

**9. Escape Route for the Recognised (Not Substantially Aided) Schools to fulfill their Obligation:** The Bill is entirely farcical when it comes to the issue of Constitutional obligation of the 'recognized but not substantially aided schools' for providing space for free education of those children who are unable to afford the fees charged by such schools in their neighbourhood. The following grounds need to be cited to reveal the escape routes that the Bill [Draft II, Section 31] cleverly provides the powerful private school lobby for not fulfilling its Constitutional obligations:

- By authorising only the District Elementary Education Authority (DEEA) with powers to direct such schools to give admission to the poor children, the Bill has allowed all such schools in the metropolitan areas to escape from this obligation since DEEA is constituted only 'for such part of every district as is not included in a metropolitan area' [Draft II, Section 18 (1)]. The Metropolitan Elementary Education Authority (MEEA) constituted for each metropolitan area as per Section 19 (1) of Draft II is not authorized by the Bill to take any action in this matter!
- The perceived benefit of free education in such schools will be limited to 'children from families below the poverty line living in the district.' In many parts of the country, the minimum wage prescribed under the Minimum Wages Act, 1948 is above the poverty line and, therefore, only a tiny number of children in these localities, by definition, is likely to be eligible for admission in such schools (Agarwal, 2003). With rising pressure from Structural Adjustment Programme, the so-called poverty

line is being progressively pushed downwards, leading to further reduction of eligible children in this category.

- Section 31 (1) states that 'no recognized school shall be required to admit children under this section in a number exceeding 20% of the total strength of the school in any class'. Since the Bill does not specify a minimum percentage of seats in such schools to be made available to the poor children free of cost, it is likely that a school may not admit even one such child.
- Under Section 31 (2), it is the Local Elementary Education Authority (LEEA) that is authorized to chose children for admission in such schools in the prescribed manner. Which official of LEEA (operating probably at Block level) would dare to chose children against the wishes of the powerful lobby of the private unaided schools in a rural area? The situation will be much worse for the LEEA official in feudal zones wherein the feudal forces will be supporting the above lobby. It would be easier for LEEA to open an additional EGS Centre for the poor children or even authorize, under Section 26 (2) of the Bill, the defaulting private school itself to open one such centre, as is the current practice by the elite public schools in metro cities.

Why has the Government introduced such a farcical provision in the Bill? Obviously not to benefit the deprived children, as must be clear from the above analysis. The only purpose seems to be to divert public attention from the growing demand for education of equitable quality which can only be provided if the Bill promotes the Common School System for all children without any discrimination whatsoever. This is obviously not the agenda pursued in the Bill. To be sure, even if the above escape routes are closed, the benefit to deprived children will be minimal as the 'recognized but not substantially aided schools' still constitute barely 8-10% of the total school system, thereby making the entire exercise of not much consequence for UFE, except if the agenda was to confuse the debate on the failure of the official policy to build a genuine Common School System.

**10. Lack of Accountability of the State and Effective Grievance Redressal for Citizens:** There is hardly any provision in the Bill by which the citizens can hold the Central Government, State Governments or any of the designated authorities accountable for their failure to provide 'free and compulsory elementary education' of equitable quality for all children within the specified period of 'not exceeding three years' and seek justice in courts for their offences. Yet, the Bill has clear provisions for cognizing offences of the poor parents for not sending their children to schools and levying heavy penalties on them. Even the Grievance Redressal Mechanism provided in Section 25 [Draft II] is limited to Sections 4 and 5 only and designed in such manner that the parents seeking grievance redressal are unlikely to get any benefit for their children before it is too late.

**11. Violation of Concurrency in Education:** Section 32 [Draft II] of the Bill states:

“(1) Central Government may give general directions to State Governments regarding implementation of this Act.”

- Draft II, Section 32 (1)

The above provision blatantly violates the concurrency in education guaranteed by the Constitution. It must be viewed as a cynical attempt to interfere with the federal polity of India.

**12. Politics of Notification of the Bill:** The Bill significantly empowers the Central Government such that ‘different dates may be appointed for different provisions of the Act, and for different parts of the country’ [Draft II, Section 1 (3)]. This means that the Government intends to take a fragmented view of the Bill depending upon its convenience, political or otherwise. Since Draft II was released on December 10, 2003 - within six days of the electoral victory of BJP in three States – it should surprise no one if the Central Government, apparently certain of lasting in power for the next five years, would notify the Bill only in those states where it is in power so that it can use the parallel structure of designated authorities to control education through Sangh Parivar’s dedicated cadre of Vidya Bharati and Saraswati Shishu Mandirs. It is no mere coincidence that both the provisions for notification on different dates ‘for different parts of the country’ and for creating a parallel structure of designated authorities from State-level down to the level of habitations were introduced in Draft II; these were not in Draft I!

### **Alternative Framework**

Let us begin the task of building up the alternative framework for a genuinely pro-people Bill by re-iterating how the draft Bill *violates some of the basic provisions of the Constitution* and, at the same time, completely fails to fulfill the guarantee of giving all children a Fundamental Right to *elementary education of equitable quality*. The above analysis has shown that both the drafts are violative of the Article 14 (equality before law), Article 15 (prohibition of discrimination on grounds of religion, race, caste, sex, place of birth or any of them), Article 16 (equality of opportunity in matters of public employment), Article 21 (protection of life and personal liberty) and finally Article 21A (Fundamental Right to education for the 6-14 age group), all these Articles belonging to the Part III (Fundamental Rights) of the Constitution. Both the drafts also violate several Articles in Part IV (Directive Principles of State Policy) of the Constitution as well that relate to children, education and deprived sections of society. These include Article 39f (development of children in a healthy manner and in conditions of freedom and dignity; protection of childhood against exploitation and moral and material abandonment), Article 45 as amended through 86<sup>th</sup> amendment (early childhood care and education for the 0-6 age group) and Article 46 (promotion of educational and economic interests of SCs, STs and other weaker sections).

The above analysis has further established that the Bill, in its present framework, will promote inequality, injustice and disharmony in society by denying elementary education of equitable quality to all children. The Bill lacks a commitment to the Common School System (a policy commitment made thrice - once through a Cabinet resolution and twice by the Parliament) in the following significant ways:

- It seeks to legitimise unequal multiple tracks of elementary education.
- It promotes the undesirable sociological principle of establishing a separate stream of education for different sections of society, rather than bringing together children of different socio-economic, cultural, religious, ethnic and linguistic backgrounds in integrated schools.
- It dilutes the Constitutional and policy commitments and international conventions calling for inclusive education for all children with special needs, including the physically and mentally disabled children as well as those belonging to the socially and culturally marginalized sections of society.
- Instead of focusing political attention on a policy for improving the quality and relevance of education in the government, local body and government-aided school system, the Bill diverts attention from this central task by providing for EGS Centres, Alternative Schools and correspondence courses for 6-14 age group children.
- The Bill attempts to provide escape routes to the 'recognised but not substantially aided schools' (i.e. the so-called public schools) from fulfilling their Constitutional obligations towards free elementary education of those children who can ill-afford to pay fees charged by them.
- It makes no commitment to transform all schools into genuine neighbourhood schools.

The de-construction of the Bill reveals the following negative trends in the Bill that promote abdication by the State of its Constitutional obligation towards education of all children, as also dictated by IMF-World Bank's Structural Adjustment Programme:

- By establishing low-quality parallel tracks of education, the Bill reduces the financial obligation of the State under the Constitution.
- The Bill has provisions which enable the State/UT governments as well as the parallel designated authorities to increase pressure on the community to make contribution in terms of money, kind and labour to the school system to gradually substitute for the State funding of elementary education.
- It attempts to shift responsibility for collapse of the official policies since independence in ensuring 'free and compulsory elementary education' for all children by making it an offence if the parents do not send their children to non-functioning, low quality or irrelevant schools/parallel streams, levying heavy penalties on them for not falling in line. In contrast, the Bill has no provisions for cognizing the failure of the various authorities in fulfilling their Constitutional obligations as an offence and for punishing the concerned authorities and officials.

- The Bill promotes as well as legitimises increasing privatization of elementary education.
- There is neither a Financial Memorandum attached to the Bill nor any obligation to provide adequate resources; there is no provision for punitive action against the authorities if they fail to provide the necessary resources within a reasonable time limit.

In light of the de-construction of the Bill undertaken in this paper, the following features emerge that help define *an alternative framework for a Bill* for fulfilling the Constitutional obligations and policy commitments:

- i) Keeping the federal polity of India and the concurrency of education in mind, any Central legislation can be no more than a Model Act (as was the case with 73<sup>rd</sup> and 74<sup>th</sup> amendments) aimed at persuading and guiding the State/UTs to draft similar legislations adapted in the context of their particular social history, socio-economic conditions, educational situation and other aspects of their contemporary reality.
- ii) The Bill will aim at ensuring education of equitable quality for all children up to 18 years of age, including early childhood care and pre-primary education for children in the 0-6 age group.
- iii) The Bill's central theme should be to establish a Common School System, including the 'recognised but not substantially aided' schools, for all children within a specified time frame, to begin with up to class VIII with provision to extend the system up to class XII.
- iv) The Bill should provide for eventually transforming all schools, within a specified time frame, into genuine neighbourhood schools wherein all children living in a designated neighbourhood, irrespective of their backgrounds, can learn and socialize together in a harmonious environment without discrimination of any kind.
- v) The Bill should ensure inclusive education for all children with special needs, including physically and mentally challenged children as well as those belonging to the socially and culturally marginalized sections of society.
- vi) The Bill should have provision for compulsion on the State to ensure flow of adequate resources for meeting the needs of building up a Common School System that will ensure education of equitable quality for all children within a specified time frame.
- vii) The Bill should provide for cognizing offence of the authorities and concerned officials for their failure to fulfill their Constitutional obligations in the framework of such a Bill along with provision for appropriate punitive action.
- viii) The Bill should duly empower and authorize only the Constitutional authorities such as the State/UT Governments and the Panchayati Raj Institutions under the 73<sup>rd</sup> and 74<sup>th</sup> Amendments; no parallel structure of authorities is called for.

ix) The Bill must distinguish between the concerned community, grass roots and parental groups, on the one hand, and NGOs and 'civil society organisations', on the other, for assigning roles for fulfilling the UEE agenda; the NGOs and 'civil society organizations' can't substitute for the former.

x) There should be specific provisions in the Bill to effectively eliminate the practice of social, cultural, religious, ethnic, linguistic and gender discrimination in schools.

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Extracted from 'Exclusion and Inequality in Education: The State Policy and Globalisation' by Anil Sadgopal published in *Contemporary India*, Journal of the Nehru Memorial Museum & Library, Vol. 2, No. 3 (July-September 2003).

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### Legitimising Exclusion and Inequality in Education

Back to the 93<sup>rd</sup> (now called as 86<sup>th</sup>) Amendment debate in Lok Sabha. The amendment Bill had the following four major lacunae:

i) The Bill sought to exclude almost 17 crore children up to six years of age from the provision of Fundamental Right to *free* early childhood care and pre-school education. This was in contravention of NPE-1986 (As modified in 1992) which considered this support during childhood as being crucial for child development and preparation for elementary education (Sections 5.1 to 5.4). The implication was clear: early childhood care and pre-school education will be denied to not less than 40% of the children in this age group, two-thirds of them being girls, whose parents barely manage to earn minimum wages. This will also prevent girls in the 6-14 age group, belonging to the same sections of society, from receiving elementary education as they will be engaged in sibling care.

ii) The Bill made the provision of Fundamental Right to education even for the 6-14 age group children conditional by introducing the phrase '*as the State may, by law, determine*' in the new Article 21A. The implications of this phrase will be discussed below.

iii) The Bill shifted the Constitutional obligation towards 'free and compulsory education' from the State to the parents or guardians by making it a Fundamental Duty of the latter under Article 51A (k) to '*provide opportunities for education*' to their children in the 6-14 age group. This purpose is now sought to be achieved by promoting and legitimizing 'community participation' in raising resources for elementary education (GOI, 2003b,c), yet another measure towards abdication by the State.

iv) The Financial Memorandum attached to the Bill provided for only Rs. 9,800 crores per annum (i.e. 0.44% of GDP in 2002-03) over a ten year period for implementing the provisions under the Bill. This commitment was far from being adequate, as it was 30% less than what was estimated by the Tapas Majumdar Committee in 1999 to provide elementary education to all the out-of-school children through *regular formal schools*. This lower estimate was made possible by depending on low-quality parallel tracks of education and lowering several other critically important infrastructural and pedagogic norms for deprived sections of society (Tilak, 2003 and Sadgopal, 2003c).

Detailed critiques of the 93<sup>rd</sup> Amendment Bill contended that the lacunae were deliberate, rather than being a result of an oversight (see Sadgopal 2001a,b,c,d and 2002a; Swaminathan, 2001). The amendment was being made, these writings sought to establish,

not to make elementary education a Fundamental Right, but to fulfill the dictates of IMF-World Bank's Structural Adjustment Programme that demanded reduction in public expenditure on social sector. The lack of guarantee of free early childhood care and pre-school education will not only result in underdevelopment of the deprived children during childhood but will also adversely affect their learning capacity during school education.

In particular, the above critiques focused upon the implications of the phrase '*as the State may, by law, determine*'. No such conditionality existed in the original Article 45. It is contended that the phrase was introduced in order to legitimize the low-budget low-quality multiple and parallel tracks of so-called educational facilities for poor children as well as other forms of policy dilutions discussed above. This phrase also legitimizes the increasing abdication by the State of its Constitutional obligation towards ensuring elementary education of *equitable* quality for all children.

To the agitated MPs from various political parties who criticized the Bill in both Houses of the Parliament, an assurance was repeatedly given by the Minister that the lacunae in the Bill will be taken care of by enacting a new law. How would a law take care of the lacunae introduced in the Constitution through an amendment? If the Government intended to rectify the lacunae later through a law, why was it bent upon introducing these in the Constitution in the first place? The leadership of various political parties neither raised nor pursued such uncomfortable questions in the Parliament. The assurance of a law to be enacted later seemed to have led to a curious consensus in the Parliament on the Constitutional amendment (now termed the 86th amendment), in spite of its unambiguous bias against crores of children (girl children in particular) belonging to various deprived sections of society (Sadgopal, 2001d, 2002a) and violations of several provisions in the Constitution relating to Parts III and IV.

### **Free and Compulsory Education Bill, 2003**

Finally, let us also briefly examine the law that is now before us in the form of the draft 'Free and Compulsory Education Bill, 2003' (Government of India, 2003b,c, Drafts I & II respectively). This is the law that was promised by the Government in Parliament presumably to take care of the lacunae in the 93rd (now called 86th) Amendment Bill. Ironically, a careful scrutiny by several academics, teachers, advocates and voluntary organizations reveals that, instead of 'taking care of the lacunae' in the 86th Amendment, the aforementioned draft Bill increases the lacunae on several grounds (Social Jurist, 2003). We will not go into all those issues in this paper but it would suffice to refer to the relevant portions of Schedule A of the draft Bill which provides for *three types* of centres for 'imparting education', specifying their minimum norms.

#### Schedule A

##### A. Regular School:

Provides for:

- 'At least two teachers in primary school';
- 'at least one room for every teacher'; and



- Qualification of teachers 'as approved by National Council of Teacher Education (NCTE)' i.e. the prevailing minimum qualifications for regular properly qualified and trained teachers.

#### B. EGS Centres/Alternate Schools:

- 'At least 4 hours of teaching every-day';
- Qualification of teachers: Class X certificate (Class VIII in the case of women) along with mere 30 days' training will be adequate;
- Yet, the curriculum will be 'same as the curriculum prescribed for recognized schools'.

*[In this specification on curriculum, we have an uncanny reflection of the NFE discourse of late eighties, evident in NPE-1986 and POA-1986, as documented earlier in this paper. Also, as expected, there are no norms for physical infrastructure since the EGS Centres/Alternate Schools will be provided none!]*

#### C. Open Schooling Centres

- Based on 'The Free and Compulsory Education for Children Bill' Draft I (GOI, 2003b).

The mindset of the State is further revealed by comparing Drafts I and II (GOI, 2003b and 2003c respectively). Although the Draft II of the Bill is still not fully official, it enables us to see the likely direction in which the legislation may be moving. Three points may be briefly noted in this regard:

- The minimum, though nominal, norm for training of 'at least 30 days' for teachers to be recruited for EGS Centres/Alternate Schools in Draft I has been further diluted in Draft II which states:  
     "Training: Should have been trained for at least 30 days *either before or within 6 months* of appointment" (emphasis added)
- The minimum norm of 'at least 4 hours of teaching every day' for EGS Centres/Alternate Schools in Draft I has been diluted in Draft II by replacing it with '*As may be prescribed in the approved scheme*' (emphasis added).
- Draft II places the provision of boundary wall or fencing, playground, *toilets and drinking water*, child-friendly elements (?) and sports equipment in the category called 'Desirable' even for the 'Regular Approved Schools' (emphasis added)!

The draft Bill is both ambiguous and weak on inclusion of the physically and mentally disabled children in the regular approved schools. Its provisions will encourage as well as facilitate violation of the policy commitment for inclusive education which is integral to the fulfillment of Constitutional obligation for equality in education and for building up the Common School System (Jha, 2003). As noted by Jha (2003), the Bill might even promote privatization and commercialization of the education of the disabled.

The draft Bill thus fully legitimizes the discriminatory low quality multiple and parallel tracks of education, already institutionalized in the operating policy and programmes, for the deprived sections of society. In a sense, the Bill will carry forward the process of abdication by the State of its Constitutional obligation for which a legitimate space was created by the 86th Amendment by introducing the conditionality i.e. '*as the State may, by law, determine*' for provision of free and compulsory education for children in the 6-14 age group.

The draft Bill, when passed by the Parliament, will fully protect and also 'guarantee' the exclusion and discrimination designed by Sarva Shiksha Abhiyan in its following statement:

"All children in school, Education Guarantee Scheme (EGS) centre, alternate school, 'back-to-school camp' by 2003." (GOI, 2003a, p. 27)

With this guarantee for protection, the Indian government persists in its refusal to reprioritise national economy and continues its campaign for seeking increased external aid, thereby further subjugating nation's education system and policies to the control of the global market.

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*From the Section entitled 'The Communal Assault'*

We may also recognize that emergence of this design for communalization of knowledge in curriculum and promoting fascist thinking is not an isolated act of academic institutions such as NCERT, ICHR, ICPR or ICSSR alone. This design will be incomplete if it is not fully supported and co-ordinated with other branches of the State. Let me cite two pieces of recent evidence. You would recall my earlier reference to the draft Free and Compulsory Education Bill (Draft I) which was in circulation since June 2003. Within six days of the announcement on 4th December last year of BJP's electoral victory in three states viz. Rajasthan, Madhya Pradesh and Chhattisgarh, the Government introduced the Draft II of the Bill. The new draft had the following two additional features:

- a) A "Competent Academic Authority"<sup>1</sup> which will mean "an authority empowered by law or by the Central or an appropriate (i.e. State) government, or recognized by such government, for prescribing *curriculum*<sup>2</sup> for the elementary stage." [Draft II, Section 2 (1) (f)] (emphasis added)
- b) A set of provisions for constituting elementary education authorities from the state-level down to the level of District, Block and even a village hamlet (termed Habitation) that will be parallel to the Constitutional authorities of the state government as well as the Panchayati Raj Institutions or municipal bodies under the 73<sup>rd</sup> and 74<sup>th</sup> Amendments (Draft II, Sections 16-20). This parallel structure will be fully empowered for the purpose of financing, promoting and planning, giving recognition, regulating, guiding, monitoring and providing academic or technical support to elementary education. The state-level parallel authority will be empowered for even "formulation of policy, laying down of priorities . . . . . and mobilization and allocation of resources" and, of course, also for "promotion of use of information technology and distance education" [Draft II, Section 20 (3) (iii) & (vi)].

I need not comment on the 'hidden agenda'. It would now make it possible for the forces of communalization to marginalize the Constitutional authorities and set up a parallel structure under their direct control to manipulate elementary education. In order to ensure that this provision is not used by secular political formations in various states, a clever mechanism has been built in for the manner of notifying the Bill. The Section 1 (3) of Draft II provides for the following:

"It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint and different dates may be appointed for different provisions of the Act, *and for different parts of the country.*" (emphasis added)

- 'The Free and Compulsory Education Bill, 2003', Section 1 (3)  
(Draft II dated 10<sup>th</sup> December 2003)

Note: The phrase in italics was not there in Draft I. It was added in Draft II following BJP's electoral gains in three states and is retained in Draft III.<sup>3</sup>

As if this was not enough, a Draft III of the Bill was issued on 8th January this year. This latest Draft III has provisions that will make it obligatory for the state governments or the Competent Academic Authorities to follow the National Curriculum Framework and 'essential levels of learning' notified by NCERT (Draft III, Section 30). As of today, due to the concurrent status of education, the state governments are under no such obligation and are free to follow their own curriculum framework and prepare text materials.<sup>4</sup> This new provision aims at not just imposing a communalized curriculum but also at destroying, from the back door, the federal character of the Indian Constitution. This 'de-constructed reading' of the Bill reveals the mind of the State on its intention to push the joint agenda of 'globalization-communalisation'. For reasons that must be obvious, the NDA Government is waiting for more convenient circumstances to present the Bill to the Parliament but the instrument for furthering the combined agenda of the Hindutva-cum-market forces into Indian education is ready.<sup>5</sup>

### Selected References

1. Government of India (2003), *The Free and Compulsory Education for Children Bill, 2003*, Draft Bill dated 6th June 2003 [Draft I].
2. Government of India (2003a), 'The Free and Compulsory Education for Children Bill, 2003', Draft Bill dated 19th September 2003 (posted on Ministry of Human Resource Development's website) [Draft I].
3. Government of India (2003b), 'The Free and Compulsory Education Bill, 2003', Draft Bill dated 10th December 2003 (as circulated by the Secretary, Department of Education, Ministry of Human Resource Development, at a public discussion organized by NIEPA, New Delhi, on 15th December 2003) [Draft II].
4. Government of India (2004), 'The Free and Compulsory Education Bill, 2004'. Draft Bill dated 08th January 2004 (as circulated by the Secretary, Department of Education, Ministry of Human Resource Development, at a meeting of State/UT Secretaries of Departments of Education, held at New Delhi, 15th -16th January 2004 and also posted at Ministry's website) [Draft III].

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### Notes

*(added for the consultation organized by the Ministry on August 05, 2004)*

<sup>1</sup> If 'Competent Academic Authority' is going to be constituted by the Central and State Governments, what is going to be the role of NCERT, SCERTs, DIETs and all Boards of Examinations (including CBSE)? Does the Government plans to render all of these duly empowered bodies, wherein thousands of crores of rupees have been invested, redundant? The Bill does not resolve this issue.

<sup>2</sup> In Draft III, the reference to "curriculum" has been replaced by "syllabus, essential levels of learning, mode of examination, and such other academic matters". Two concerns need to be raised. First, who would be responsible for framing and prescribing the "curriculum" as per Draft III? The Draft Bill fails to provide an answer. Second, the concept of "essential levels of learning" has not been defined or elaborated upon in any publicly known policy or curricular document so far. The Ministry has instead defined the Minimum Levels of Learning (NCERT, 1991) which have been criticized widely on pedagogic and epistemological grounds. Does the Government intend to further dilute and/or distort the MLLs? Will 'essential levels of learning' mean merely 'literacy levels' in line with the Jomtien-Dakar Framework? Is this an evidence of

reductionism becoming a dominant feature of educational planning by the State in the 21<sup>st</sup> century, at least for the under-privileged? The Ministry needs to clarify its position.

<sup>3</sup> One can see through the anti-Constitutional political objectives of the *Hindutva* forces in the previous NDA Government in providing the option of notifying different dates for “different provisions of the Act, and for different parts of the country”, as discussed above. However, what political objectives, one wonders, does the UPA Government wishes to serve by retaining this provision?

<sup>4</sup> NCERT is an agency of the Union Government and its formulations do not automatically become mandatory for the States/UTs unless some credible democratic process of consulting the States/UTs has been followed and their consent obtained. This is precisely the role of CAGE which we have suggested should be made into a statutory body on a priority basis. In view of the federal structure of the Constitution and the concurrent status of education, how can NCERT be authorized to notify its curriculum framework, ‘essential levels of learning’ etc. without a due process being undertaken by the Union Government? This was the basis of the nation-wide criticism of the NDA Government’s ill-conceived move to impose NCERT’s curriculum framework (2000) as the national curriculum framework and this should have been an adequate and legitimate basis for the UPA Government for rejecting the so-called National Curriculum Framework (NCF) drafted by a handful of NCERT’s staff, advisors and consultants. Section 30 (1) of the Draft Bill is designed to legitimize NDA Government’s agenda of using NCERT to impose its *Hindutva*-cum-market ideology on the whole nation. Why is UPA Government supporting this move?

<sup>5</sup> Three additional concerns need to be addressed. First, Section 30 reveals a total confusion between the concepts of curriculum framework, curriculum, syllabus and the undefined ‘essential levels of learning’ and the respective roles of the State-level and District-level bodies in their formulation and notification. Second, what is the legal implication of the requirement of “*keeping in view the documents*” by the State-level and District-level bodies, unless it is a clever method for imposing NCERT’s formulations over the whole country, down to the level of habitations? Third, what is the purpose of keeping the “recognized schools” (i.e. the *unaided fee-charging private schools*) *outside the purview of Section 30*? The alarming contradictions between Section 30 and Section 31 further imply that the *unaided fee-charging private schools* will *not* be required to “strictly conform to the ideals, values, and principles enshrined in the Constitution, especially as articulated in its Preamble . . . .” and also will not be required to “aim to develop children into citizens fully cognizant of their fundamental duties as specified in Article 51-A thereof”!

A tentative and incomplete analysis for initiating discussion  
at the consultation organized by the Ministry on August 05, 2004

**ANALYSIS OF THE PREMISES UNDERLYING  
'THE FREE AND COMPULSORY EDUCATION BILL, 2004'**

No.	Premises Underlying the Draft Bill	Premises for the New Bill
1.	<p>'Compulsory Education' means compulsion on the parents or guardians to ensure that their children regularly attend school.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• Ambiguity with respect to provisions for the Government to provide adequate resources. [Section 21 (1)]</li> <li>• No Financial Memorandum is required to be attached with the Bill.</li> <li>• Penalty on parents/ guardians if their wards do not attend school regularly. [Section 33 (1)]</li> <li>• Public officials can find excuses to escape punishment for dereliction of their duty by citing parent's or guardian's failure to ensure attendance of their wards; provisions for protecting the public officials. [Sections 39 &amp; 40]</li> <li>• No obligation to improve access, social relevance, quality (i.e. curriculum, pedagogy, evaluation, assessment etc.) or ambience of the school system since it is assumed that the <i>fault lies with the children or their parents/ guardians and not the education system.</i></li> </ul>	<p>'Compulsory Education' means compulsion on the State to provide adequate resources and all essential facilities for quality education.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• Unequivocal obligation on the State to provide adequate resources and facilities for quality education.</li> <li>• A Financial Memorandum with the Bill becomes a requirement.</li> <li>• Failure to fulfill the aforesaid obligation gives a right to the parents/ guardians/ children to seek enforcement through courts.</li> <li>• Dereliction of duty on the part of the public officials becomes a punishable offence.</li> <li>• Persistence of high incidence of out-of-school children or 'drop outs' and/or low levels of learning will force the State to <i>change its policies with the aim of ensuring equity, quality and relevance of education in the mainstream school system,</i> rather than taking escape routes through parallel educational streams as it has since 1986.</li> </ul>
2.	<p>(a) In combination with the new Article 51A (k), the State can 'legitimately' shift its obligation under Article 21A to the parents/ guardians or the community.</p> <p>(b) The notions of 'community participation' and 'public-private partnership' is dangerously used to promote abdication by the State of its obligations flowing from Article 21A.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The authorities constituted under the Act from habitation-level upwards to the State-level can be <i>required</i> to mobilize resources for elementary</li> </ul>	<p>(a) Article 51A (k) is considered to be in violation of the basic spirit of the Constitution and can't be used to shift State's obligation flowing from Article 21A. This contention is especially valid in light of the failure of the State to provide 'free and compulsory education' to all children by 1960 which gives an unmitigated right to the parents/ guardians or the children to seek enforcement of the obligation.</p> <p>(b) Community participation is necessary for improving management of the education system but this can't be used</p>

	<p>education. [Sections 16-20]</p> <ul style="list-style-type: none"> <li>• While being ambiguous with respect to State's obligation to provide adequate resources, the State can be specifically empowered to raise resources from the community on a 'voluntary' basis to fund elementary education. [Section 25 (1)]</li> <li>• Evidence of gradual but systematic abdication of the State's obligation: Section 16 (5) (iii) requires the local authority to mobilize resources and the State shall provide funds "to the extent they cannot be locally mobilized." (emphasis added)</li> <li>• Franchising of the State's obligation is extended by allowing any NGO (including a corporate house and/or a religious body) to take responsibility for any area for providing elementary education [Section 25 (2)] and for setting up of 'transitional schools' [Section 27 (2)].</li> </ul>	<p>to promote abdication by the State of its obligations under Article 21A.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The local authorities can be made responsible as well as accountable for the management of the education system but can't be <i>required</i> to mobilize resources for elementary education, unless of course they are authorized to collect revenue in place of the Central or State Governments.</li> <li>• Raising of resources through voluntary contribution does not need any legal powers being vested into the State unless it is envisaged as a substitute for the State's obligation to provide adequate resources in which case it loses its voluntary character.</li> <li>• No measures, implicit or otherwise, to abdicate the obligation of the State can be permitted or provided for in the Bill.</li> <li>• No franchising of State's obligation can be permitted.</li> </ul>
3.	<p>The concept of 'free education' need not be guaranteed i.e. ensured without any conditionalities.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The Bill becomes equivocal in guaranteeing 'free education' by making it "subject to rules made in this behalf, freedom for the parent or guardian from liability to incur expenditure, wholly or partly, . . . . as may be prescribed." [Section 2 (1) (t)]</li> </ul>	<p>The concept of 'free education' is to be guaranteed as an unmitigated right of the child.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• 'Free education' is to be guaranteed without any conditionalities whatsoever.</li> <li>• In view of the fact that the notion of Minimum Wages does not provide for education and other minimum needs of a family and even this can't be guaranteed by the State, the 'opportunity cost' of sending children to schools in case of the families dependent on Minimum Wages must be included in the notion of 'free education'.</li> </ul>
4.	<p>The concept of 'compulsory education' is equivalent to mere attendance in the school and need not include any commitment to the quality of education.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The reference to compulsory education as an obligation on the State can be withdrawn from its definition. The obligation for quality education is missing but certain ambiguous notions of attendance with "minimum regularity" and</li> </ul>	<p>The concept of 'compulsory education' can't be reduced to mere attendance and is incomplete without an unequivocal commitment to the quality of education, making it necessary to define quality in unambiguous terms.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The State is obliged to fulfill its obligation towards quality education and the parents/ guardians can seek its enforcement through the courts; this</li> </ul>



	completion of elementary education are introduced. [Section 2 (1) (k)]	requires that quality education is clearly defined in the Bill.
5.	<p>The definition of 'school age' excludes all children under six years of age as well as those in the 14-18 age group.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• A farcical attempt is made by including a) ECCE for the 0-6 age group in the 'Desirable', rather than the 'Minimum', category of norms for schools [Schedules I &amp; II]; and b) the 14-18 age group for completing merely <i>elementary</i> education, rather than <i>High School and/or 10+2 education</i>. [Section 37]</li> </ul>	<p>The definition of 'school age' includes all children under six years of age as well as those in the 14-18 age group in consonance with UN Convention of the Right of the Child to which the Govt. of India is a signatory.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• ECCE for the 0-6 age group and 'free and compulsory education' up to 10+2 stage is integral to the concept of right to education, apart from being a minimum condition for equitable social development for all sections of society under the prevailing conditions.</li> </ul>
6.	<p>It is possible to guarantee right to education through parallel streams of education of differential quality (i.e. with differential norms) viz. regular schools, EGS Centres/ Alternative Schools and "alternative arrangements" (e.g. 'back to school camps' in SSA) for the 6-14 age group.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• Legitimation of the principle of 'a separate educational stream for each social strata.'</li> <li>• Violation of the principles of equality and social justice as enshrined in several Articles of the Constitution.</li> <li>• Continued attrition of the Common School System promised in the National Policy on Education – 1986 (as modified in 1992), leading to further deterioration of the public-funded school system, thereby promoting the market-driven fee-charging private school system for the privileged sections of society.</li> <li>• Lack of commitment to education of <i>equitable quality</i> will result in persistence of the high incidence of out-of-school children and 'drop-outs', as has been the case throughout the Nineties when the <i>multiple track education</i> was practiced as the key strategy for UEE.</li> </ul>	<p>Right to education can't be guaranteed without an obligation to provide education of <i>equitable quality</i> for all children for which the 1986 policy imperative of Common School System (Section 3.2) is the only historic option for the nation.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• A ten-year plan to move towards a <i>Common School System at least until the High School stage</i> through the instrumentality of <i>neighbourhood schools</i>, irrespective of the type of school management or its source of income/funds, with the aim of ensuring <i>education of equitable quality</i> for all children; this is to be achieved by establishing certain commonly applied basic infrastructural, quality-related and pedagogic norms, including a <i>rational language policy</i>.</li> </ul>
7.	The federal structure of the Indian Union and the concurrent status of	The federal structure of the Indian Union and the concurrent status of education is

	<p>education can be marginalized, diluted and/or destroyed altogether.</p> <p><i>Implications:</i> The power given to the Central Govt. to give directions to the State Govt. regarding implementation of the Act violates the concurrent status of education in the federal structure of Indian polity. It also takes away the initiative from the State/UT Govts.</p> <p>- Sections 38 (1), 41 &amp; 44.</p>	<p>the foundation of all educational planning and policy formulation and also the strategic basis for implementing right to education.</p> <p><i>Implications:</i> The State Govt. and its various educational agencies and structures are strengthened to become the chief vehicles for implementing the right to education.</p>
8.	<p>The Constitutional authorities can be marginalised and undermined with the aim of ultimately replacing them by arbitrary authorities.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The definition of 'Competent Authority' allows that the Director of Education (or any other equivalent officer) of the State Govt. can be replaced by any NGO, corporate body or religious organization for the purpose of giving recognition to schools. [Section 2 (1) (i)]</li> <li>• In total violation of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments, a whole range of authorities are constituted from the level of local habitations upwards to the District and Metropolitan levels; the State Govt. is empowered to replace the existing Constitutional authorities (e.g. Panchayati Raj Institutions and municipal bodies) with arbitrarily constituted authorities at different levels to implement the proposed Act. [Sections 16-19]</li> <li>• The State Govt. is empowered to replace the Directorate of Education (or any other such govt. authority) with a newly constituted authority for the purpose of the proposed Act. [Section 20 (1)] As a <i>special concession to the World Bank conditionality</i> (as practiced in several states in DPEP), Section 20 (2) provides for the appropriate govt. to designate, <i>if it so desires</i>, a pre-existing autonomous society, established by the same govt. for this purpose.</li> </ul>	<p>The Constitutional authorities need to be fully empowered and vested with all necessary legal powers and resources in order to carry out their duties effectively.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>• The powers, accountability and role of all of the existing Constitutional authorities (including Panchayati Raj Institutions and municipal bodies) are maintained and further strengthened.</li> <li>• Voluntary bodies are provided appropriate space for strengthening the mainstream school system, rather than weakening it through parallel streams.</li> </ul>
9.	<p>Extra-Constitutional bodies can be given authority for decision-making in academic matters.</p>	<p>No space can be provided for <i>back door</i> entry of NGOs, corporate houses or religious bodies for prescribing</p>

	<p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>The Central/appropriate govt. is given arbitrary powers to recognize any agency (NGO, corporate house or a religious body) as a 'Competent Academic Authority' for the purpose of prescribing "<i>syllabus, essential levels of learning, mode of examination, and such other academic matters . . . .</i>" for <i>elementary and secondary</i> stages. The govt. is allowed to replace academic bodies such as NCERT, NIEPA, NCTE, SCERTs and Boards of Examinations with bodies of its arbitrary choice. [Sections 2 (1) (h), (p), (gg) &amp; (hh)]</li> </ul>	<p>curriculum or any aspect thereof.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>The duly created Constitutional authorities are further strengthened to fulfill their obligations for prescribing any aspect of curriculum and improving the quality of education and made accountable for its decisions.</li> </ul>
10.	<p>The practice of child labour may not only continue but be legitimized through the Bill.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>The Bill is not designed to eliminate child labour but to co-exist with it. The employer of child labour is required to send a notice to the approved school and the concerned habitation-level authority including particulars about "hours of the day, and days of the week when the child is employed or permitted to work" [Section 7 (2) (ii)]. The purpose is apparently to enable the State to adjust the timings of the 'alternative arrangements', including EGS centres and Alternative Schools, with the convenience of the employer.</li> </ul>	<p>The practice of child labour needs to be eliminated unconditionally.</p> <p><i>Implications:</i></p> <ul style="list-style-type: none"> <li>Make provisions, create laws and ensure all necessary conditions that will enable the children engaged in child labour to complete their education through regular formal schools.</li> </ul>

- Anil Sadgopal  
August 05, 2004

## EMPOWERING THE GOVERNMENT SCHOOLS<sup>\*,#</sup>

*a plea for political priority for the only historical option for India*

The crisis was foreseen by the Kothari Education Commission (1964-66) which unequivocally recommended the **Common School System with neighbourhood schools** as the National System of Education for all children of India. What is a Common School System? The most important feature of a Common School System is *equitable* (not *uniform*) quality of education for all types of schools, be they Government, government-aided, local body or private schools. Six essential and non-negotiable attributes of equitable quality of education need to be specified : (i) minimum physical infrastructure, including library, teaching aids, playgrounds and many other features (e.g. early childhood care centres and pre-primary schools attached to primary/elementary schools); (ii) professional quality of teachers and teacher : student ratio; (iii) diversified and flexible curriculum to reflect the geo-cultural plurality of the country, while emphasising certain core curricular features of nation-wide significance; (iv) pedagogy for holistic, child-friendly and liberative education; (v) apart from gender sensitivity, pedagogic and social empathy for the *dalits*, tribals, cultural and ethnic minorities and the physically or mentally challenged children; and (vi) de-centralised and community-controlled school system.

The Indian Parliament has expressed its commitment to the Common School System twice in its resolutions on the National Policy on Education respectively in 1986 and 1992 (the 1968 policy, issued as a Cabinet resolution, was also committed to the Common School System). Yet, the concept could not be translated into practice because the political leadership and bureaucracy at all levels along with the intelligentsia found an *escape route* for their own children viz. the private school system. This shift in commitment from the Government school system to the private school system implied an increasing loss of political, bureaucratic and social will to improve the Government schools. The present policy support to privatisation and commercialisation of education amounted to legitimisation of *status quo* of disparity, discontent and disempowerment of the vast majority of Indian people.

The Central Advisory Board on Education (CABE) appointed a Committee on Common School System in 1988. The CABE Committee proposed a ten-year phase-wise programme for reconstruction of the present school system into a Common School System. In 1990, the Acharya Ramamurti Committee, constituted to review the 1986 Policy, extended the CABE Committee proposals further. The chief features of a phase-wise re-construction programme may be summarised as follows : (a) Highest political priority to improvement of both the access and the quality of the Government, local body and the government-aided schools; (b) De-centralisation of decision-making and management of schools through the Panchayati Raj framework and making the school entirely accountable to the community it serves; (c) Fulfilling the Constitutional obligation of a minimum of eight years of *elementary* education (instead of five years of *primary* education) under Article 45 to all children up to 14 years of age (including the early childhood care and pre-primary 0-6 age group); (d) Allocation of

\* This concept was first evolved and elaborated in the *LOKSHALA Programme for Universalisation of Elementary Education*, organised by Bharat Jan Vigyan Jatha with academic support from Maulana Azad Centre for Elementary and Social Education of the Department of Education, University of Delhi (March 1995).

# Published in *Outlook*, December 11, 2000.

*adequate* financial resources, getting out of the '6% of GNP' trap; (e) A pedagogically and socially rational language policy for the medium of *education* (not *instruction*) common to all schools, so that language becomes a means of *articulation*, rather than *imposition*; (f) A carefully constructed programme of incentives, disincentives, persuasion and eventually legislation to gradually bring the private schools into the fold of the Common School System; incentives to private schools may include grants for children from low-income groups, computed at the rate of allocation per child in Government schools, such that all children in the neighbourhood have access; disincentives may include gradual withdrawal of all hidden subsidies to private schools, like the cheap land, tax-free income and exemption from income tax on donations, teachers trained at public cost, etc.

The elite in India have always been dismissive of the concept of Common School System by mocking at it as being politically too radical and, therefore, infeasible. In contrast, the poor and the lower middle class have for long internalised the concept as the only means for their empowerment and social justice. It is an irony that such an equitable public school system has been prevalent in some form or the other in several European countries, USA and Canada. Indeed, this is the only historical option left for India for building a cohesive, secular and just society. The diversionary educational agenda including adult literacy, non-formal centres, Alternative Schools or Education Guarantee Scheme, will have to be given up. The agenda of 'Empowerment of Schools' for creation of a Common School System must receive topmost priority in national political agenda.

November 30, 2000

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Published in *Outlook*, December 11, 2000.

## TN-FORCES

# Draft Law for Submission to the Government of India on THE FREE AND COMPULSORY AND EQUITABLE EDUCATION BILL, 2004.

## The Free and Compulsory And Equitable Education Bill, 2004

### Introduction

1. Due to globalisation too much of school education has become privatized and marketable: increasingly the state is abrogating its responsibilities to fulfill its constitutional obligations and has consistently decreased budgetary allocations every year for education. This draft law is based on the understanding that despite the Constitution 86<sup>th</sup> Amendment the Free and Compulsory Education Bill should guarantee the right to education to all children upto 18 years or Std. XII. or equivalent
2. The first principle of the enabling law is that it cannot provide for rights lesser than what the Constitutional 86<sup>th</sup> Amendment has provided. Article 21 A is categorical that all children 6-14 years have the right to education. The 86<sup>th</sup> Amendment makes no distinction between Government, aided, substantially aided, recognised non-formal, etc. Dichotomy in education cannot be accepted hence we must redraft a law that is guaranteeing formal-free, quality, compulsory and equitable education in any school. The poorest child—all of them have a right to be admitted, be provided free, quality education and retained in any school of his/her choice in the neighbourhood. The Amendment does not reduce this right to a quota system of 20% for not substantially aided schools. Hence this law must give up quotalisation of education based on class, caste and language. By implication to make this Constitutional right or the right in Unnikrishnan Judgement realisable—every child also has the right to be taught in the language of their communication / mother tongue.
3. If we accept this argument as central then free must include quality and standards of free as laid down in the Draft Bill are inadequate. This implies that besides defining the economic parameters of free we need to include the essentials of quality – equitable education as a definition of free. The definition of free education must encompass the meaning of equitable and quality education. Free must guarantee access to any approved / recognised school with quality education provided even to the poorest of the poor children in the school of their neighbourhood, in their language and free of all charges. Common school system should form the basis of free education.
4. Since the Constitution 86<sup>th</sup> Amendments is a right of all children, the Approved Schools definition should not restrict this right. The definition is restrictive and discriminatory. It does not promote equitable and quality education, which is the guarantee ensured by the Constitution Amendments. It leaves out of its purview-recognised schools not substantially aided and includes education guarantee centre or alternative schools. All children have the right to quality, free and compulsory education in any school as per the 86<sup>th</sup> Amendment. Unless the definition of approved schools to include all schools is recognised this law is not acceptable.
5. Secondly there are too many authorities. The Local Authority entrusted with powers of management and finances and control over personnel is sufficient as a single

authority. At best there can be a Local Education Committees / Authority comprised of elected members of the local government, village education committee to represent the gram sabha but also eminent persons committed to education.

6. We need a proviso stating that for children who need rehabilitation / mainstreaming into different types of schools that is necessary for the process of eradication of child labour. However this process should be for a limited time period of a maximum of 1 year from the notification of this law after which the alternate system should be withdrawn.

## ANNEXURE – I

### **A Critique and a Proposal**

Parliament has enacted the Constitution 86<sup>th</sup> Amendment Act 2002 (earlier tabled as the Constitution 93<sup>rd</sup> Amendment Bill) which guarantee free and compulsory education for all children 6 to 14 years. The Constitution Amendment is as follows:

- ***The Constitution (Eighty Sixth) Amendment Act, 2002***  
An Act - Further to Amend the Constitution of India.

Be it enacted by Parliament in the fifty – third year of the Republic of India as follows:

1. **Short title and commencement** - (1) This Act may be called the Constitution (Eighty sixth Amendment) Act 2002.

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

2. **Insertion of new article 21 A** - After Article 21 of the Constitution, the following article shall be inserted, namely:

*“21 A. Right to education.* - The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.

3. **Substitution of new article for article 45.**- For article 45 of the Constitution, the following article shall be substituted, namely : -

*“45. Provision for early childhood care and education to children below the age of six years.* - The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.

4. **Amendment of article 51A.**- In the Article 51A of the Constitution, after clause (j) the following clause shall be added namely :-

*“(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six to fourteen years”.*

In September 2003, Government of India proposed to enact a Central Law to give effect to the Constitution Amendment. Accordingly a Draft Bill called the Free and Compulsory Education for Children Bill put into circulation for wider debate. This enabling law must be tested against the tenets of the Constitution Amendment. The rights it offers cannot be lesser than the Constitution Amendment as it will then be seen as a law that takes away the rights enshrined in Article 21 A by the Amendment. This is cannot do in both the substantive rights part of the proposed law nor into procedural aspects. This note attempts a preliminary analysis and critique of this law against the background of the 85<sup>th</sup> Amendment being now part of the Right to Life – right to life includes the right to livelihood and the rights to live in dignity. To give effect to this bundle of rights the right to education, essentially to give meaning to the right to live in dignity is now made a fundamental right.

## **I. What does the draft law propose**

### ***Definition***

One method of analysing the substantive portion of law is to examine its definition. Some key definitions are useful to understand how the government proposes to structure its substantive rights and who it intently to empower.

Sec 2 (a) "approved school" means any school in any specified area within the jurisdiction of a local authority imparting elementary education".

- (i) is under the management of the Central Government or State Government or the local authority or under the management of a body controlled by the Central Government or State Government or local authority;
- (ii) being under any other management, is recognised by the appropriate Government for the purposes of this Act and receives substantial aid from the Government or local authority;
- (iii) any Education Guarantee Centre or alternative schools run under any approved scheme of the Central or State Government.

(c) "attendance authority" means the local authority concerned or any other authority as may be prescribed;

(d) "attendance at an approved school" mean presence for instruction at a school imparting elementary education for such number of days in a year and at such time on each day of attendance, as may be specified by the attendance authority;

(e) "child" means a boy or girl within such age group not being less than six years of age or more than fourteen years of age;

(g) "compulsory education" means and implies an obligation on appropriate Government to take all steps to ensure that every child is enrolled and retained till the prescribed level of education is received by such child in a school imparting the prescribed courses of study and the steps taken in that behalf;



(h) "disability" means disability as defined under sub-section. (l) read with sub-sections (b), (e), (l), (n), (o), (q), (r), (t) and (u) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

(i) "free education" means exemption from the obligation to pay tuition fee or other charges which schools usually collect from pupils in a school. It may extend to provision of free supply of text-books, note-books, other study materials, health care and nutrition where the appropriate Government so declares by rules made under the Act;

(o) "recognised school" means a school recognised by the competent authority or any State Elementary Education Board or State Secondary Education Board, or the Central Board of Secondary Education or All India Council of Secondary Education or National Institute of Open Schooling or any other body or authority notified for public education by the competent authority.

(p) "school" means a centre for imparting education fulfilling such requirements and other conditions as may be notified by the appropriate Government and the requirements so specified would not be less than those specified in Scheduled A of this Act;

(q) "school age" in relation to a child means being not less than six years of age or not more than fourteen years of age.

(r) "special school" means any institution imparting education for children suffering from any disability;

(s) "substantially aided" in relation to a school means a school which meets at least seventy five percent of its annual expenditure through funds received as loan or grant either individually from Central Government or State Government or local authority or collectively from all of them;

### ***Basic Education Authority***

Sec. 3 (1) In the local body areas of each State and Union Territory, the appropriate Government shall notify an authority, known as Basic Education Authority, for implementing the provisions of the Act.

Provided that where the State has delegated the functions relating to Elementary Education to the local authority in accordance with the provisions of the Constitution such power shall be exercised by the local authority concerned.

(2) The Basic Education Authority shall three months prior to the beginning of the year submit plans to the general body of the local authority concerned detailing the steps to be taken in the year and the strategies to be followed to get all children to school.

### ***Free and Compulsory Education***

Sec. 4 (1) Subject to the provisions of this Act education shall be free and compulsory for every child of school age.

(2) The appropriate government shall ensure the availability of the school in accordance with such norms as may be notified by the appropriate Government.

(3) The appropriate Government shall provide the school facilities mentioned in sub-section (2) at the earliest and, in any case, not later than one year after the notification of this Act.

(4) The attendance authority shall ensure free education to a child in a school unless such child is receiving education in a recognised but not substantially aided school mentioned in clause (ii) of section 7.

(5) Nothing in this Act shall entitle a parent to claim reimbursement of any expenses incurred voluntarily in respect of education of a child in a recognised school, which is not substantially aided by the Government.

### ***Compulsory Recognition of Schools***

Sec. 4 (A). (1) All centres for imparting education to children in the school going age would have to be recognised.

(2) Any child who has studied in a learning centre which is not recognised, would be deemed to have not received education for the purposes of the Act and would not be eligible for any benefits which would have accrued on getting such an education from a recognised or approved schools.

Explanation : Benefits for this purpose would include admission to higher classes in recognised or approved schools or permission for appearing in examinations conducted by or on behalf of the competent authority or any authority approved by it.

### ***Responsibility of parent to send his or her child to school***

Sec. 6 (1) It shall be the duty of the parent or guardian of every child to cause the child to attend an approved school unless there be a reasonable excuse for his or her non-attendance in a school within the meaning of Section 7.

(2) It shall be the duty of the attendance authority to ensure compliance with sub-section (1).

(3) In case of children who are without parents or guardians, the local authority within whose jurisdiction the child ordinarily resides shall be deemed to be guardian for the purpose of the Act.

(4) Every local authority shall form a citizens committee consisting of such number of persons and possessing such qualifications as may be prescribed to monitor the conditions of children in sub-section (3) and ensure their enrolment in schools.

(5) Every citizens committee shall exercise such powers as may be prescribed or as may be entrusted to it by the local authority.

### ***Certain Duties of Teachers***

Sec 8 (1) to (4) outlines duties of a teacher. It states that once a child is admitted to school, it shall be duty of the teachers in association with the parents or guardians to ensure continued attendance of children enrolled in the schools.

Besides imparting education the teachers

- Are obligated to also support all-round development of children entrusted to his / her care.
- Call for reports on attendance.
- Duty to report, failure of which will be treated as professional misconduct- and proceeded against.

### **Education Committees**

Sec. 9 (1) to (3) puts an onus on local government to constitute a Village Education Committee for each school on set of schools.

Most important according to Sec. 9(2) is that it is the duty of this Committee to *ensure quality education.*

### ***Children with Disabilities:***

Section 10 (1) to (5) outlines the mandatory duty of the Basic Education Authority. It's main purpose under Section 10 (1) (a) and 10 (1) (b) is to ensure that every child with disability has access to free education and to promote integration of children with disabilities in normal schools.

### ***Attendance Order***

Sec 11 (1) to (6) details matters concerning the attendance order. It states that if a parent or guardian of child fails to ensure that their child attends an approved school there will be an enquiry conducted. The attendance authority can then order to the parents / guardian to ensure that the child attends an approved school. Sec. 11 (3) to (6) deals with procedural aspects of this obligation.

### ***Employment or engagement of a child preventing from attending school not permissible***

Sec. 12. deals with prohibiting employment or engagement of a child, which prevents the child from attending an approved school. It reads as follows: "no person shall employ or engage a child in a manner, which shall prevent the child from attending an approval school....."

*No fee to be levied*

Sec 13 (1) and (2) deals with no fee to be levied in respect of any child for attending an approved school.

### ***Obligation of recognised schools***

Sec. 14 (1) to (4) is crucial because it details the obligation of recognised schools. It states :

14 (1) the attendance authority shall have power to direct recognised but not substantially aided schools to give admission, in a manner as prescribed, without any fees or any other charges to children below poverty line from the local body area. Provided that any such direction shall be applicable to all such recognised schools existing in the local body area. Provided, further, that the upper limit for admitting such children would be 20% of the total strength of the school.

(2) the children under this category shall be chosen by the local authority concerned in the manner determined by the appropriate Government by law, from children below poverty line from the local body area. Explanation : "children below poverty line" means children from families identified as being below poverty line under the public distribution scheme of the Central Government or the State Government. (3) On receipt of such direction, the school shall admit such students and provide free education to them. (4) The competent authority may take such action deemed appropriate against a school failing to carry out a direction given under sub-section (1).

### ***Grievance Redressal Mechanism***

Sec 16 (1) to (4) outlines what is the grievance redressal mechanism which is expected to be headed by a District Magistrate and there to four other persons. The onus under this section is placed on the Basic Education Authority to provide schooling facilities and any aggrieved party may initiate action before this authority for redressal. The G.R.A. can give directions to the authority suo-moto or a complaint by an aggrieved party including recovering the cost of service from the B.E.A.

### ***Penalty for contravention of Section 12***

Sec. 18 deals with contravention of the provisions of Sec. 12, which is punishable. It reads as follows:

18 (1), If any person contravenes the provision of section 12 he shall be punishable with a fine which may extent to Rs.500/- and in case of continuing contravention, with an additional fine not exceeding Rs.50/- for each day during with such contravention continues after conviction for the first of such contraventions.

(2) No court shall take cognizance of an offence under this Act except on the complaint of the competent authority / attendance authority or any other person authorized in this behalf by the local authority by general or special order.

### ***Courts competent to try offence under the Act***

Sec. 19 (1) and (2) deals with courts competent to try offences under this Act. This includes the Panchayat Adalat or the court of a Magistrate. An offence triable

19 (1) The court competent to try offence under section 18 of this shall Act be the following:

(a) The Panchayats Adalat – by whatever name called, in respect of offence within their jurisdiction; (b) Where there are no Panchayat Adalat, by whatever name called, and whenever the offences takes place outside the jurisdiction of such Panchayats Adalat, the court of a magistrate having jurisdiction over the area

(2) Any offence triable by the Panchayat Adalat shall be tried in the manner provided for the trial of criminal cases by the concerned Panchayat Raj Act, and any offence triable by a magistrate shall be tried in a summary way.

### ***Farming and approving schemes of Education guarantee centre and alternatives schools***

Sec. 20 : Outlines the framing and approving of schemes of Education guarantee, centre and alternative schools.

## **II. A Critique and a Proposal**

7. Too much of school education has become privatised: increasingly the state is abrogating its responsibilities to fulfill its constitutional obligations and has consistently decreased budgetary allocations every year for education.
8. The first principle of the enabling law is that it cannot provide for rights lesser than what the Constitutional 86<sup>th</sup> Amendment has provided. Article 21 A is categorical that all children 6-14 years have the right to education. The 86<sup>th</sup> Amendment makes no distinction between Government, aided, substantially aided, recognized non-formal, etc. Hence we must redraft a law that is guaranteeing formal-free, quality, compulsory education in any school. The poorest child—all of them have a right to be admitted, be provided free, quality education and retained in the richest school. The Amendment does not reduce this right to a quota system of 20% for not substantially aided schools. Hence this law must give up quotarisation of education based on class, caste and language. By implication to make this Constitutional right or the right in Unnikrishnan Judgement realisable—every child also has the right to be taught in the language of their communication / mother tongue.
9. If we accept this argument as central then free must include quality and standards of free as laid down in the Draft Bill are inadequate. This implies that besides defining the economic parameters of free we need to include the essentials of quality – equitable education as a definition of free.

10. Since the Constitution 86<sup>th</sup> Amendments is a right of all children, the Approved Schools definition should not resist this right. The definition is restrictive and discriminatory. It does not promote equitable and quality education, which is the guarantee ensured by the Constitution Amendments. It leaves out of its purview recognised schools not substantially aided and includes education guarantee centre or alternative schools. All children have the right to quality, free and compulsory education in any school as per the 86<sup>th</sup> Amendment. Unless the definition of approved schools to include all schools is recognised this law is not acceptable.
11. Secondly there are too many authorities. The Local Authority entrusted with powers of management and finances and control over personnel is sufficient as a single authority. At best there can be a Local Education Committees / Authority comprised of elected members of the local government, village education committee to represent the gram sabha but also eminent persons committed to education.
12. We need a proviso stating that for children who need rehabilitation mainstreaming into different types of schools that is necessary for the process of eradication of child labour. However this process should be for a limited time period of a minimum of 1 year from the notification of this law.
13. Nowhere is it categorically ensured that all children have a right to education upto Std. VIII. Elementary education like under **the Free and Compulsory Education Bill, 2004** can be reduced to Std V., meaning that it is sufficient for 14 years old to be in Std V even if the child is 14 years of age.
14. The definition of free education must encompass the meaning of equitable and quality education. Free must guarantee access to any approved / recognised school with quality education provided to the poorest of the poor children in the school of their neighbourhood, in their language and free of all charges.

**School education to be compulsory and free must also be equitable and qualitative. The minimum standards to achieve this are outlined below:**

The government shall provide such number of elementary schools and high schools in the state with trained permanent teachers in the ratio of 1:20.

Every child shall have the right to quality standards in his / her school of learning to guarantee a joyful and attractive learning environment and includes:

- ◆ A room or a distinct space for each grade or group of 30 -40 children shall be provided.
- ◆ A trained teacher, per grade, should be available to the children for 220 prescribed instructional days.

- ◆ Exemption of tuition fees / provision for other basic rights such as free noon meal, text books, note books, slates, medical assistance, uniforms and transport shall be provided by the State in every school—government and private.
  - ◆ The child 's own language should be the medium of instruction upto Std VIII
  - ◆ School syllabus shall inculcate social justice and human rights values
  - ◆ The Yashpal Committee Recommendations should be the basis for reducing the physical and mental burden for students.
  - ◆ The Teacher – student ratio should be maintained at 1:20
  - ◆ Creation of special opportunities and facilities for children with disabilities, children living and working on the streets, migrant children, child labourers who have dropped out, children displaced by riots, mega development projects, floods, droughts, etc.
  - ◆ Facilities with adequate safe drinking water, toilet facilities with running water and electricity with adequate electricity with adequate lights and fans and buildings that provides protection during rains and summer heat.
  - ◆ Every school shall provide adequate place for recreation and play, especially primary and elementary schools.
  - ◆ A usable blackboard, chart, chalks, teaching aids in each classroom including availability use for electronic media aids (T.V, slide projector, over head projector).
  - ◆ A child friendly, participatory and contextually relevant curriculum - based on reduction on the principle of reducing the burden of learning.
  - ◆ Protection against all forms of torture, sexual abuse, degrading and inhuman treatment, including abusive language is prohibited in all schools henceforth.
  - ◆ A participatory evaluation and learning process rather than the exam system based on rote memorising and a record of ensuring that all children have attained minimum levels of learning.
15. The law needs to place the onus of responsibility for accountability of ensuring education for all children 6-14 years on the appropriate government – Educational Department officials and not on parents and teachers. The obligation must be placed also on the concerned school authorities (and not on teachers) for ensuring that all children in its vicinity of the school are in school—enrolled, provided equitable—quality education and retained in the school as much as possible.
16. With regard to Children with Disabilities Section 10 (1) (a) ensures that every child with disabilities has access to free education. However Sec.10

(1) (b) speaks only of endeavouring to promote integration of children with disabilities in normal schools.

Unfortunately Section 10 (3) to (5) denies this same commitment by being given powers to set up special schools in government and private sector for those in need of special education (and who cannot be integrated in normal school).

17. On the matter of Attendance Order: Section 11 (1) to (6) needs to be omitted as it is too narrowly based on attendance fulfillment as a record for attendance and built around, parents / guardians obligation to ensure attendance. Right to free (quality) compulsory, education is much more than attendance registers and parental enquiries.
18. Under Employment or engagement of a child it should be simply stated that no person shall employ or engage a child in any employment—below 14 years of age.
13. In the definitions 2(a) approved schools is defined as “approved school” means any school in any specified area within the jurisdiction of a local authority imparting elementary education. However elementary education as Standard VIII is nowhere defined and must be stated and defined.

Sec.14 is crucial as it narrows down the constitutional right of all children to elementary education. It places an obligation on the attendance authority to direct recognised but not substantially aided schools to give admission without any fees or any other charges to children below poverty line upto an upper limit of 20% of the total strength of the school. These children are to be chosen by the local authority from families identified as being below the poverty line under the Public Distribution Scheme. We are now dependent on the Public Distribution scheme for who is below the poverty line and that also only for 20% of the total strength of the school. These schools are the self-financing schools and the state once again gives them the freedom not to admit children who requires to attend a school. This is a classic section that reduces the Constitutional 86<sup>th</sup> Amendment and the Supreme Court case in Unnikrishnan's Case to nothing.

### **III. What we are proposing**

- The Draft Bill on Free and Compulsory Education for Children Bill 2003 is unacceptable in its present form as it sets a rights regime far below the rights guaranteed in the Constitution and International Law. We detail below some essential changes that are necessary even to proceed on with a dialogue with Government of India on this Draft Bill.
- Education is central to eradication of child labour. But this requires that the right to free, compulsory, equitable, quality education is guaranteed for all children upto Std. XII. However in the context of this limited commitment by the Government of India the following proposals are put forward for consideration.



- **Contrary to the National Policies on education and also contrary to the letter and spirit of the Constitution, the government itself is opening different types of schools for people on the grounds of different economic status – high fee paying functioning schools for the well-offs, mal-functioning government schools for the marginalised sections, and even worse, untrained teachers for the very poor. Every parent wishes that their children should get the best education. What exists in the school system – separating students according to social class—is nothing but apartheid in education and that must be halted. Countries all over the world have provided Common Schools as a means towards progress, equality and equitable opportunity. India cannot refuse to do so either (T.N. FORCES).**
1. **The definition of approved school must be radically altered to be in consonance with the Constitution 86<sup>th</sup> Amendment. The present definition of approved school in Sec. 2(a) is excluding and discriminatory. The redefined version should read as :**

**Approved School as: means “any school in any specified area within the jurisdiction of a local authority imparting elementary education” is under**

**(i). is under the management of the Central Government or State Government or the local authority or under the management of a body controlled by the Central Government or State Government or local authority;**

**(ii). being under any other management is recognised by the appropriate Government.**

**This means all recognised private schools, aided or unaided have a duty to guarantee the right to free and quality, equitable education for all children 6 to 14 years and a minimum eight years of school education.**

2. **By implication this law should cast a duty on the educational authorities of the appropriate government to ensure formal school education and not condense the right to include education guarantee centres or alternative schools or any approved scheme of the Central Government or State Government.**
3. **A separate proviso to ensure for a period of a maximum of 12 months the continuation of such programmes to mainstream children back to schools. After which all other forms of schooling – non-formal education, alternative schools, education guarantee centres, etc. should be disbanded to ensure the right to education for all children in approved schools.**
4. **Right to education has been essentially reduced to attendance. For this the local authority or any other authority as prescribed will be responsible. Attendance is reduced to presence for instruction. There should be only one authority and that should be local government (Authority) responsible for school education. This will be possible and realisable unless there is a total entrustment / devolution of 29 powers listed in the Constitution 73<sup>rd</sup> and 74<sup>th</sup> Amendment to the Local Government. Together with devolution of powers there needs to be devolution of financial resources and personnel who will be in the first instance accountable to the Local-**

government. Specifically if this Bill is to become a reality, Local Authority (Government) needs to be entrusted with powers of management and control. Under the Local Authority a sub-committee needs to be formed – Local Education Authority – made up of elected leaders of the local government but also other citizens concerned with education.

5. No where in the proposed Bill is it categorically stated that elementary education means upto Std. VIII or higher as the case may be. Merely defining child as a boy or girl within such age group not being less than 6 years or more than 14 years is insufficient. This is because under **The Free and Compulsory Education Bill, 2004** a child of school going age is defined as 6 years to 14 years but the child could be in Std. V. This is unacceptable and the government of India must commit with financial resources for providing at least education for all children (irrespective of caste / class, language) upto Std. VIII. Further the appropriate government if it so desires may extend free and compulsory education beyond 14 years and provide for early childhood care, joyful learning and development.
6. There can be no reasonable excuse for non-attendance. It is the duty of the State and the neighbourhood school to ensure education Sec. 7 of the Act stands deleted.
7. Responsibility for providing schooling must be on the state (appropriate government) and the approved / recognised school. This duty cannot be cast on parents or teachers to guarantee education. Teachers will have specific duties to impart education and support the all-round development of the child entrusted to his / her care. Hence, Sec. 6 should be deleted and Sec.8 redrafted.
8. Sec 10 regarding children with disabilities must be changed to guarantee that all children with disabilities have access to free, equitable – quality education in approved / recognised schools. These schools should guarantee special education, specially trained teachers and necessary infrastructure for all children who have a specific disability, which prevents them from participating freely in the school learning process. The state does not require to provide special schools different from the approved / recognised schools.
9. Sec 14 of the Draft Bill needs to be omitted in total in the context of an amendment to the definition of an approved school under Sec.2. Sec.14 legalises for private unaided schools not to provide education on demand for the poor which the Constitution 86<sup>th</sup> Amendment (now 21 A) has illegalised.
10. Sec.11 on attendance order has to be redrafted thoroughly or omitted.
11. Sec. 15 is crucial as it attempts to compute the age of the child. The age of the child can be determined by a birth certificate or in its absence, a declaration by the parents / guardian. All the other sub-sections need to be deleted.

12. Sec. 17 is constructed on Sec. 11. We hold that Sec.11 has to be redrafted. Hence Sec. 17 can be omitted.
13. Under penalty for employers for contravention of Sec. 12 the penalty cannot be less than what is prescribed in the Child Labour (Prohibition and Regulation) Act and the Supreme Court Judgement in M.C. Mehta Vs State of Tamil Nadu. Read together the minimum penalty is 40,000 rupees for employment of a child below 14 years. Hence the fine of Rs.500/- proposed is in contempt of the Supreme Court directions in this matter. Secondly under the CLPRA any person can initiate legal action against employers. Whereas under the proposed law it has to be only on a complaint by the competent authority / attendance authority or any other person authorised in his behalf by the local authority.
14. Sec. 20 needs to be deleted.
15. Schedule A in the context of the above arguments needs to be redrafted based on free, compulsory, equitable and quality education.

**TN-FORCES Draft Law for Submission to the Government of India on  
THE FREE AND COMPULSORY EDUCATION BILL, 2004.**

**Preamble**

An Act to substitute the Free and Compulsory Education Bill, 2004 and to guarantee free, quality, equitable school education for all children upto 18 years and ensure early childhood care, services and joyful learning 0-6 years for all children.

WHEREAS the Constitution 86<sup>th</sup> Amendment Article 21 A guarantees free and compulsory education for all children 6 to 14 years.

And WHEREAS the Supreme Court has ruled in J.P. Unnikrishnan vs State of Andhra Pradesh that education is a fundamental right for all children upto fourteen years of age and India has ratified the UNCRC which defines a child as 18 years of age.

WHEREAS under the Constitution Amendment Article 45 of the Directive Principles has been amended to provide for early childhood care and development.

And WHEREAS a policy decision has been taken by the Union Government to provide free, quality, equitable school education for all children upto 18 years and early childhood care, services and joyful learning for all children 0-6 years.

And WHEREAS to give effect to that policy decision it is necessary to make school education free and compulsory for all children upto 18 years and compulsory early childhood care, services and joyful learning.

And WHEREAS it is also necessary to make it obligatory on the part of Department of Social Welfare, Directorate of Social Welfare, Department of School Education, Directorate of Elementary Education, Directorate of School Education, Directorate of Matriculation Schools and all its staff to ensure that all children 0-18 years are guaranteed the stated rights in this Act including early childhood care, learning and development services.

And WHEREAS the UNCRC defines a child as any person upto 18 years of age.

In the 56<sup>th</sup> year of this Republic that the Free and Compulsory Education Bill, 2004 is as follows:

**1. Short title, - extent and commencement**

(1) This act may be called The Free and Compulsory Education Act, 2004.

(2) It extends to the whole of the country except Jammu and Kashmir.

(3) It shall come into force within 30 days of the Presidents assent by notification in the Official Gazette.

**2. Definitions**

In this Act, the following meanings are applicable:-

(1) 'academic year' means a period notified as such by the appropriate government.

(2) "appropriate government" means

- (i) the state Government in the case of territory comprised in a State
- (ii) the Government of a Union Territory, in the case of a Union Territory having its own legislature and
- (iii) the Central Government, in the case of other Union Territories.

(3) "attendance at a primary, middle, secondary and higher secondary school

means presence for instruction at a primary, middle, secondary and higher secondary school or equivalent for such number of days, and on such days in a year, and at such time on each day of attendance, as may be prescribed;

**(4) Approved School (delete) Recognised school** means "any recognised school in any specified area within the jurisdiction of a local authority imparting primary / elementary / secondary and higher secondary education or equivalent"

(i). is under the management of the Central Government or State Government or the local authority or under the management of a body controlled by the Central Government or State Government or local authority;

(ii). being under any other management is recognised by the appropriate Government.

**(5) "competent authority"** means the competent authority appointed by the Government under Section 13

**(6) Child** means every human person being (delete) upto below (delete) the age of 18 years.

**(7) Compulsory Education** means twelve years of formal school learning and instruction to children in such a manner that the educational status and progress of every child is compulsorily and constantly monitored, and all necessary steps taken to ensure quality education and that every child enrolled in a recognised school attends it at least with such minimum regularity as may be prescribed. for completion of XII Std education or upto 18 Yrs.

**(8) Caste Discrimination** means those offence of atrocities listed under Section 3 (1), Section 3 (2) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act). and any other relevant act.

**(9) Disability** shall have the meaning assigned to it in clause (l) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.

**(10) Early Childhood care, learning and development services (delete) Early childhood care and development (ECCD)** means nurturing the child from birth through six years free, qualitative, public institutional care which includes the right to facilities for joyful learning, nutrition, food security, health care and development services.

**(11) Equitable Education** means education that is non-discriminatory on the basis of class, caste, gender, disability language & ethnicity.

**(12) Free Education** means a right to free and quality education as mentioned in 5(3) from pre-primary till Std XII Or equivalent in all schools. and includes the right to all Government Welfare Schemes. (delete)

**(13) "Guardian"** means any person to whom the care, nurture or custody of any child falls by law or by natural right or by recognised usage, or who has accepted or assumed the care, are or custody of any child or to whom the

care, nurture or custody of any child has been entrusted by any lawful authority;

(14) "Local areas" means:

- (i) in case of urban areas, a municipal area, and
- (ii) in case of rural areas :

(A) in States having panchayats at the intermediate level, the territorial area of a Panchayat of such level, and

(B) in other States, such territorial unit as the appropriate government may, by notification, specify as the 'Local area', for purposes of this Act;

(15) "Local authority" means a Panchayat or a Municipality and such other authorities as the appropriate government may, by notification, specify;

(16) "Monitoring Authorities" means all elected local government bodies and such other authorities appointed by the Government.

(17) "parent" means the father or mother of a child and includes an adopted father or mother;

(18) Qualitative Education means the minimum standards as per Sec. 5 (3).

(19) "School age" in relation to a child means 18 years of age or completion of Std XII exams.

(20) "School Education" means education upto Std XII or equivalent

(21) Torture, Degrading and Inhuman Treatment means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This article is without prejudice to any international instrument or national legislation, which does or may contain provisions of wider application.

(include homes for children) Attn. Ossie

**3. Duty of appropriate government to provide free and compulsory education.**

(1) The appropriate Government shall, through the Authorities and mechanisms provided in Chapter III and otherwise, provide free and compulsory education to all children in all recognised schools in the manner hereinafter provided. All schools without recognition should be closed herewith.

(2) While taking measures in pursuance of sub-section (1), the appropriate government and all authorities mentioned in Chapter III of this Act shall

pay special attention to the needs of children belonging to disadvantaged groups, like:

- a) girls,
- b) scheduled castes, scheduled tribes and other backward classes  
**MBCs DNT.**
- c) families below the poverty line,
- d) families affected by migration, calamities, etc.
- e) inhabitants of urban slums and rural areas, especially remote rural areas
- f) first generation learners
- g) children with special needs
- h) children in need of care and protection and
- i) juveniles in conflict with law.

**Explanation:** - "Disadvantaged group" implies a group suffering from any disadvantage – physical, locational, social, economic or otherwise – which adversely affects the participation of children belonging to it. in elementary education.(delete)

- (3) While taking measures in pursuance of sub-section (1), the appropriate government shall take all necessary steps to ensure co-ordination, convergence and synergy among all programmes having a bearing on free and compulsory education, especially programmes relating to early childhood care and education, (delete) adult literacy, welfare and development of women, children, and disadvantaged groups and rural and urban poverty alleviation and shall, from time to time, notify appropriate rules and guidelines towards that end.

#### **4. Duty of appropriate government to establish facilities for free and compulsory education.**

- (1) The appropriate government shall take steps to ensure that, within a period not exceeding one year from the commencement of this Act, an approved school imparting education upto Class VIII (delete) XII or equivalent becomes available within such distance from every habitation as may be prescribed.

#### **5. School education to be compulsory, free, equitable and qualitative**

(1) Subject to the provisions of this Act, school education shall be free, compulsory, equitable and qualitative for every child upto 18 years of age.

(2) For giving effect to the provisions of sub-section (1) the government shall provide such number of elementary schools, high schools and higher secondary schools in the state with trained permanent teachers in the ratio of 1:20 ensuring one teacher per class.

(3) Every child shall have the right to quality standards in his / her school of learning to guarantee a joyful and attractive learning environment and includes:

- ◆ A room or a distinct space for each section of a class children shall be provided.
- ◆ A trained teacher, per grade, should be available to the children for 220 prescribed instructional days.
- ◆ Exemption of tuition fees / provision for other basic rights such as free noon meal, text books, note books, slates, medical assistance, uniforms and transport shall be provided by the State in every school—government and private.
- ◆ The child 's own language (delete) mother tongue or the Regional language should be the medium of instruction. upto Std VIII (delete)
- ◆ For equal education to all the children core curriculum uniform syllabus (delete) should be followed (delete) adopted and there shall be under (delete) a single board of examination in every state for all the schools.
- ◆ School syllabus shall inculcate social justice, democracy, secularism, scientific temper and human rights values
- ◆ The Yashpal Committee Recommendations should be the basis for reducing the physical and mental burden for students.
- ◆ The Teacher – student ratio should be maintained at 1:20 ensuring one teacher per class
- ◆ Creation of special opportunities and facilities for children with disabilities, children living and working on the streets, migrant children, child labourers who have dropped out, children displaced by riots, mega development projects, floods, droughts, etc.
- ◆ Facilities with adequate safe drinking water, toilet facilities with running water and separate toilet facilities for girls and electricity with adequate electricity with adequate lights and fans and buildings that provides protection during rains and summer heat.
- ◆ Every school shall provide adequate place for recreation and play, especially primary and elementary schools.
- ◆ A usable blackboard, chair and table for comfortable seating and writing chart, chalks, teaching aids in each classroom including availability use for electronic media aids (T.V, slide projector, over head projector), laboratory and library facilities.
- ◆ A child friendly (child centric), participatory and contextually relevant curriculum - based on reduction on the principle of joyful learning reducing the burden of learning.(delete)
- ◆ Protection against all forms of torture, sexual abuse, degrading and inhuman treatment, including abusive language is prohibited in all schools henceforth.



### **health care to be included ( for attention of Ossie)**

- ◆ A participatory evaluation and learning process through practical class with sufficient learning tools rather than the exam system based on rote memorising and a record of ensuring that all children have attained minimum levels of learning. **Council of children to be involved in the process of evaluation.**
- ◆ Evaluation of students can be based on various skills related to the subjects rather than tough filtration having a standard written examination.

### **6. Child's Right to Admission in a proximate approved school (neighbourhood schools)**

No child shall be denied admission in any recognized approved(delete) school of his/her choice located in such vicinity of her place of residence as may be prescribed;

### **7. Prohibition of causing obstruction to employing children**

No person shall prevent a child from attending an approved school.

no person shall employ or engage a child in a manner, which prevents the child from attending a recognized upto eighteen years of age. Std. XII or eighteen years of age.(delete)

### **8. Responsibilities of Parents**

It shall be the responsibility of every parent or guardian of a child upto 18 years of school age to motivate the child to attend school.

#### ***Exemption:***

if such child is prevented from attending a approved school by reason of sickness or infirmity.

### **9. Duties of Officials of the Department of Education**

(1). It shall be the duty of every District Education Officer, Panchayat President, Union Chairperson, Councillors in Municipalities / Municipal Corporations to ensure that all children are enrolled and complete XII standard schooling.

(2). It shall also be the duty of every District Education Officer, Panchayat President, Union Chairperson, Councillors in Municipalities / Municipal Corporations to ensure that all children who dropout are placed back in school wherever they are residing.

#### **Duties of official and local bodies to be separated -**

#### ***Exemption:***

if such child is prevented from attending an elementary school by reason of sickness or infirmity;

## **10. The Right to Free Education and Early Childhood Care and Development**

(1) All children 0-6 years have a right to early childhood care, learning and development services and the State shall finance the same.

## **11. Prohibition of Tuition and Collection of Donations**

(1) The State shall finance all school education Institutions for all children upto 18 years.

(2) Collection of tuition fees, special fees, admission fees, building fees, etc. by any school or Pre-Primary (Kindergarten) Early Care and Learning Institution stands prohibited from the date of commencement of the Act.

(3) Collection of any form of donation in any school or Pre-Primary (Kindergarten) Early Care and Learning Institutions in any school by school authorities including by Parents Teachers Association stands prohibited from the date of commencement of this Act.

(4) No teacher shall take tuition's or collect tuition fee from any child either in the school, in a household or in a tutorial.

## **12. All forms of Torture, Degrading and Inhuman Treatment including discrimination by caste, ethnicity, religion, language and gender are prohibited.**

(1) No Principal, Correspondent, Headmaster, Teacher, Inspectors of Schools or Non-teaching staff shall inflict any form of torture, degrading and inhuman treatment including discrimination by caste ethnicity, religion and gender, disability and calling names is prohibited in any school, pre-primary, early childhood care and learning institution on any child.

(2) All forms of ridicule and discrimination based on caste, language ethnicity, religion and gender in any school pre-primary, early childhood care and learning institution is prohibited.

(3) Every student has a right to a Transfer Certificate whenever required and requested.

(4) Issuance of Transfer Certificate as disciplinary action or lack of proficiency in studies is prohibited in all classes specifically in classes IX, X, XI and XII.

## **13. Competent Authority**

(1) The Government shall, by notification, appoint any officer of the Education department, not below the rank of District Educational Officer, to be the competent authority for the purpose of carrying into effect the provisions of this Act and the rules made there under and different competent authorities may be appointed for different areas.

(2) The competent authority shall exercise such powers and perform such other functions as may be prescribed including:

1. ensuring for all children upto 6 years of age free, quality, early childhood care, learning and development of schools.
2. ensuring the enforcement of free, compulsory, quality and equitable education in all schools upto Std XII.
3. submitting of monthly reports of progress to local government authorities.
4. ensuring adequate pre-primary and school infrastructure facilities and basic civic services in all schools.
5. monitoring the prohibition of all forms of torture, sexual abuse and degrading treatment of all children 0-18 years.

#### 14. Monitoring Authorities

(1) Government shall by notification designate as monitoring authorities of schools the following :

Panchayat President,  
 Union Panchayat Chairperson,  
 Town Panchayat President,  
 Municipal Chairpersons and Councillors  
 and such others have may be prescribed for the purpose of carrying into effect the provisions of this Act and the rules made thereunder.

(2) The Monitoring Authorities shall exercise such powers and perform such other functions as may be prescribed including:

1. supervision and management of all pre-primary, primary, middle schools, secondary and higher secondary schools.
2. the enrollment, retention and quality of learning in pre-primary and school education.
3. monitoring the daily functioning of teachers, appointments, attendance and transfers.
4. monitoring and filing complaints against any employer employing children below 18 years.
5. monitoring and filing complaints for any case of torture, sexual abuse and degrading treatment of children 0-18 years.

#### 15. Penalty

(1) Every competent authority fails to discharge his duty under Sec. --- shall be punishable with fine with imprisonment for one year or of fine which will be a minimum of Rs.10,000/- and which may extend to Rs.20,000/- (fine amount to be enhanced)

Penalty to be added relating to section 11 and 12

Transfers not to be used as punishment

Appropriate legal action to be taken in cases of sexual harassment

#### 16. Cognizance of offences

(1) Any court shall take cognizance of an offence punishable under this Act on a complaint made in writing by any person, social organisation, competent authority, monitoring authorities and such other officers of government as the government may designate.

## **17. Competent authority, etc. to be public servants (Central Act XLV of 1860)**

(1) The competent authority and the monitoring authorities appointed under section 6 and the officer authorised under section 8 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

## **18. Power of Government to give directions**

(1) The Government may, in the public interest, by order, direct the competent authority and monitoring authorities to make an enquiry or to take appropriate proceedings under this Act in any case specified in the order, and the competent authority and monitoring authorities shall report to the Government the result of the enquiry made or the proceedings taken by him within such period as may be prescribed.

## **20. Power to make rules**

(1) The Government may make rules to carryout all or any of the purposes of this Act.

(2) Every rule or order made under this Act shall, as soon as possible, after it is made, be placed on the Table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Assembly makes any modification in any such rule or order, or the Assembly decides that the rule or order should not be made, the rule or order 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 order.

## **21. Power to remove difficulties**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion requires by order published in the Central Government Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty.

(2) Provided that no order shall be made after the expiry of a period of two years from the date of commencement of this Act.

## **Separate section on safety and protection of the child girl children Duties and responsibilities of teachers**

**General - Approved school to read as recognized schools**

## Draft education bill put under microscope

By Dhanya Parthasarathy

CHENNAI, AUG. 18. Why should education for different groups of children be of different quality was the overarching question that emerged at a meeting of a team of educationists, research scholars and social workers here on ensuring that every girl and boy in the country went to school, and would not stay away because of any loophole in the law.

Around 20 experts met at Loyola College on Wednesday to examine under a microscope the draft of the Free and Compulsory Education Bill 2004 put forth by the Union Government.

"The transit school system is not on," said Professor K. Shanmugavelayutham of the Forum for Creche and Childcare Services in Tamil Nadu, the organiser of the programme. "Where is equality if transit schools continue to exist?" he said quoting Chapter IV Section 27 of the Bill.

The clauses in the Bill that gnawed at the people conducting the half-day dissection included the fact that the draft legislation permitted child labour up to a certain level (Section 7 in clause 2).

Educationist S.S. Rajagopal

called for one school for all children of a neighbourhood. "There should be total decentralisation at the district level," he added. Nowhere in the Bill does the State explicitly take responsibility for providing schools all over the country, said Virgil D'Sami, convenor of the Tamil Nadu Alliance for Right to Education and Equity.

Members lauded the features such as the removal of over-emphasis on attendance in this Bill.

But the misses were aplenty as they pointed out — orphans were not included, disabled children could be exempted from schools (only severely disabled children should be exempted, said the participants). While the Bill said textbooks would be provided it made no mention of compulsory provision of notebooks or writing stationery, labs, libraries or blackboards in schools.

The Bill mandated free education for all children up to 14 years, and some research scholars demanded that the ceiling age should be raised to 16.

It was announced that the memorandum of their suggestions would be submitted to the ministry of human resources and development at the earliest.

# Public Study Group on CABE Committees

8 December 2004

Submission

## On INCLUSIVE EDUCATION

### 1. Basic Principles that guide the Public Study Group (PSG) in organizing its inputs on Inclusive Education.

First, India aspires to join the category of 'developed nations' within the next ten to twenty years. Hence, the access as well as the quality of its school education system has to match that of the developed nations in the near future. Accordingly, it has to urgently phase out the multi-track education system at least up to the High School stage, replace multi-grade teaching with one teacher for each class and reduce the class size. The PSG would argue for a class size of 20 to be achieved for all children within the next ten years. It would require almost a two-fold increase in the number of schools and/or classrooms and preparation of lakhs of additional trained teachers on a priority basis.

Second, the entire school education system needs to be transformed with a view to making it a genuinely inclusive system. This would include reconstruction of the curriculum, pedagogy, student-teacher relationship and classroom ambience. It would also require that the 'world of work' is integrated with the 'world of knowledge' in order to make education relevant to the sources of livelihoods for all children.

Third, the government is committed to spend at least 6% of the GDP on education, half of which will be on elementary education (the related statement in the Common Minimum Programme is flawed and must be recast). The CMP does not take into account the cumulative gap in resources that has been building up for more than three decades as a result of continued under-investment in education. This would require additional allocations in a phased manner. The Tapas Majumdar Committee report has suggested that it should be possible to achieve UEE through formal school system, without resorting to the multi-track approach for the deprived sections of society. The PSG is convinced that adequate resources can be mobilised by re-prioritising the Indian economy and re-orienting the education policy. This can be achieved without taking recourse to any form of external aid.

Fourth, the government in its CMP has placed equal educational opportunity at the core of its educational policy. India is a signatory to UNESCO's Salamanca Statement issued by the 'World Conference on Special Needs Education: Access and Quality' held in Spain (Salamanca) in 1994. The Statement declared that "*regular schools with (this) inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system.*" The policy, therefore, should be re-designed on the principle of equality and social justice and must ensure inclusion of *all* children in regular schools, including those with disabilities and special needs by making systemic reforms in the (formal) school system.

Fifth, the formal school system can be designed to respond to the varying needs of children from diverse socio-economic, cultural and linguistic backgrounds (including those with physical and mental disabilities) in order to ensure inclusive education for all.

## 2. Policy documents relating to the education of children with disabilities.

Relevant excerpts from the policy and reports are reproduced below with brief comments.

### CABE Report, 1944 (Annex. I)

- Education for children with disabilities should form “an essential part of a national system of education and should be administered by the Education Department.”
- “Wherever possible, handicapped children should not be segregated from normal children.”
- 10 percent of the total budget on basic and secondary education should be set aside for educating children with disabilities.

**Note:** The education of children with disabilities (treated as special education) continues to remain outside the HRD Ministry. Under the ‘rules of executive business’ of the government, the subject is under the Ministry of Social Justice, despite representations made against it. A UNESCO report suggests that 95% countries in the world have transferred special education to the respective education departments or ministries.

The allocation of resources for education of children with disabilities is meager. The Ministry of HRD thinks it is the responsibility of the Ministry of Social Justice and the latter allocates meager amounts to NGOs to run their special schools. The Ministry of HRD gives money through a scheme called IEDC which is not even designed to bring about any systemic reforms in the school system for including children with disabilities (expectedly, the performance of IEDC has been dismal). Under the SSA/DPEP, the Ministry gives money for the education of only the ‘certified’ disabled, a non-educational approach, to say the least.

### Education Commission (1964-66) (Annex II)

“The primary task of education for a handicapped child is to prepare him for adjustment to a socio-cultural environment designed to meet the needs of the normal. *It is essential, therefore, that the education of handicapped should be an inseparable part of the general education system.* The differences lie in the methods employed to teach the child and the means the child uses to acquire information. These differences in methodology do not influence the content or the goals of education. This form of education is, therefore, conveniently referred to as ‘special education’. [emphasis added]” (Section 6.43)

“In the special programmes which alone have been developed so far in our country, the handicapped children are isolated from the normal ones and placed in special institutions. In the educationally advanced countries, however, a great deal of stress is now being laid on the integration of handicapped children into the regular school programmes. . . . we feel that experimentation with the integrated programmes is urgently required and every attempt should be made to bring in as many children into integrated programs as possible.” (Section 6.47)

### NPE-1968 (Annex. III)

The NPE-1968 was committed to the expansion of educational facilities for children with disabilities by developing “integrated programmes enabling them [the handicapped children] to study in regular schools”.

Note: A scheme called IEDC (Integrated Education of Disabled Children) was launched by the then Ministry of Social Welfare eight years later in 1974. The scheme was transferred to the Ministry of HRD in 1992. The scheme is still continuing with minor changes, on the false assumption that education of the 'disabled' needs to be viewed as a 'project' or 'scheme', rather than as an *organic responsibility of the education/school system*. This scheme-based approach also negates the possibility of looking at the issue of the education of the disabled as an opportunity for undertaking systemic reforms in the formal education system. The comments of the review committee on the IEDC can be seen later in this paper.

#### NPE-1986/92 (Annex IV)

- "Wherever it is feasible, the education of children with motor handicaps and other mild handicaps will be common with that of others."
- "Special schools with hostels will be provided, as far as possible at district headquarters, for the severely handicapped children."
- "Teachers' training programmes will be reoriented, in particular for teachers of primary classes, to deal with special difficulties of the handicapped children."
- Voluntary efforts to be encouraged.

POA-1986 makes the following observation:

"As soon as the disabled children enrolled in special schools acquire the communication skills and study skills, they will be integrated into common schools. It is further assumed that with the improved efficiency of the common school system . . . ., the capacity of the common schools to cater to the needs of the disabled children will also improve. . . . large number of children do enter the common school system but drop out because of lack of sensitivity in the system to their needs." (POA-1986, Chapter XV, Sections 7 & 8)

Significantly, POA-1992 fails to acknowledge this linkage between the 'efficiency of the common school system' and its capacity to retain the disabled children.

#### NPE Review Committee, 1990 (Annex V)

The following concerns regarding the policy relating to the education of the disabled were articulated:

- The education of the disabled is viewed as a 'social welfare' activity.
- Child to child help leading to sensitization of the future generation, child to parent help for community sensitization and pedagogic reinforcement were missed out.
- Most of the special centres for the handicapped children were located in urban centres.
- The IEDC scheme was being implemented in terms of running 'Mini Special Schools' within general schools.
- NPE-1986 has not stressed the mobilization of the total general education system for the education of the handicapped.
- Special schools have been treated in isolation from other educational institutions from the point of view of providing the educational supervisory infrastructure.

Note: The committee stressed the need of "breaking the insulation between the general and special schools" and mobilizing the total education system for the education of the disabled, rather than running IEDC as 'mini special schools' within the general schools.



## Persons with Disabilities Act, 1995 (Annex VI)

- Free education in an appropriate environment till age of eighteen years.
- Endeavor to promote the integration of students with disabilities in the normal schools.
- Promote setting up of special schools in the government and *private sector*.
- Only medically certified disabilities up to 40% to be treated as a 'person with disability'.

Note: The PWD Act is seriously flawed on three counts. First, it promotes special schools under private sector, which is neither in consonance with the national policy nor with the Supreme Court's Unnikrishnan Judgment (1993) and the 86<sup>th</sup> Constitutional Amendment, whereby education should not be turned into a commercial activity but be seen as a Fundamental Right of the child. Second, it does not strictly apply to private schools, but does not prevent private schools from opening a market of 'special needs' and 'learning disability' in a big way. Many private schools have started 'learning centres' to segregate children by labeling them as 'slow learners' and 'learning disabled' and started charging higher fees from of them. This is turning out to be a big business, often amounting to a racket. Third, defining 'person with disability' as one certified to be with 40% disability is rather non-educational. It should hardly matter if disability is 40 % or 39% (or even 1%), since all children up to the age of 14 years have to be given free and compulsory education, and all additional or special facilities have to be provided. However, this arbitrary stipulation is becoming a great impediment, particularly in government schools for accessing schemes such as IEDC. A definition of 'disability' makes little educational sense as we have to offer educational opportunity to *all*, and *all* should enjoy it equally!

## Sarva Shiksha Abhiyan, 2002 (Annex. VII)

SSA's approach is described below:

**"The thrust of SSA will be on providing integrated and inclusive education to all children with special needs in general schools. It will also support a wide range of approaches, options and strategies . . . . This includes education through open learning system and open schools, non-formal and alternative schooling, distance education and learning, special schools, wherever necessary, home-based education, itinerant teacher model, remedial teaching, part-time classes, community-based rehabilitations (CBR) and vocational education and co-operative programmes."** (Section 5.2)

Note: While using the rhetoric of 'integrated and inclusive education', SSA fails to emphasise the need to undertake systemic reforms for making the entire school system inclusive. Indeed, it negates inclusion by promoting parallel streams in education for the children with disabilities. It is bound to collapse just as has been the case with IEDC since 1974.

## 3. UN resolutions and declarations in regard to education for children with disabilities

- *UN World Programme of Action Concerning Disabled Persons (1983)*

Member-States should adopt policies, which recognize the rights of disabled persons to equal educational opportunities with others. The education of the disabled should as far as possible *take place in the general education system . . . .* (Article 120)

- *UN Convention on the Rights of the Child (1989)*

States parties. . . . [should] ensure that the disabled child has “effective access to and receives education, training, health care services. . . . in a manner conducive to the child’s fullest possible social integration. . . .” (Article 23.3)

- *UN Standard Rules (1993):*

They [persons with disabilities] should receive the support they need *within the ordinary structures of education, health, employment and social services.* (Introduction, Article 26). States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is *an integral part of the education system.* [emphasis added]. (Rule 6)

Note: All the UN resolutions are consistent in stressing the need to locate special education (for the disabled) within mainstream education. In other words, they emphasise de-segregation of the education for the disabled, the so called special education or the special educational needs, which is rapidly emerging as a profitable market in India and that too in the name of charity and ‘doing good’!

#### 4. UNESCO’s Salamanca Statement (Annex VIII)

“We call upon all governments and urge them to:

- give the highest policy and budgetary priority to *improve their education systems* to enable them to *include all children* regardless of individual differences or difficulties,
- adopt as a matter of *law or policy*, the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise . . . .”
- education system should be designed and educational programme be implemented to take into account the wide *diversity* of [unique characteristics, interests, abilities and learning needs] these characteristics and needs,
- those with special educational needs must have *access to regular schools*, which should accommodate them within a *child centered pedagogy* capable of meeting these needs,
- ‘Regular schools with this *inclusive orientation* are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving *education for all*
- All children mean ‘disabled and gifted children, street and working children, children from remote and nomadic populations, children from linguistic, ethnic and cultural minorities and children from other disadvantaged and marginalized areas or groups’.

Note: India is a signatory to the Salamanca Statement. It is clear that inclusive education is not confined to the education for children with disabilities. Its focus on diversity brings in many other groups of children into regular schools under the principle of all-learn-together. However, in

India, while special educationists have hijacked the term and agenda for the inclusive education, the general educationists are oblivious of it. Secondly, they want to keep it confined to the disabled, and any reference to the other groups of children is resisted. There is a growing 'vested interests' among the special educators and NGOs. Thirdly, the statement clearly calls for systemic reforms but any discussion on reforms is opposed keeping the focus on schemes and programmes, such as IEDC, again reflecting 'vested interests' on the part of the NGOs. Unfortunately, apex institutions like NIEPA and NCERT have become a part of it, and even the ministries are not able to see through! There is a need to think beyond special education and special needs in this country.

## 5. An Analysis of Policy Development on Special Needs Education<sup>1</sup>

The policy issue regarding education of children with disabilities and special needs do not seem to have been considered under a discourse of rights, equal opportunity and social justice in this country. It seems to have been designed largely keeping in view the charity and volunteerism. Further, it has been considered in isolation treating these children as a separate group.

### • *CABE 1944*

'The first official attempt to analyse the problem [of educating the handicapped]' was made in the CABE report of 1944 (Sargent, 1968, p100)<sup>2</sup>. The report, also known as the John Sargent report, after the British chief educational advisor at that time, asked for making education of these children 'an essential part of a national system of education and [to] be administered by the Education Department' (CABE, 1944)<sup>3</sup>. It further said, '*wherever possible*, handicapped should not be segregated from normal children' (ibid, emphasis added) and 10 percent of the total budget for 'basic' and high schools should be spent on the provisions and services for the education of the 'handicapped'. The special education is yet to be a part of the mainstream education, though a number of UN conventions and declarations including the Salamanca Statement have called for making special education a part of the mainstream education, and as per a survey of the UNESCO ninety five percent of the countries in the world have already removed systemic segregation of the special education (UNESCO, 1995)<sup>4</sup>. Many civil society groups recently petitioned the President and the government of India for removing bureaucratic barriers from making education system inclusive.

### • *Special Needs Education in NPEs*

The 1966 education commission noted that the Indian Constitutional directive on compulsory education under article 45 included handicapped children as well, but its subsequent observations had questionable foundations and were pessimistic (Jha, 2002a)<sup>5</sup>. While observing that not much had not been in this regard, it recorded, 'any great improvement in the situation does not seem to be practicable in the near future'; wanted the country to 'learn from educationally advance countries' (Education Commission, 1966, p.123) though the special education in those countries was under criticism. Further, it felt that many ('handicapped') children might 'find it psychologically disturbing to be placed in an ordinary school' (ibid) against the spirit of integration. It made a target of covering only 10% of the children with disabilities by 1986. Drawing upon the report, the government, under the section 'equalization of educational

<sup>1</sup> Prepared by Madan M Jha, based on a paper written for the Council for Social Development

<sup>2</sup> Sargent, J. (1968) *Society, School and Progress in India*. Oxford: Pergamon

<sup>3</sup> CABE (1944) *Post War Education Development in India*. New Delhi: Government of India

<sup>4</sup> UNESCO (1995) *Review of Present Situations in Special Needs Education*. Paris: UNESCO

<sup>5</sup> Jha, M. M. (2002a) *School Without Walls: Inclusive Education for All*. Oxford: Heinemann.

opportunity' of the 1968 policy committed to make attempts 'to *develop integrated programmes* enabling the handicapped children to study in regular schools' (MHRD, 1998<sup>6</sup>, emphasis added).

After eight years of the policy announcement, a programme named Integrated Education of Disabled Children (IEDC) was launched by the government in 1974, which was revised in 1992. In the 1986/92 policies, though the 'education for the handicapped' was listed as a part of 'education for equality' in addition to the education for the scheduled castes, scheduled tribes and minorities, the encouragement to 'voluntary effort' and policy of opening special schools (at the district head quarters for 'severe disabilities') continued. It called for 'the education of children with motor handicaps and other mild handicaps' to be common with the others '*wherever it is feasible*' (MHRD, 1998, p.11, emphasis added).

Ramamurthi committee (1990) made a critical review of the 1986 policy observed that education for the 'handicapped' is being regarded as a 'social welfare' activity; 'special schools have been treated in isolation from other educational institutions' and the IEDC scheme is run as 'mini special schools' (MHRD, 1990, p.85). The modified policy in 1992 continued without making any changes. Jangira (1997)<sup>7</sup> finds the policy 'hesitant in full commitment to universalization of elementary education' for them, and it remained 'silent on the department of education assuming full responsibility for education of children with disabilities' (p. 496).

#### • *Education In Disability Related Acts*

In 1995 the parliament passed the Persons with Disabilities Act giving a full chapter on education for children with disabilities. There does not seem to be any major policy deviation after the Salamanca Statement (1994). It provided for setting up of special schools in the 'government and private sector', which seems inconsistent with the Supreme Court judgment and education policies that do not allow privatization and commercialization of education. It, however, assures that the governments shall, '*endeavor to promote the integration* of students with disabilities in the normal schools' (The Gazette of India, 1996, p.12, emphasis added). As a variant of the NFE, the labour ministry of the government is running 'special schools' for the child labour as one of its projects (GOI, Ministry of Labour, 2004).

The Act defines a 'person with disability' as one 'suffering from not less than forty percent of any disability certified by a medical authority' (ibid). Such criterion for measuring disability in terms of percentages creates utter confusion and problems in education and deprives children of support and services, which they are otherwise entitled to, even if the disability is certified as less than forty percent, since education after all is 'free and compulsory' for all children.

The Act does not define 'learning disability' or 'special needs' or 'learning difficulty' but 'mental retardation' has been defined as 'a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence', and 'mental illness' has been defined as 'any mental disorder other than mental retardation' (ibid, p. 3). The phrases in the definition of mental retardation are similar to the ones used in the British Mental Deficiency Act of 1913 (amended in 1927), which defined 'mental defectiveness' as 'a condition of arrested or incomplete development of mind'. It is a case of this author that these definitions may be useful for giving some incentives and administering welfare programmes for the disabled, but do not

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<sup>6</sup> Ministry of Human Resource Development (MHRD) (1998) *National Policy on Education (As modified in 1992) with National Policy on Education, 1968*. New Delhi: Government of India.

<sup>7</sup> Jangira, N.K. (1997) 'Special Education'. In *Fifth Survey of Educational Research 1988: Trend Report*, Vol.1, New Delhi: NCERT.

have much relevance for giving education to all. At times it becomes limiting and stigmatizing for the children in schools.

Subsequent Acts have either copied the definitions of the PWD Act, 1995, or have added more categories of disabilities. For instance, the Act made in 1999 for creating a Trust for the 'welfare' of persons with autism, cerebral palsy, mental retardation and multiple disabilities has kept the same definition of the mental retardation and disability as given in the PWD Act, but has defined 'severe disability' with 80% of disability, rather than 40% for 'person with disability'. Notably, the National Trust Act does not refer to education of persons for whose 'welfare' it has been created. About the autism, it says, 'autism means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour' (The Gazette of India, 1999). The same definition of mental retardation has been used in the Rehabilitation Council of India (RCI) Act 1992 (amended 2000). The RCI decides curriculum on special education and accredits institutions and course for 'special education', thus keeping it outside the domain of the mainstream educational institutions and maintaining a clear divide between the two.

• **Free And Compulsory Education Bill 2004**

A bill has been drafted following the article 21A of the country's constitution to secure fundamental right to education for children of age 6-14 years. Though the bill has now been placed before one the CABE committees, recently constituted, it may not be inappropriate to look at the elements of equality and inclusion in the bill.

The bill defines a child with special needs as one 'with a disability or a learning disability or both'. The learning disability is defined as 'dyslexia, attention deficit disorder, autism, Down's syndrome and such other conditions as NCERT may notify' (GOI, Department of Education). The local authorities shall '*promote integration of children with special needs in normal schools*' (ibid, emphasis added). In absence of a government school, recognized schools, including private unaided schools would be directed to admit these children without specifying who would pay for them. In the subsequent section the draft bill says the child will be sent to a special school existing within the prescribed distance from the residence of the child. It is silent on what happens if a special school is not within the 'prescribed distance' and the child is not able to 'integrate' in a normal school.

The bill intends to create a non-existent category of 'learning disability' that would drive a large number of children from mainstream school system into the hands of professionals and specialists who have begun growing in the private sector. To say the least, if the bill becomes law in this shape, it would be out of tune with international perspectives and inclusion movement across the world that is questioning the theory of special needs and learning disability *within* children. In addition, it would open a big market for special and private schools and 'professionals' in this 'sector', excluding a large number of the poor and the disadvantaged from the mainstream education. There are many study-evidences at the international level that proportion of the working class and ethnic classes have always been significantly high among those labeled as having 'learning disabilities' and 'special needs' (Dunn, 1968<sup>8</sup>; Tomlinson, 1982<sup>9</sup>). In case of India, it would largely mean scheduled castes, scheduled tribes and other children with poor social and economic background.

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<sup>8</sup> Dunn, L. M. (1968) 'Special Education for the Mildly Retarded- is much of it justifiable?' In *Expected Children*, September 35: 5-24

<sup>9</sup> Tomlinson, S. (1982) *A sociology of Special Education*. London: Routledge and Kegan Paul.

## 6. Demystifying Inclusive Education: The Indian Context (A Brief Note)<sup>10</sup>

The term 'inclusion' has developed an international use in educational vocabulary in recent years and has become a buzzword to ascribe education of children with special needs and disabilities in regular schools, unlike its predecessor 'integration' used in Europe, Australia and Asia and 'mainstreaming' in the USA and Canada. The Warnock Committee in the UK introduced the concept of 'special educational needs' in 1978 in regard to children having 'a learning difficulty, which calls for special educational provision', and it said a child has a 'learning difficulty' if he/she has 'significantly greater difficulty in learning than the majority of children of the same age', or has a 'disability' that prevents the child from making use of facilities available to children of the same age in the school (DES, 1978)<sup>11</sup>. It abolished eleven categories of disabilities and created a generic term of 'special education needs' expanding its coverage from two percent children in special schools to around twenty percent of children that could potentially be labeled as having 'special needs' based on their cognitive capabilities, behavioral responses and physical and sensory impairments requiring 'a range of provision' in regular and special schools (Thomas and Vaughan, 2004)<sup>12</sup>. It, however, did not count social and economic factors contributing to the special needs (Clough and Corbett, 2000)<sup>13</sup>.

In richer developed countries, education is largely inclusive of girls, the disadvantaged and the ethnic groups. Children with disabilities-physical and mental and learning difficulties, earlier getting education in separate special schools, are now being recommended to mainstream schools intending to 'include' them in their curricula and cultures. Therefore, the discourse on inclusive education in developed countries mostly centers on the extension of special education, or at most a reform in special education. The approach has to be different in respect of the developing countries where a large proportion of children is still out of school. Those who get enrolled are unable to complete minimum prescribed number of school years. Besides, in many countries, for example in India, there is no separate structure of special schools under the public education system to substantially respond to children with special needs, so the discourse is on whether to develop a separate system or welcome *all* children in regular schools.

There is a perception largely influenced by the non-governmental organisations and unquestioned by the authorities in the government that only 1-5 percent of children with disabilities in India are enrolled in schools. The perception does not match the reality. The literacy rate of 54.5 % (male-64% and female-41.6%) has been recently reported by the census 2001. Comparing with the literacy rate of 64.5% (male-75.3% and female-53.7%) of the total population, and keeping in view that there are only 2500 special schools (RCI, 2000), mostly run by the voluntary agencies, against over 115, 000 secondary schools and 900, 000 primary and upper primary schools in the country, it would be concluded that a large number of ordinary schools are educating children with disabilities. These figures confirm that 'the number of children with disabilities *casually integrated in ordinary schools*' exceed those reported in official documents (Miles, 1997<sup>14</sup>,

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<sup>10</sup> Prepared by Madan M Jha

<sup>11</sup> DES (1978) Special educational needs: report of a committee of enquiry into the education of the handicapped children and young people (The Warnock Report). London: HMSO.

<sup>12</sup> Thomas, G. and Vaughan, M. (2004) *Inclusive Education: Readings and Collections*. Berkshire: Open University Press.

<sup>13</sup> Clough, P. and Corbett, J. (eds) (2000) *Theories of Inclusive Education: A Student's Guide*. London: Paul Chapman.

<sup>14</sup> Miles, M. (1997) 'Disabled learners in South Asia: lessons from past for educational experts'. In *International Journal of Disability, Development and Education*, 44(2), 97-104

p.101, emphasis added) and also 'the informal efforts of Indian families and neighborhoods ... to respond to special needs and disabilities' (Miles, 1994, p.4)<sup>15</sup>.

Earlier the 47<sup>th</sup> round of national sample survey in 1991 reported 42% (NSSO, 1994) literacy rate among persons identified as disabled. Often, these figures are disputed due to undercounting and differences in the definition of a disability as used by the survey and the census and those given in laws or applied by NGOs. The percentage of the disabled reported by the survey and the census is close to two percent. NGOs and international agencies believe that disabled should be between 5-10%. Even assuming higher percentage of disabled the literacy rate should not be as lower as is generally projected. As per the recent national survey data, only about 11% disabled were enrolled in special schools in urban areas while less than 1% were enrolled in rural special schools. Under the integrated education scheme over 120,000 children were getting benefits in over 24,000 mainstream schools (Jha, 2002a, p. 98). It seems that those reporting less figures of the literacy rate among the disabled could be referring only to the children covered under the integrated education scheme of the education ministry and special schools under the social justice ministry.

These figures are being presented to suggest that in India children with disabilities *are going to ordinary schools*, without the services of special teachers. There is no charity or 'doing good' factor behind such a natural entry of children into ordinary schools. We do not have a structure of special schools as in the west, where a special school system was created for the disabled parallel to the regular school system when law for compulsory mass education was passed. We are in a similar situation as were the western countries over hundred fifty years ago since we are in the process of making mass schooling compulsory. A central bill for 'free and compulsory education' for children of age 6-14 are in the offing. Now the question is, should we adopt policies and practices of the western countries that created a special school system, trying now to dismantle, or we strengthen our common schools to make them inclusive of all children in the neighbourhood. In other words, should we totally follow the western 'models' of special education, special needs, and learning disabilities, or develop our own understanding, appreciation and values for all-children-learn-together in common inclusive schools. Do we define learning disability and special needs while they want to un-define these exclusionary labels? Analyzing the disability situation in south Asia, Miles (2002)<sup>16</sup> observes, 'inclusion requires a fundamental rethinking of the aims and social context of education, from top to bottom' (p.114).

The social reality in India goes beyond the integration or inclusion of children with disabilities. There are a large number of children with adverse social and economic background and situations. The policy design and instrumentalities have been creating hierarchies of schools for different categories of children (PROBE, 1999)<sup>17</sup>. There may be a need to extend sociological theory to understand this phenomenon in the Indian school education, and engage a discourse around the rights, equity and social justice that had led to a demand for a 'more integrated system' in the west to desegregate special education for the disabled (Skidmore, 1996)<sup>18</sup>.

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<sup>15</sup> Miles, M. (1994) 'Disability care and education in 19<sup>th</sup> century India: some dates, places and documentation'. In *Action Aid Disability News*, 5(2), 1-

<sup>16</sup> Miles, M. (2002) 'Disability in South Asia- millennium to millennium'. In *Journal of Religion, Disability and Health*, 6 (2/3), 109-115.

<sup>17</sup> PROBE (Public Report on Basic Education) (1999) *Public Report on Basic Education in India*. New Delhi: Oxford University Press.

<sup>18</sup> Skidmore, D. (1996) 'Towards an integrated theoretical framework for research into special educational needs'. In *European Journal of Special Needs Education*, 11(1), 33-47

**CHAPTER IX**

**THE EDUCATION OF THE HANDICAPPED**

1. In a national scheme of education which provides for all children according to their special aptitudes, it seems only logical that consideration should also be given to those children who are generally classed as 'handicapped'. Little has been done so far in this country to meet the specific requirements of children in this category, and there is much that it could profitably borrow from the experience and achievements of those countries which have been active in this field already. In educationally advanced countries it is agreed that special provision is necessary for subnormal children who fail to keep pace with the majority of their fellows of the same age-group.

The handicapped may be divided into two major groups ;

- (I) the mentally handicapped, and
- (II) the physically handicapped.

2. In schools and in the world outside mental backwardness does not always mean the same thing. Among the mentally handicapped two broad types may be distinguished (i) those who are born with intelligence below the average and (ii) those who are 'backward' owing to some form of maladjustment or physical ailment, which has caused temporary mental retardation.

Children who are mentally handicapped are not a class radically different from the normal, though the dividing line between normality and abnormality seems to have been rising as civilization has advanced in complexity. Throughout the entire range of abilities that children exhibit, the various grades merge almost imperceptibly into one another. A child who appears to be dull at school may not necessarily prove a failure in life. A cut-and-dried classification is not always either possible or desirable. A detailed study of individual cases is required and efforts should be made to trace the particular causes which may be at the root of a child's failure to make due progress at school. Among the 'backward' children, however, two types are generally found :—

- (i) those who try, and
- (ii) those who do not try.

In the former category backwardness may be due to—

- (a) lack of proper guidance in the initial stage of education,
- (b) wrong methods of instruction,
- (c) interruption of study due to frequent migration or illness,
- (d) specific disabilities which only an expert can diagnose, and
- (e) nervous and temperamental factors.

Among the latter, the causes of backwardness may be—

- (a) lack of vitality,
- (b) environmental influences, i.e., unsatisfactory home conditions,
- (c) over-indulgence or over-discipline at home, and
- (d) undetected physical deficiency.

The school medical services will no doubt discover and remedy those that are temporary or curable. There will in any case be an appreciable number of children who will need special education only for a limited period, at the end of which they should be able to take their place with their coevals in the normal group.

3. Efforts are being made today to measure the degree of 'backwardness' by reference to a definite objective standard. In the process of selection it is useful to remember that an individual child is much too complex in his make-up and interests to be explained in terms of a few broad principles. 'Intelligence Tests' have, however, come to be generally regarded as reliable methods and the I. Q. (Intelligence



Quotient) or M. R. (Mental Ratio) is considered to be a fairly accurate index of the educable capacity of a child. This method, however, with its stress on abstract thinking has obvious limitations, for children with relatively low I. Q.'s may have other attributes which will enable them to play their part as independent and useful citizens.

On the basis of intelligence tests subnormal children may be put into three groups. Children with I. Q. between 85 and 70 are "dull" children. These children cannot keep pace with the normal group in the ordinary school course. They will always be educationally backward and the chances of their becoming useful citizens will depend upon the development of abilities other than scholastic. The "dull" are able to perform certain tasks calling for a limited degree of initiative and responsibility but will always need a certain amount of sympathetic supervision, if they are to become and remain reasonably efficient.

Children with I. Q. below 70 are usually termed "feeble minded"; they may also be kept in ordinary schools, provided they are only called upon to deal with simple concrete things. Those whose I. Q. falls below 55, i.e., "inbeciles", can find no useful place in the modern world and require special care at home or in institutions.

In Western countries it is estimated that the number of people with an I. Q. less than 55 is approximately 0.3 per cent. of the population. It would appear on that basis that British India has between six to fourteen a population of 1,66,305 which will fit into no kind of school when young and into no occupation when grown up. If the proportion of 1 per cent. is taken as an approximate figure for the number of "feeble minded" there are in the same age-groups in this country 5,54,350 children. The proportion of the "dull" with I. Q. 85-70 is estimated to be about 15 per cent. of the age-group, and on that basis the number of children in the category will be 83,15,250.

4. It is not desirable for psychological or other reasons to segregate the subnormal or backward children in schools. 'Dull' children, apart from intellectual incapacity, may be otherwise sane and normal. Although it may be expedient in the course of ordinary grading to separate dull children from the bright ones for a considerable part of their intellectual training, yet since they will have to learn to live in a world with people of all grades of abilities, it is essential that throughout the school life they should have opportunities of mingling freely with their brighter fellows and of sharing with them such work and pleasures as all children enjoy. The mentally handicapped children who are educable should, therefore, remain within the general educational system, though special provision will have to be made for their particular requirements. Special schools may have to be provided for the "feeble minded" at a later stage.

5. The education of handicapped children must, as in the case of the normal, aim at enabling them to lead a life of useful service to the community and happiness for themselves. The study of individual children will guide the school in determining what useful habits they should form, what kind of skill they should acquire, what interests and attitude of mind they should be led to develop and what knowledge they should strive for. A carefully planned programme suited to the child's potential abilities, academic and vocational, will enable the child to work towards definite standards. His success should be gauged in relation to his own potentialities rather than in terms of achievements of the normal groups. In short, when it is realized that the understanding of the child is of prime importance and that the subject matter is secondary, then, and only then, can a school help each child to realize his own potentialities.

6. " Those who have had opportunities of watching a successful teacher of a dull and backward class at work have no doubt of the qualities by which such a teacher shines. In the first place, he shows very clearly that he is thoroughly familiar with children's ways : he is interested in them as individuals ; he possesses the power of divining whatever latent possibility is in them and of inspiring them with his own confidence in their eventual success ; he is thoroughly familiar with what appeals to children, he knows how to provide the tasks that will keep them happily and usefully occupied and how to make work that does not at first attract a source of pleasure and profit ; he is able to turn the most untoward circumstance to good account and re-direct attention into proper channels when it has become diverted elsewhere ; he is generous and open-minded, quick to show sympathy when it is needed but slow to give up hope when things are not going well ; he is lively and cheerful himself and his example and influence breed liveliness and cheerfulness in his pupils ; he may or may not be distinguished academically, but he will certainly possess a fund of common sense and have an undoubted gift in some direction or other—a gift, perhaps, for dramatic work or for music, or dancing, or games, or craftwork. On the whole, his interests will be active and practical rather than just bookish ; he will be wise and resourceful rather than merely clever ; and he will be more interested in projects rather than subjects and in children than either ".\*

Teachers with the qualities described above are not easy to find ; but the problem of ensuring the supply of such teachers is inseparably bound up with those of the selection and training of teachers in general. There are not many members of the teaching profession in this country who possess experience in handling dull children over a long period, for acquaintance with the general principles of human development must necessarily be supplemented by class-room experience and hitherto little attention has been paid to the dull or backward child as a specific educational problem. The training colleges will have to face the task almost entirely by themselves, since they cannot as in other educationally advanced countries turn to organisations for mental welfare, like the National Institute of Industrial Psychology or the Child Guidance Clinics, for help and guidance.

There are at present only two institutions in India for the education of the mentally handicapped.

(1) Bodhana, Jhargram, Bengal.

(2) The Children's House, Kurseong, Bengal.

The first is the only institution which serves the needs of all communities in India generally ; the second is an institution catering for European and Anglo-Indian children only.

7. The physically handicapped may be divided into the following categories:—

(i) Those who are deficient in one or more special senses ; the blind, the deaf, the deaf and blind, the deaf-mutes etc.,

(ii) those who are retarded by motor deficiency including respiratory, heart and orthopaedic cases and

(iii) those who are defective in speech.

The number of the physically handicapped according to the census of 1931, modified in the light of expert opinion, may very roughly be put as follows :—

Blind	.. .. .	17,50,000
Deaf-mute	.. .. .	2,00,000
Deaf	.. .. .	6,00,000
Cripple (permanently handicapped)	.. .. .	Not known
Delicate (temporarily handicapped)	.. .. .	Not known
Speech-Defective	.. .. .	Not known

\* P. 50, Board of Education pamphlet 112.

In the absence of effective remedial measures, climate, customs and quacks must have added considerably to these figures during the last ten years. Unfortunately no figures relating to these items are available in the 1941 census.

8. The census of 1931 puts the number of the blind in British India (excluding Burma) at 4,35,078, but census figures can hardly be relied on for educational purposes as there is no standard definition of blindness in this country. If the definition adopted by the English Board of Education be accepted, namely, "so blind as to be unable to perform any work for which eye-sight is essential", expert calculation would then raise the number of the blind population in India in 1941 to about 20,00,000, with about 4,00,000 in the six to fourteen age-group.

What has been done up-to-date to tackle this problem has been very largely due to voluntary philanthropic enterprise. There are in existence 33 societies which are gallantly facing this enormous challenge; of these 25 are for the blind only, 6 are for both blind and deaf, 1 is in combination with a poor asylum and 1 with a cripple home. Altogether they have a total enrolment of 1,156 blind people, of whom 998 are males and 158 females. Of these 987 are children. It will be clear from this how much remains to be done.

If the problem is to be effectively tackled, the services provided must be comprehensive. It is true that in other countries blind welfare work has been pioneered by private philanthropy and the State has come in when private enterprise had already made appreciable progress. This country, however, has waited long enough and the time has arrived when the State should take up the education of handicapped children as a necessary part of the general scheme, though it will no doubt at all times encourage and welcome voluntary assistance. The Board have urged that comprehensive legislation in the general interests of the blind should be promoted on the lines of the Blind Persons Act in Great Britain. Such legislation should ensure among other measures the compulsory education of blind children as well as facilities for vocational training to provide employment for the employable blind and financial help for those who cannot be made self-supporting. As a preliminary to launching an effective scheme for the welfare of the blind it is essential that a special census of the blind persons in India should be taken as soon as possible. It is also necessary to adopt a Uniform Braille Code for Indian languages as a whole. Attempts in the past to overcome the linguistic difficulties inherent in this task have failed but last year a special committee of the Board at last succeeded in devising a Uniform Braille Code which will, it is hoped, meet the demands of the Indian languages and win in time general acceptance. It still remains to set up a central press with an up-to-date embossing plant and a workshop for manufacturing necessary educational apparatus together with a central library to serve all institutions in India.

Apart from training facilities for the blind there also should be in every area an after-care department to place those trained in jobs as well as a research bureau to investigate improved methods of training and new avenues of employment. Special training institutions will also be necessary for training teachers for the blind schools. While the schools with their medical services will do all they can to train and place the blind in life, there are numerous other aspects of the problem, e.g., the prevention of blindness, the education of public opinion, begging, etc., which can only be tackled effectively by an all-India society with the sanction of the State behind it. It is satisfactory to record that the Government of India have recently appointed Sir Clutha Mackenzie to study the problem and prepare a comprehensive scheme for improving the general welfare of the blind population.

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9. It is a common practice in existing institutions to combine the education of the deaf; deaf-mutes and other physically infirm with *that of the blind*. As their requirements are separate and distinct, there should be special institutions for the education of each main category. Deaf-mutes and the stone-deaf require education in a special school for the deaf; the partially deaf, according to the degree of their defect, should either be taught in a school or class for the partially deaf, or should be placed in the front seats of the class in an ordinary school.

The existing educational provision for the deaf comprises 35 schools with a total enrolment of 1,313 pupils.

10. One of the most notable expansions of the educational and medical services in Western countries during recent years, has been the development of schemes for the education and training of the physically handicapped children, most of whom are commonly known as "cripples". The English Board of Education hold that there are three vital conceptions which lie at the foundations of any sound application of medical science to the amelioration of the condition of the child disabled or crippled by disease or accident—

- (1) there must be restoration of the form and straightness of the body;
- (2) there must be re-education of the restored functions of the body;
- (3) reliance for both restoration and re-education must be placed in the inherent powers of the living tissues of the body, of brain as well as of bone and muscle.

The under-vitalized, the tubercular and the cardiac may be considered together within this somewhat complex group of the physically handicapped. The term "delicate" may be used to cover the sub-group whose deficiencies are more or less of a temporary character. The facilities required for the delicate in many ways resemble those for the permanently handicapped or the "cripples". Fresh air classes and open air schools are the best that educational and medical experts have been able to prescribe for this type of child. The open air school should be a playground and a school room combined. Climatic conditions in this country would render it necessary to build these schools in localities where the winter is mild and the summer not too trying, i.e. at the sea-side or in hill stations of moderate height.

11. The variety of forms of speech defect and the number of causes to which these defects are attributed make the care, treatment and education of children suffering from such handicaps extremely complicated. The outstanding cases are the speech defects of the deaf and stuttering, which is commonly associated with motor defects. A national survey in U.S.A. revealed that 9 in every 1,000 children are stutterers and that there were in that country about 1 million school children between the ages of five and eighteen so handicapped in speech as to require remedial treatment and training. There can be no doubt that the number of children so affected in this country is very large. Treatment can be provided either in full-time special schools, day or residential, or more easily and economically, in special classes held after school hours so that the children may be free to attend their ordinary classes at other times. It is of course necessary to employ expert teachers and to give individual instruction. It is also important to secure the cooperation of the parents.

12. Another group of individuals should claim consideration from the educationist today. Those with more easily recognized handicaps, whether physical or mental, have received due consideration in educationally advanced countries for many years past but it is only recently that a group, who were usually labelled "criminals", have come to be classified as "socially handicapped" or "social

misfits" and regarded as within the possible range of educational reclamation. The problem is one of reclamation rather than segregation. The retributive attitude is being gradually replaced in civilized countries by an educational approach and a modern educational system in this country should provide facilities for the proper training of this group with a view to rehabilitation. With the introduction of a compulsory system of education, which should keep all children usefully occupied in school, the magnitude of the problem will be to some extent automatically reduced. Child Guidance Clinics will no doubt be established by authorities to deal with delinquent or socially maladjusted children.

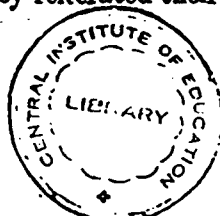
13. The Board have considered the minimum educational qualifications and the minimum age for admission to the appropriate courses of training in the case of teachers in special schools for mentally and physically handicapped children and are of opinion that generally the requirements here should be the same as in the case of primary schools. But they emphasize in agreement with what has been stated above that in selecting recruits for such schools special attention will have to be paid to personal characteristics and aptitude. They, however, recommend that the course of training for the teachers in blind schools should be different and that there should be established a special all-India institution for the training of teachers of this category. The same will apply in the case of teachers of the deaf.

14. In considering the question of accommodation the Board are of opinion that although the average number in a class in the special school for handicapped children should be considerably smaller as a rule than in an ordinary school, this should not be regarded as an adequate reason for reducing the size of any class room below that of the standard unit prescribed for normal children, that is, 400 sq. ft. Children with physical defects require more room for movement and often need special furniture, while in the mentally sub-normal class freedom of movement, variety of practical occupations and personal supervision by the teacher all demand ample floor space. Special types of construction will be necessary to meet the special requirements of these schools and it is likely that much experiment will have to take place before the type of accommodation specially suited to Indian conditions can be discovered.

Special schools will, on the whole, be more costly than the ordinary schools and the cost of each type of school will vary with the nature of the special services and requirements involved. The special services, the buildings and equipment, the higher cost of training and the higher salaries of teachers in some cases will all tend to add to the cost of this branch of the educational system. It may be asked whether a country like India could or should afford the money for such special schools, the return for which may not be proportionate to the expenditure involved. The answer is that in a national system intended to satisfy the needs of all it is difficult to ignore the claims of those who are unfortunate through no fault of their own. Moreover, the money spent in educating them may prove a profitable investment in view of the fact that many of the handicapped at the end of their training may be saved from becoming a burden either on private charity or on the State.

Consideration has already been given by the Board to this problem and in 1936 they recommended that the education of the handicapped should not be neglected and asked Provincial Governments to report what the position was in their areas. The general attitude of the Provinces, as indicated by their replies, appeared to be that whatever funds were available should be spent in extending education among normal children. In spite of this the matter was taken up again by the Board last year, when they reiterated their opinion that the provision

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of special schools for mentally and physically handicapped children should be one of the functions of the State and that the question should receive the earnest and immediate attention of the educational authorities concerned. They also recommended that the Provinces, Local Administrations and major States should make a survey of the mentally and physically deficient population of school going age, since in the absence of such information no planning is possible. The time has come when State action can no longer be delayed. While in a period of financial stringency there may have been some justification for preferring the claims of the normal, there can be no excuse for neglecting the needs of the handicapped in a scheme of education on really comprehensive lines which is now in contemplation.

15. Summary of the main conclusions in this chapter :—

(a) Provision for the mentally or physically handicapped should form an essential part of a national system of education and should be administered by the Education Department.

(b) Hitherto in India Governments have hardly interested themselves at all in this branch of education : what has been done has been due almost entirely to voluntary effort.

(c) Wherever possible, handicapped children should not be segregated from normal children. Only when the nature and extent of their defect make it necessary, should they be sent to special schools or institutions. Partially handicapped children should receive special treatment at ordinary schools.

(d) The blind and deaf need special educational arrangements, including specially trained teachers. It may be desirable to establish central institutions for training the teachers required.

(e) Particular care should be taken to train the handicapped, wherever possible, for remunerative employment and to find such employment for them. After-care work is essential.

(f) In the absence of any reliable data it is impossible to estimate what would be the cost of making adequate provision for the handicapped in India ; 10 per cent. of the total expenditure on Basic and High Schools has been set aside for special services, which include such provision, and it is hoped that this will suffice.

TABLE 6.5 EXPENDITURE ON SCHOLARSHIPS/STIPENDS BY SOURCES (1960-61)

Type of institution	Percentage of expenditure incurred from the funds of				Total (in 000's)	Percentage of expenditure on scholarships/stipends incurred on the type of institutions to total expenditure on scholarships/stipends from the funds of				
	Central Government	State Governments	Local Bodies	Other sources		Central Government	State Governments	Local Bodies	Other sources	Total
1. University Teaching Departments . . . . .	41.3	38.2	..	20.5	5,871 (100)	7.7	2.5	0.3	12.5	4.5
2. Research Institutions . . . . .	44.6	9.0	0.3	46.1	1,839 (100)	2.6	0.2	0.6	8.8	1.4
3. Colleges for General Education . . . . .	44.2	48.2	0.3	7.3	27,248 (100)	38.4	14.9	6.6	20.8	21.0
4. Colleges for Professional Education . . . . .	31.3	57.6	0.3	10.8	22,020 (100)	21.9	14.4	7.0	24.8	16.9
5. Colleges for Special Education . . . . .	45.5	42.7	..	11.8	880 (100)	1.3	0.4	..	1.1	0.7
<b>TOTAL HIGHER EDUCATION</b>	<b>39.0</b>	<b>49.4</b>	<b>0.3</b>	<b>11.3</b>	<b>57,858</b>	<b>71.9</b>	<b>32.4</b>	<b>14.5</b>	<b>68.0</b>	<b>44.5</b>
6. Secondary Schools . . . . .	12.2	81.0	0.8	6.0	26,337 (100)	10.2	24.2	21.8	16.4	20.3
7. Schools for Vocational Education . . . . .	15.4	82.2	0.3	2.1	33,169 (100)	16.2	31.0	9.1	7.4	25.5
8. Higher Primary School . . . . .	3.0	89.9	4.5	2.5	7,777 (100)	0.8	7.9	34.3	2.0	6.0
9. Lower Primary School . . . . .	0.4	89.0	7.1	3.5	2,831 (100)	..	2.9	19.5	1.0	2.2
10. Pre-Primary School . . . . .	..	100.0	..	..	1 (100)	..	..	..	..	..
11. Schools for Special Education . . . . .	12.6	63.2	0.4	23.8	2,037 (100)	0.8	1.5	0.8	5.1	1.5
<b>TOTAL SCHOOL EDUCATION</b>	<b>12.2</b>	<b>82.3</b>	<b>1.2</b>	<b>4.2</b>	<b>72,152 (100)</b>	<b>28.0</b>	<b>67.5</b>	<b>85.5</b>	<b>31.9</b>	<b>55.5</b>
<b>GRAND TOTAL</b>	<b>31,375 (24.1)</b>	<b>88,014 (67.7)</b>	<b>1,024 (0.8)</b>	<b>9,598 (7.4)</b>	<b>130,011 (100.0)</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source : Ministry of Education, Form A. (Totals do not tally because of rounding).

well lay the foundation for a more massive attack on the problem to be made in later years. There is much in the field that we could learn from the educationally advanced countries which in recent years have developed new methods and techniques, based on advances in science and medicine.

6.43. Scope and Size of the Programme. The primary task of education for a handicapped child is to prepare him for adjustment to a socio-cultural environment designed to meet the needs of the normal. It is essential, therefore, that the education of handicapped children should be an inseparable part of the general educational system. The

differences lie in the methods employed to teach the child and the means the child uses to acquire information. These differences in methodology do not influence the content or the goals of education. This form of education is, therefore, conveniently referred to as 'special education'.

6.44. Determination of the size of the handicapped population has eluded educators, planners and social workers not only in this country but also in many of the economically advanced countries. For instance, even the United States does not have a reliable estimate of the number of handicapped children. From the available

evidence, it appears, however, that the total population in the following categories is about 2.5 million in our country.

- (1) *The Blind.* A recent survey undertaken under the auspices of the Ministry of Health has, however, suggested that the number of blind persons might be of the order of four million. This is also the estimate of the Royal Commonwealth Society for the Blind, London. The number of children of school age is estimated at 400,000.
- (2) *The Deaf.* No national survey of the incidence of deafness has been undertaken. Estimates based on a few sample surveys would seem to indicate that the number of deaf persons in the country may be anywhere between 1 and 1.5 million. The number of children of school-going age is believed to be about 300,000.
- (3) *The Orthopaedically Handicapped.* No national survey of this category of handicapped persons has yet been undertaken. Again, based on a few sample surveys, it would appear that the number of orthopaedically handicapped children in the country is about the same as that of the blind.
- (4) *The Mentally Retarded.* Mental retardation is a complex concept influenced to a large extent by cultural factors and its determination involves the administration of sophisticated psychological tests. It is, therefore, difficult to estimate the number of such children in the country. Here again, estimates based on somewhat inadequate sample surveys seem to suggest that the country may have between 1.4 to 1.8 million mentally retarded children.

Briefly, the position is summed up below :

Category	Estimated number of children
The Blind	400,000
The Deaf	300,000
The Orthopaedically Handicapped	400,000
The Mentally Retarded	1,400,000
TOTAL	2,500,000

6.45. Existing Educational Facilities. The present position of educational facilities for these children is as follows :

- (1) *The Blind.* At present, there are about 115 schools and other establishments for

the blind with an enrolment of 5,000 or a little over 1 per cent of the total number of blind children in the country. Most of these institutions impart primary education coupled with training in a few simple handicrafts. Music forms an integral part of the curriculum. The great majority of the existing institutions are run by voluntary agencies but are assisted by State Governments. The Central Government has set up a comprehensive National Centre for the Blind at Dehra Dun. This Centre includes a Central Braille Press which publishes textbooks and other reading material in Braille. The Centre also has a workshop for the manufacture of Braille appliances which produces the basic equipment needed for the education of the blind. There are three centres for the training of teachers of the blind sponsored by the Government of India and they can train between 30 and 40 teachers annually. In addition, the Governments of Madras and Andhra Pradesh conduct courses for training teachers when needed.

- (2) *The Deaf.* The number of schools for deaf children is about 70. Most of these schools provide primary education coupled with some prevocational training in engineering and non-engineering occupations. The majority are privately managed but are aided by the State Governments. The total enrolment is about 4,000 or a little over one per cent of the total population of such children. About half a dozen centres for the training of teachers of the deaf are functioning at present and can train 50 to 60 teachers per annum.
- (3) *The Orthopaedically Handicapped.* The major problem of this category of children is locomotor in character and they often attend ordinary schools. At present, there are about 25 institutions for such children with a total enrolment not exceeding about 1,000. Since most orthopaedically handicapped children do not present special educational problems, it is not considered necessary to have specially trained teachers for this category of children.
- (4) *The Mentally Retarded.* On account of its complexity, this aspect of special education has received very little attention. There are only about 27 schools for mentally retarded children with a total enrolment not exceeding 2,000. One of these



schools is run by the Government of India. Two centres for the training of teachers of mentally retarded children are functioning at present and they can train about 20 teachers annually.

At present, there are practically no facilities for the education of other categories of handicapped children. Some of the emotionally disturbed children are cared for in children's homes and other institutions set up under the various Children's Acts. As a rule, however, such homes are not intended primarily for the educational treatment of emotionally disturbed children.

It is evident from the brief review given in the preceding paragraphs that the existing facilities are extremely inadequate. In certain cases, the foundation has been laid while in others we have to begin at the beginning. The importance of a carefully thought-out plan for the development of educational services for the handicapped cannot, therefore, be over-emphasized.

**6.46. A Plan for Action.** The progress in providing educational facilities to handicapped children will be limited by two main considerations: teachers and financial resources. A reasonable target will, therefore, be to provide, by 1986, education for about 15 per cent of the blind, deaf and orthopaedically handicapped children and to about 5 per cent of the mentally retarded ones—this will mean the provision of educational facilities for about 10 per cent of the total number of handicapped children. As a part of the programme, it should be possible to have at least one good institution for the education of handicapped children in each district.

6.47. This goal can be reached through the adoption of two programmes—the special and the integrated. In the special programmes which alone have been developed so far in our country, the handicapped children are isolated from the normal ones and placed in special institutions. In the educationally advanced countries, however, a great deal of stress is now being laid on the integration of handicapped children into the regular school programmes. This has several advantages of which two are important: reduction of costs and promoting mutual understanding between handicapped and the non-handicapped children. This has also its disadvantages. For instance, many handicapped children find it psychologically disturbing to be placed in an ordinary school. On an overall view of the problem, however, we feel that experimentation with the integrated programmes is urgently required and every attempt should be

made to bring in as many children into integrated programmes as possible.

6.48. In addition, it will be desirable to develop services on a pilot basis for some additional categories of children who have peculiar educational needs, *viz.*, the partially-sighted, the speech-handicapped, the aphasic the brain injured and the emotionally disturbed. As pointed out earlier, hardly any attempts have been made in this field so far. It is impossible to state at this stage, what the number of such children will be. Even the facilities for training teachers are very inadequate. The Ministry of Health is already in the process of setting up an institute for the training of speech-therapists at Bangalore. These speech-therapists could deal with speech-handicapped and aphasic children. There are hardly any facilities for the training of teachers for the partially-sighted or the emotionally disturbed and brain-injured children. We, therefore, suggest that an attempt should be made in the next two plans, to set up a few centres as a pilot project, to assist these categories of children. The whole problem may be reviewed again after 10 years.

6.49. To develop these programmes adequately, attention will have to be paid to the following matters:

- (1) The preparation of teachers will need emphasis and attention. Assuming a pupil-teacher ratio of 10:1, about 16,500 teachers will be needed for the blind, deaf and mentally retarded children only. This will necessitate a considerable increase in the capacity of the existing training institutions and the establishment of new ones.
- (2) It is necessary to co-ordinate the efforts of different agencies working in the field such as the Ministry of Education, the Central Social Welfare Board, voluntary organizations interested in the problem and the Ministry of Health. Similar co-ordination will also be needed at the State levels.
- (3) It is also necessary to develop adequate research in the problem. We recommend that the Ministry of Education should develop a programme for this and allocate the necessary funds. The NCERT should have a cell for the study of handicapped children. The principal function of this cell would be to keep in touch with the research that is being done in the country and outside and to prepare materials for the use of teachers.

## **ANNEXURE 8 III**

### **National Policy on Education, 1968**

#### **Section 4: Equalisation of Educational Opportunity:**

Strenuous efforts should be made to equalise educational opportunity.

- a. Regional imbalances in the provision of educational facilities should be corrected and good educational facilities should be provided in rural and other backward areas.
- b. To promote social cohesion and national integration the Common School System as recommended by the Education Commission should be adopted. Efforts should be made to improve the standard of education in general schools. All special schools like public schools should be required to admit students on the basis of merit and also to provide a prescribed proportion of free-studentships to prevent segregation of social classes. This will not, however, affect the rights of minorities under Article 30 of the Constitution.
- c. The education of girls should receive emphasis, not only on grounds of social justice, but also because it accelerates social transformation.
- d. More intensive efforts are needed to develop education among the backward classes and especially among the tribal people.
- e. Educational facilities for the physically and mentally handicapped children should be expanded and attempts should be made to develop integrated programmes enabling the handicapped children to study in regular schools.

## **ANNEXURE IV a**

### **National Policy on Education, 1986**

#### **Chapter IV : Education for Equality**

##### **Handicapped**

The objective should be to integrate the physically and mentally handicapped with the general community as equal partners, to prepare them for normal growth and to enable them to face life with courage and confidence.

The following measures will be taken in this regard:

- i. Wherever it is feasible, the education of children with motor handicaps and other mild handicaps will be common with that of others.
- ii. Special schools with hostels will be provided, as far as possible at district headquarters, for the severely handicapped children.
- iii. Adequate arrangements will be made to give vocational training to the disabled.
- iv. Teachers' training programmes will be reoriented, in particular for teachers of primary classes, to deal with the special difficulties of the handicapped children; and
- v. Voluntary effort for the education of the disabled, will be encouraged in every possible manner.

## 4. EDUCATION OF THE HANDICAPPED

## PRESENT SITUATION

1. It is estimated that about 12.59 million children with disabilities are to be provided education in the school system. The details are as follows :

		<i>Figures in Million</i>
Total Projected Population of children with disability in age-group 5-14 years <sup>@</sup>		3.19
Locomotor Handicap	1.48	
Hearing Handicap	0.65	
Speech Handicap	0.91	
Visual Handicap	0.15	
Mentally retarded children in the age group 5-14 *		3.60
Children with learning disability in the age group 5-14		3.60
Children with disability in age group 16-18 years		2.20

The 1981 figures of the survey by NSSO have been extrapolated on the assumption that population with disabilities would have grown at the same rate as the general population.

Estimated at 1% of the population in the age group 5-14 years.

Out of these, about half a million require vocational training.

2. The educability of another 2 million disabled children is to be improved through early intervention and services by ECCE.

3. At the end of 1991-92 about 30,000 children with disability were availing special benefits under the scheme Integrated Education for Disabled Children (IEDC). In addition, about 60,000 children with mild disabilities received resource support without special benefits. A large number of children with disability are also receiving education in special schools which number about 1035.

4. The Project Integrated Education for Disabled Children (IEDC) is being implemented, as a field demonstration, in blocks each in ten States and Union Territories. In these blocks about 90 per cent of children with disability are receiving education in general schools per pupil in these blocks is now around Rs. 2,000/- and is likely to come down as the number of beneficiaries increases. General teachers feel confident and motivated as their status in the community has improved due to the services they provide.

4.1.5 The innovative multi-category training of resource teachers has been found to be effective and has been institutionalised in the Regional Colleges of Education, the universities offering special education courses and the training programmes organised by Non-Governmental Organisations.

4.1.6 Each DIET has been provided a resource centre for orienting elementary teachers and establishing field demonstrations in lab areas. Faculty from 102 DIETs have so far received induction training at the NCERT.

4.1.7 The Ministry of Welfare had taken steps to ensure supply of trained manpower to special schools and improve standards in these schools through the National Institutes for the Handicapped (NIHs) and increased support to NGOs.

4.1.8 The Ministry of Labour manages 17 Vocational Rehabilitation Centres (VRCs) for the handicapped and helps in their placement also. About 66,000 persons with disability have been rehabilitated under this scheme by September, 1991. Three percent of seats for admission to ITIs and under the Apprenticeship Training Scheme are available for handicapped persons. These seats are being fully utilised.

4.1.9 The evaluation of special schools and the scheme of IEDC has revealed some grey areas. General education system is not yet mobilised, to a noticeable extent, for education of the handicapped, either at the Central or State level. Inputs from different schemes like CBR, DRC, ECCE, non-formal education, adult education, vocational and technical education, etc. are not being brought together for the education of the physically handicapped. Some States are still reluctant to implement IEDC while some are implementing it rather indifferently. Few NGOs are active in rural areas. The standard of education in special schools needs improvement. Facilities for the education of children with multiple handicaps are yet to be developed. The early detection and intervention programmes so essential for education of these children have yet to be started. The goal of UEE for this disadvantaged group would remain an unachievable dream unless concerted and urgent measures are taken.

## 2. NPE REVIEW PERSPECTIVE

4.2.1 As part of its concern for equalisation of educational opportunities, the NPE, 1986 focuses on the needs of children with disabilities. The NPE, 1986 recommended an integrated education in general schools for children with locomotor handicaps and with other mild disabilities, orientation and pre-service training of general teachers to meet special needs of these children, provision of vocational training, establishment of special schools for severely dis-

abled children and encouragement of voluntary organisations in these tasks. The POA suggested a pragmatic placement principle. It postulated that a child with disability who can be educated in a general school should be educated in a general school only and not in a special school. Even those children who are initially admitted to special schools for training in plus curriculum skills should be transferred to general schools once they acquire daily living skills, communication skills and basic academic skills.

### 3. TARGETS

4.3.1 For achieving equalisation of educational opportunities, children with disability should have access to quality education comparable to other children. However, considering the financial resources likely to be available during the 8th Plan the targets for education of disabled children would be as follows:

- (i) Children who can be educated in general primary schools
  - (a) Universal enrolment by the end of 9th Five Year Plan.
  - (b) Ensuring achievement of minimum level of learning through adjustment and adaptation of curriculum and teaching to special needs.
- (ii) Children who require to be educated in special schools or special classes in general schools
  - (a) Universal enrolment by the end of the 9th Five Year Plan.
  - (b) Ensuring achievement of level of learning commensurate with their potential.
- (iii) Reduction of drop out rates on par with other children.
- (iv) Providing access to disabled children to secondary and senior secondary schools with resource support and making special provision for vocational training of these children, particularly those with intellectual disabilities.
- (v) Reorienting pre-service and in-service teacher education programmes including pre-school teachers training programmes to meet special needs in the classroom.
- (vi) Reorienting adult and non-formal education programmes to meet educational and vocational training needs of persons with disability.

### 4. IMPLEMENTATION STRATEGIES

4.4.1 The strategy of area-specific and population-specific micro-planning for UEE is equally relevant for this disadvantaged group. Planning for UEE and adult literacy

at all levels - Centre, State, District, Block and Project should provide for the educational needs of this category children.

4.4.2 Education of children with disability will be a component in the training of educational planners and administrators as well as preservice and inservice teachers. DIETs, CTEs and IASEs which have been provided facilities for this component will have to pay particular attention to this aspect of teacher training. While drawing schemes for strengthening SCERTs, cells for education of the handicapped may be considered as envisaged in IEDC.

4.4.3 The material supplied under Operation Blackboard will have to take into consideration special needs of the children. School buildings will have to take note of architectural adjustments needed to ensure access to children with disability, at the construction stage itself so as to avoid expenditure on modifications later on. Special schools need be opened in the districts which have no special school facilities. The education of the handicapped should form an essential component in all externally assisted basic education projects being implemented or proposed to be implemented.

### 5. INTEGRATED EDUCATION FOR DISABLED CHILDREN (IEDC)

4.5.1 The POA, 1986 target of increasing enrolment of disabled children by 25 per cent per year was achieved as enrolment of disabled children in general schools increased from 15,000 to 30,000. Subject to availability of resources, cumulative enrolment would reach 50,000 by the end of 8th Plan. However, an additional 1,00,000 children with mild disabilities will be provided resource support for teachers and learning aids and equipment.

4.5.2 The following actions are needed for achieving targets laid down:

- (i) Adequate allocations of resources.
- (ii) Provision for education of persons with disability should be made an integral component in externally assisted basic education projects.
- (iii) Provision for education of disabled children should be made in the Centrally Sponsored Schemes of Operation Blackboard, Vocationalisation of Education and Non-Formal Education.
- (iv) Co-ordinated implementation of schemes like Community Based Rehabilitation, ECRC, VRCs and IEDC so as to reduce cost and achieve higher coverage. This would require coordination among the Ministries/Departments of Health, Welfare, Education, Women & Child Development and Labour.

- (v) The NGOs have to be encouraged to implement IEDC, particularly in rural areas. The NGOs involved in other educational activities will be encouraged to work in this area also and assisted in developing their expertise.

## 6. SPECIAL SCHOOLS

4.6.1 The POA envisaged provision of an additional 400 special schools at the district headquarters. However, because of resource constraints no new special school has been established. The Ministry of Welfare has identified 240 districts without any special schooling facility. Efforts would be made to provide special schools in these districts by the end of 9th Five Year Plan.

## 7. VOCATIONAL TRAINING

4.7.1 The Ministry of Labour is providing vocational training to the handicapped through the Craftsman Training Scheme (CTS), the Apprenticeship Training Scheme and separate Vocational Rehabilitation Centres (VRCs). Three per cent of the seats for admission to ITIs under the Craftsman Training Scheme and Apprenticeship Training Scheme are reserved for candidates who are handicapped but have aptitude and are otherwise fit to undergo the required training. The States/UTs have been advised from time to time to implement this reservation for the handicapped which will be continued during the 8th Plan also. Seventeen VRCs will continue to provide training to a larger number of handicapped persons during the 8th plan. The instructors in ITIs will receive orientation to meet special needs of handicapped persons. This component will be added in ITI instructor's training programme. Adjustment and adaptation of equipment to provide full access to disabled persons will be ensured.

4.7.2 The National Institutes for the Handicapped under the Ministry of Welfare will continue their efforts to provide vocational training to the handicapped.

4.7.3 The Department of Education will also encourage voluntary organisations working in the area of vocational education and training for the handicapped. The CIVE will provide support to vocational training programmes for the handicapped through teacher training material and other resources.

## 8. ORIENTATION AND TRAINING OF TEACHERS

4.8.1 All the DIETs to be established by the end of the 8th Plan will have a resource room and trained faculty to teach the essential component of education of children with disability. They will also run orientation programmes for teachers at least from lab areas and practising schools to establish field demonstration of IEDC programme. The SCERTs will support field demonstrations under the scheme of IEDC. Similar action is suggested for the 250

CIEs and 50 IASEs. The budget provision is available in the scheme itself. The pre-service training curriculum will induct essential components in these areas, wherever it has not been done so far.

4.8.2 All in-service teachers should receive awareness input on education of children with disability in orientation programmes. In each area/institution where IEDC is implemented all teachers will receive orientation as envisaged in the scheme of IEDC. The heads of institutions and educational administrators will also receive training. Considering the large numbers to be covered, the Indira Gandhi National Open University and NCERT should plan credit courses on special education to equip general teachers to meet special needs. The NCERT will provide training to the IEDC cell staff. Multicategory training of resource teachers will be encouraged in UGC supported programmes.

## 9. TRAINING OF EDUCATIONAL ADMINISTRATORS

4.9.1 The NIEPA in collaboration with NCERT should develop programmes for training educational administrators and making them aware of the needs of this group. The IGNOU should design and offer courses for this target group also.

## 10. SPECIAL TEACHERS

4.10.1 The NIHS and its regional training centres have built up capacity to train single disability special teachers for special schools. Besides meeting demands of the new special schools, the existing untrained teachers will be trained and backlog cleared by the end of the 8th Plan. Inservice training of special teachers will be planned in a way that each teacher receives a three-week course every four years.

4.10.2 Efforts will be made to promote special education units in university departments of education for training teachers to handle multicategory disabilities.

## 11. EDUCATIONAL AND VOCATIONAL GUIDANCE PERSONNEL

4.11.1 The existing educational and vocational guidance counsellors should be provided training in dealing with disabled children and their parents. Essential component should also be added to their preservice training programmes. The NCERT and NIHS should design and offer in-service course for in-service counsellors.

## 12. CONTENT AND PROCESS

4.12.1 Curriculum flexibility is of special significance for these children. Special needs of these children will be met, if child centred education is practised. The curriculum adjustment and adaptation of teaching methods and material

will be worked out, field tried and provided to the users. The following actions will be taken:

- (i) Guidelines for child centred education, including special needs in the classroom, being developed at the NCERT will be made available by mid 1993.
- (ii) Guidelines for adjustment of curriculum and instructional material and methods for visually and hearing handicapped at primary level have been developed. These will be made available to teachers. Work for upper primary and secondary school level will be started and completed by the end of 1994.
- (iii) The achievement of minimum levels of learning by children with mild disabilities should be ensured through resource support and alternative learning material, wherever needed.
- (iv) The Boards of Examination should make adjustment and adaptations in examination for the handicapped children.
- (v) Study of more than one language should not be compulsory for deaf children.
- (vi) Teaching of Science and Mathematics is either not available to handicapped children or they opt for an easier substitute. Special efforts should be made by the NIHS and the NCERT to develop an action programme to improve access of disabled children to these important areas.
- (vii) Child-to-child help in education of children with disability is an effective resource in view of large classes and multigrade teaching. NCERT should develop a package and make it available to teachers by the end of 1993.
- (viii) The special learning aids and equipment like braille books, braille kit, audio visual material will be developed and made available to schools by NIHS and NCERT.

### 13. USE OF MASS MEDIA

4.13.1 Radio and television are being used in a limited way both for advocacy as well as educational purposes. The CIET, SIETs, NIHS and other organisations will develop a variety of programmes so that they can be regularly telecast/broadcast. The MHRD will approach the Ministry

of Information and Broadcasting for providing adequate time for this purpose.

4.13.2 The CIET, SIETs and NIHS will also develop software in non-telecast mode and make it available to DIETs, other training centres and NGOs working with disabled persons.

4.13.3 Field publicity units should be utilised by States for advocacy programmes. Newspapers and magazines have started popular advocacy and educational writing in this area. The NCERT and the NIHS will develop packages and hand over to journalists in workshops.

### 14. AVAILABILITY OF SPECIAL LEARNING MATERIAL AND AIDS

4.14.1 Learning material in braille is still not available to all children. Same is the case with aids like braille slate, Taylor frame, etc. Similarly language training material for speech and hearing handicapped is not available in regional languages. Steps will be taken by the NIVH, AYJNIH, NIMH and the NCERT to ensure the availability of such material.

### 15. MONITORING AND EVALUATION

4.15.1 The availability of a reliable data base is essential for proper monitoring and evaluation of educational programmes for persons with disability. Towards this end the District Education Office, must, with the help of other agencies, collect data about the number of disabled persons in the District - disability wise, sex wise and age group wise; beneficiaries under IEDC, special schools, ITIs, VRCs, etc.; number of special and resource teachers, their qualifications and pay scale, and budget utilisation. Similar information should also be included in the statistics collected by MHRD as also the Educational Surveys conducted by NCERT.

4.15.2 The MHRD and the Ministry of Welfare should make grants under IEDC and special schools contingent on the periodic returns giving the information. An inter-departmental Committee should be set up at the State and Central levels for monitoring. In addition, regular visits by the officers of the MHRD, NCERT, Regional Colleges of Education and field offices, should lead to status reports.

4.15.3 Evaluation studies by external agencies, universities conducting courses on education and rehabilitation of persons in specific geographical areas will be commissioned by MHRD and the Ministry of Welfare.

## Section C : Education of the Handicapped

### NPE/POA Stipulations

4.3.1 NPE advocates the policy of integrating the physically and mentally handicapped with the general community as equal partners as the objective of their education. Specific measures suggested are common education along with normal children for those who have motor handicaps; provision of special schools and hostels for the severely handicapped, vocational education for the disabled, teachers' training and encouragement of voluntary efforts.

4.3.2 The POA mentions, about the detailed measures to be taken, important amongst them being massive in-service training for teachers, orientation programmes for the administrators, development of supervisory expertise in the resource institutions like the SCERT and DIET etc. It also calls for provision of incentives like supply of aids, appliances, text books and free uniforms.

### The present scenario

4.3.3 The population of the educatable handicapped in the 5-14 year age group has been estimated as follows:

Locomotor	12.20 lakhs
Visual disability	1.27 lakhs
Hearing disability	5.35 lakhs
Speech disability	7.44 lakhs
Mentally Retarded	(No reliable estimates)

- As of now, there are about 280 schools for the deaf covering 28,000 students, the earliest one having been started in 1885. The majority of the special schools teach upto the primary level while some teach upto middle level. There are also schools which teach upto the high school level mostly for children with residual hearing capacity. There are about 200 schools for the visually handicapped covering about 15,000 students.
- The percentage of enrolment of the handicapped children to total children at the elementary stage at present 0.07%. This reflects a serious neglect of education of the handicapped over the last four decades.



The reasons for the low coverage of handicapped children in education are the following:

- \* Education of the handicapped is viewed as a social welfare activity.
- \* Child to child help leading to sensitization of the future generation, child to parent help for community sensitization and special and general pedagogy reinforcement were missed out.
- \* Most of the special centres for the handicapped are located in metropolitan cities and urban centres. The non-government organisations barring a few exceptions have not significantly come to operate at district or sub-district levels. Reportedly, 215 districts in the country do not have special schools for any disability though there are over 1000 documented special schools.
- \* The scheme of Integrated Education for Disabled Children which was conceptualised by the Department of Social Welfare in 1974 was implemented for several years in terms of running 'Mini Special Schools' within general schools. The reason was that there was no provision for sensitization and involvement of all the teachers.

#### Committee's perspective

It should be stated to the credit of NPE 1986 that provision for education of the handicapped was mentioned under part relating to equal educational opportunities. For the first time, because of this Policy stipulation, education departments were put in the right perspective of having to treat education of the handicapped as their legitimate function. It is due to the credit of the Policy that it mentioned about the mainstreaming of the education of the handicapped and about teacher training. The forthright statement of NPE regarding involvement of voluntary agencies, significantly opened up implementation of integrated education of the disabled children to non-government organisations. However, the NPE, so far as it relates to education of the handicapped, is inadequate in the following respects:

- \* It has not stressed the mobilisation of the total general education system for the education of the handicapped.
- \* Special schools have been treated in isolation from other educational institutions from the point of view of providing the educational supervisory infrastructure, leaving it to the Ministries of Welfare and HRD to co-operatively develop the same.

The merit of the POA is in its call for establishment of special schools at district and sub-district level, curriculum development apart from provision of infrastructure facilities; and specific target setting for universal primary education of the handicapped. While special schools for the education of those with severe handicaps are rightly emphasised by the POA, they have not laid emphasis on multiple delivery of services in special schools. While single disability mode is required for research, development and rehabilitation work, for delivery of educational services, multi-service mode in special schools should be given importance. This is particularly so because doctors, dispensaries, public health centres and development functionaries are multi-purpose in nature. The POA has not also called for redefinition of the role of the special schools. Alternative modes of educational provision have not been mentioned.

#### Post - policy implementation

4.3.5 The Department of Education has been implementing a scheme for the integrated education of the disabled under which 100% assistance is given to the States. The scheme is presently being implemented in nineteen States and UTs. The annual provision under the scheme is of the order of Rs. 2 crores and of now 20,000 children are being covered. Assistance provided to the States under the scheme is expected to be utilised to provide for salaries and incentives for teachers, setting up resource rooms, carrying out assessment of handicapped children, training of teachers, provision of instructional material, etc.

#### Future strategy

4.3.6 Having comprehensively taken into account, the problems faced in providing education for the handicapped with reference to their special and diversified needs, and having studied the history of implementation of the educational programmes for the handicapped, the Committee would give the following recommendations:

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#### Recommendations

- (i) People should be made aware of the problems of the handicapped, in terms of the magnitude and type of handicaps. The media should be effectively used for this purpose.
- (ii) Every family with a handicapped child should be provided support through incentives, dialogue, periodic training and evaluation. Parents' groups and community education groups should be formed.
- (iii) The educational system for the handicapped should

be flexible. It should offer a range of education provisions - special schools for those who cannot be educated in general schools, special classes in general schools, and integrated education for the disabled of the type already in existence. Education should be through different options - formal, non-formal, open schools, home day schools, vocational centres etc.

(iv) Educational packages should be offered for hearing impaired children in a differentiated way -

- \* Pure orally oriented programmes for profoundly deaf children.
- \* Combined oral-manual programmes for some of the profoundly deaf children for the education of whom pure oral programmes will not be adequate.
- \* Segregated programmes for those children for whom such programmes are essential.
- \* Integrated programmes for those whom this modality promises better emotive, cognitive, social and linguistic development.

(v) For making the boys and girls of impaired hearing economically independent, vocational training has to be specially organised. Vocational training which is job-oriented and matched to the abilities and aptitudes of the hearing impaired, should be organised in a significantly diversified way making a departure from the earlier practice of confining to a limited number of vocational training programmes like in drawing, painting, tailoring, knitting, embroidery, book-binding, etc. These diversified courses also relate to industrial operations such as sheet metal works, printing, turning, fitting, welding, electrician's trade, carpentry, etc.

(vi) Bharati Braille has been developed, thanks, inter alia, to the special effort made by the National Institute for the Visually Handicapped. Based on this, teacher training and book production programmes have also been launched. These production programmes should be intensified by their scales of operation being enlarged and diversified to cover wide range of subjects and in-school and out-of school needs.

(i) While work has been initiated for development of Braille notations for mathematics and science, not much progress has been made. On account of the

growing emphasis on science and mathematics teaching, a comprehensive and effective code for use in the area of mathematics and science should be developed.

- (viii) For the moderately mentally retarded, special curricula should be developed and standardised - not merely for the purpose of basic education in 3 R's but for training in self-care skills like motor integration, perceptual and motor skills, language, communication and conceptual skills. It should be clearly understood that for the mentally handicapped, academic achievements are relatively unimportant in comparison to social adaptation and vocational training.
- (ix) Vocational schools for the mentally retarded adults are not too many. For their benefit jobs in sheltered workshops, farms and industries should be provided as they are not capable of receiving open employment. The idea is that after receiving training they can work on sub-contract basis.
- (x) In pre-service teacher training programme, education of the handicapped, should be made part and parcel of the pedagogy and methodology.
- (xi) A programme of sensitization should be implemented for in-service teachers as well.. This should include various components, namely, Non-Formal Education, vocationalisation of education and distance education.
- (xii) Teachers' training colleges should have special courses for teaching the handicapped children; a special component on the education of the handicapped should be included in the B.Ed courses as well.
- (xiii) At least one resource faculty should be provided in each DIET to provide teacher training inputs in the context of education for the handicapped.
- (xiv) The role of the special schools should be clearly redefined as spelt out below:
  - i) Early identification of children with handicaps and formulation of stimulation programmes for them and the community in their catchment areas;
  - ii) Education of the handicapped children who cannot be educated in general schools upto the point when they can be integrated - thus

cannot be educated in general schools upto the point when they can be integrated - thus breaking the insulation between the general and special schools.

- iii) Service as resource agencies for implementing the integrated education programmes in general schools so that they feel as a part and parcel of the educational system.
- iv) Bringing about mutual reinforcement of the pedagogies of special and general education.
- (xv) A lot of development is taking place in the application of technology for the benefit of the handicapped. Several technological aids are already available like for example, Brailleix produced by Federal Republic of Germany which facilitates recording of whole encyclopaedia on cassettes, printing conversion devices like 'tactacon' which facilitates presentation of printed material in vibro-tactile form so as to enable the blind persons to read, devices facilitating mobility of the blind persons etc. The technologies and techno-aids available for meeting the special needs of the handicapped children should be reviewed and measures for dissemination of information should be formulated.
- xvi) Sustained researches should be undertaken to determine the needs of the physically handicapped and produce technological aids capable of helping in overcoming handicaps. The Indian Institute of Technology and other technological institutions in the area of higher education should be given specific responsibilities for undertaking these researches.

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### The Three 'C' Model

The Three 'C' model has been developed in Kerala by the Central Institute & Information Centre of Mental Retardation, Trivandrum, for the education of the disabled. The features of this model are:

- Imparting education through a sense for shapes (rectangle, circle, triangle etc.)
- An understanding that recognition of shapes is a pre-alphabet experience (for a child which sees the mother, the forehead is a rectangle, eyes are circles and nose is a triangle).
- Motor, psycho-social, language and cognitive skills are developed through the medium of shapes. (For this purpose, instruction is imparted on building figures with shapes; e.g. a triangle placed over a square will signify a house).
- Use of equipment/materials like scissors, paper, spanners etc. for exercises in building shapes. (This facilitates development of coordination skills and skills for recognition of articles).
- Development of skills through seeing perceiving and smelling.
- The whole system of education of the handicapped through this modality ultimately results in building up of comprehension, competency and creativity. Hence the nomenclature 'Three C Model'.

This model has been applied in Kerala since 1980 in about 50 centres for the education of the handicapped; 2000 children have been benefitted, 400 teachers oriented and 10,000 families reached.

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## Section D : Common School System

4.1 In the context of establishing the National System of Education, the NPE states that effective measures will be taken in the direction of the Common School System recommended in the 1968 Policy. The implication of having the Common School System has been stated by the Policy to be gaining of access to education of a comparable quality by all students irrespective of caste, creed, location or sex.

4.2 The POA, however, does not spell out any modalities or action programme for bringing the Common School System into existence.

4.3 The CABE Committee on Common School System under the chairmanship of Prof. D.S. Kothari, however, has examined the matter and given a report. This report calls for promotion of neighbourhood schools, qualitative improvement of education in the public sector, identification of target areas and establishment of a National Council for common schools with State Education Ministers, educationists, voluntary organisations, Planning Commission and Directors of NIEPA & NCERT and M.Ps.

4.4 According to the Education Commission, 1964-66 which originally advocated the concept, the Common School System of public education has the following features:

- It will be open to all children irrespective of social, economic and other differences.
- Access to education will depend on talent.
- Adequate standards would be maintained.
- No tuition fee would be charged.
- The average parent would not ordinarily feel the need of sending his children to expensive schools outside the system.

5 The National Policy on Education 1968 had accepted the recommendation of the Education Commission for bringing about the Common School System.

6 Common School System of education has been prevalent in USSR, the USA and certain European countries in some form or other.

4.4.7 The reasons why the Common School System has not gained ground so far are the following;

- Economic and social disparities; the well-to-do communities send their children to schools with better infrastructure, teachers and teaching standards. Ordinary schools are not sought after; and in turn results in low investments in them.
- The constitutional protection given to the minorities to establish and administer their own educational institutions etc. does not go with the concept of the Common School System.
- In Government schools, the quality of education has remained poor.
- Lack of political will.
- Public schools, privately managed English medium schools, schools charging capitation fees and those having expensive coaching classes have proliferated.
- Growth of institutions in the Government sector like the Sainik Schools and Kendriya Vidyalayas meant for separate categories of students.

4.4.8 The first step in securing equity and social justice in education is the building up of a Common School System. Specific actions required in this context are the following:



## Recommendations

- Provision of significantly increased outlay for elementary (particularly primary) education. This would help in the building up of the required levels of infrastructure and quality of education, thereby transforming Government, local-body and aided schools into genuine Neighbourhood Schools.
- Provision of special allocations for improvement of school system in backward areas, urban slums, tribal areas, hilly tracts, desert and marshy areas, drought and flood-prone zones, coastal belts and islands.
- Ensuring instruction for all in the medium of mother tongue at the primary level, particularly linguistic minorities; active encouragement of teaching in the regional languages at the secondary level; and discontinuance of State aid to the schools imparting education otherwise than in the medium of mother tongue/regional languages.

Phased implementation of the Common School System within a ten year time frame; and essential minimum legislation, particularly to dispense with early selection process, tuition fee, capitation fee etc.

Exploring ways of including the expensive private schools into the Common School System through a combination of incentives, disincentives and legislation.

# लोकशाला

प्रारंभिक शिक्षा के लोकव्यापीकरण के लिए वैकल्पिक दृष्टिकोण

भारत जन विज्ञान जत्था का शैक्षिक पहल

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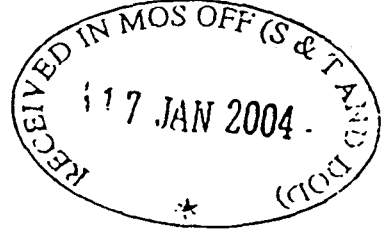
वा में,

श्री कपिल सिब्बल

विज्ञान एवं प्रौद्योगिकी राज्य मंत्री, भारत सरकार

अध्यक्ष (केब समिति संबद्ध विषयक)

नई दिल्ली



षय: प्रस्तावित निःशुल्क और अनिवार्य शिक्षा विधेयक के विषय में विचारणीय प्रसंग।

गशय,

लोकशाला अभियान (भाजविज) एक स्वैच्छिक शैक्षिक पहल है। इसके साथ लोग प्रारंभिक शिक्षा के लोकव्यापीकरण से संबद्ध अनेक मसलों को लेकर लगातार कई से बिहार के विभिन्न भौगोलिक क्षेत्रों में जूझ रहे हैं। इसमें प्रारंभिक शिक्षा के संवैधानिक मधानों के आलोचनात्मक विश्लेषण के आधार पर संवैधानिक संशोधन को समझने का स हुआ है। जिसमें कई महत्वपूर्ण मसले को चिह्नित किया गया है और उस संबंध में सी है। परंतु राष्ट्र-निर्माण की प्रक्रिया में अभी तक इन मसलों का समुचित हल नहीं

ऐसी स्थिति में राष्ट्रीय पुनर्निर्माण के दिशा में वर्तमान राष्ट्रीय सरकार द्वारा केब मिति की कार्रवाई में इन मसलों को महत्व दिया जा रहा है। और इस संदर्भ में सार्थक चीत की प्रक्रिया शुरू है। उसमें प्रस्ताविक निःशुल्क और अनिवार्य शिक्षा विधेयक से द मसलों के मोटे स्वरूप को समिति में विमर्श हेतु इस पत्र के साथ भेजा जा रहा है।

आशा है कि इस पत्र में उठाए गए मसलों की भावना को गंभीरता से लिया गा, क्योंकि आजाद भारत में समानता, सद्भाव एवं सामाजिक न्याय की स्थापना राज्य की धानिक जिम्मेवारी है। इशालिए समन्यू समी सलस्यों की इहकी प्रति उपलब्ध करु दिमा जाय।

आपका

अ.क.

(अक्षय कुमार)

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## निःशुल्क और अनिवार्य शिक्षा विधेयक में विचारणीय प्रसंग

प्रस्तावित निःशुल्क और अनिवार्य शिक्षा विधेयक का प्रारूप तत्कालीन सर्वोच्च शिक्षा आयोग के प्रास्ताविक में तैयार किया गया है। इसलिए इस पर विचार करने में संविधान की मूल भावना को समझना-बुझना जरूरी है, जिसमें उसकी यह भावना स्पष्ट होती है। भारत के संविधान निर्माताओं ने भारत को स्वतंत्रता आन्दोलन के दौरान उपजे विचारों से प्रेरणा ली थी। इसके आलाोक में संविधान निर्माताओं ने, शिक्षा के संदर्भ में, राज्य के लिए निम्नलिखित लक्ष्य को निर्धारित किया था - "राज्य यह प्रयास करेगा कि संविधान लागू होने के दस वर्षों के भीतर चौदह वर्ष की आयु तक के सभी बच्चों के लिए निःशुल्क एवं अनिवार्य शिक्षा का प्रावधान कर दिया जाय"।

(राज्य के नीति निर्देशक तत्व, अनुच्छेद 51)

इस अनुच्छेद की व्याख्या में यह मान लिया गया है कि इसके दायरे में कक्षा एक से कक्षा आठ तक की शिक्षा को निःशुल्क और अनिवार्य बनाने के निर्देश थे। पर संविधान लागू होने के बाद 86वाँ संविधान संशोधन विधेयक-2001, जो प्राथमिक शिक्षा के अधिकार को मौलिक अधिकार देता है, के लागू होने तक यह लक्ष्य एक मृगमरीचिका बना हुआ रहा है। उपलब्ध आँकड़ों के विश्लेषण से यह पता चलता है कि इस देश में दो-तिहाई बच्चों को स्कूल में ही नहीं या फिर प्रवेश पाने के शुरुआती वर्षों में ही स्कूल से धकेल कर बाहर कर दिये गये।

### संवैधानिक निर्देशानुसार शिक्षा नीति एवं आयोग की अनुशंसा

संवैधानिक निर्देशानुसार भारतीय समाज में, समानता तथा सामाजिक न्याय की दृष्टि से, सुधार लाने हेतु मुख्य रूप से निम्न अनुशंसाएँ हुई हैं -

कोठारी आयोग (1964-66)

कोठारी आयोग देश का पहला शिक्षा आयोग है। इसमें "समान स्कूल प्रणाली" लागू करने की सिफारिश की गई है। इसके लिए वर्ष 1986 तक शिक्षा के क्षेत्र में सकल राष्ट्रीय उत्पाद के 6 प्रतिशत अंश के निवेश की सिफारिश की गयी थी। इसके एक अध्याय (शिक्षा आयोग 1966:123) में शैक्षिक अवसरों को समान बनाने की दिशा में कहा गया है कि "... इस क्षेत्र में अभी तक बहुत कुछ कम काम किया गया है। ... स्थिति में कोई भारी सुधार निकट भविष्य में व्यावहारिक नहीं दिखाई देता ...

राष्ट्रीय शिक्षा नीति, 1968

वर्ष 1968 में पहली शिक्षा नीति संसद द्वारा पारित की गयी। इसमें कोठारी आयोग की सिफारिश को स्वीकारते हुए कहा गया है कि ऐसी स्कूल प्रणाली के जरिए ही राष्ट्रीय एकजुटता एवं सामाजिक सद्भाव का निर्माण संभव हो सकेगा। इसमें एकीकृत कार्यक्रमों के विकास का भी सुझाव दिया गया है।

राष्ट्रीय शिक्षा नीति, 1986

वर्ष 1986 की राष्ट्रीय शिक्षा नीति ने कोठारी आयोग के प्रति अपनी कटिबद्धता दोहराई थी, जिसे संसद द्वारा पारित कर दूसरी शिक्षा नीति के क्रियान्वयन का संकल्प लिया गया था। पर इसमें एक साथ ही विद्यालयों की एक और परत (केंद्रीय विद्यालय) चढ़ाई गई एवं स्कूल से बाहर के दलित, गरीब बच्चों के लिए सरकारी स्कूल प्रणाली से भी गई-बोती औपचारिकतर प्रणाली का लॉली पॉप फेंका गया, जबकि प्रारम्भिक शिक्षा पर जोर दिया गया था।

ऑपरेशन ब्लैक बोर्ड का क्रियान्वयन

राष्ट्रीय शिक्षा नीति (1986) में प्राथमिक विद्यालयों में ढाँचागत और सेवागत सुधार के लिए ऑपरेशन ब्लैक बोर्ड कार्यक्रम सामने आया। इसमें कई प्रकार की शिक्षण सामग्री के साथ हर स्कूल में कम-से-कम 2 शिक्षक, जिनमें यथासम्भव एक शिक्षिका हों, उपलब्ध कराये जायेंगे एवं प्रत्येक स्कूल में बरामदे के साथ कम-से-कम 2 बड़े कमरे तथा लड़के और लड़कियों के लिए अलग-अलग शौचालय बनाये जायेंगे - यह निश्चित किया गया था। इस कार्यक्रम में कुछ आर्थिक व्यय राज्य शासन तथा शेष खर्च केंद्र शासन द्वारा देय था।

## 1992 की संशोधित शिक्षा नीति

इस तरह कोठारी आयोग की समान स्कूल व्यवस्था वाली अनुशांसा को देश की संसद ने बिना किसी मतभेद के तीन बार (1968 की पहली शिक्षा नीति तथा 1986 की दूसरी शिक्षा नीति और 1992 की संशोधित शिक्षा नीति) स्वीकार करते हुए क्रियान्वित करने का संकल्प लिया

### राज्य द्वारा नीति का उल्लंघन

राज्य द्वारा लगातार व्यवस्थित रूप से शिक्षा नीति का उल्लंघन जारी रहा है। जैसे-

- ⊙ कोठारी आयोग की 'समान स्कूल प्रणाली' लागू करने वाली सिफारिश आज तक ठंडे बस्ते में पड़ी हुई है।
- ⊙ ज्ञान-सृजन की प्रक्रिया में मानवता और मानवीय गुणों को तिलांजलि दे दी गई।
- ⊙ सन् 1988 में राज्य द्वारा 'राष्ट्रीय साक्षरता मिशन' के गठन की घोषणा की गयी, जब कि गठन होना चाहिए था 'राष्ट्रीय प्रारंभिक शिक्षा मिशन' का। इससे देश का लगभग सारा सरोकार प्रारंभिक शिक्षा की कार्रवाई से हटकर प्रौढ़ साक्षरता पर केन्द्रित हो गया। इससे प्रौढ़ शिक्षा का कार्यक्रम शैक्षिक कार्रवाई केन्द्र बना।
- ⊙ सरकारी शिक्षा व्यवस्था में सुधार न करके समानान्तर, (केन्द्रीय विद्यालय, सैनिक स्कूल, नवोदय विद्यालय आदि सरकारी स्तर पर एवं गैर सरकारी स्तर पर अनेक विद्यालय) अलग-अलग वर्गों की संतुष्टि हेतु महंगी शिक्षा व्यवस्था लागू होती रही और इस समानांतर कार्रवाई को नीतिगत सहारा मिलता रहा।
- ⊙ राष्ट्रीय सकल आय का 6% अंश नहीं दिये जाने से कोष की आवश्यकता का अन्तर बढ़ता जा रहा है। इससे शिक्षा नीति के समक्ष चुनौती ज्यादा गंभीर होती गयी।
- ⊙ 1990 में जोमतिशन सम्मेलन के अनुरूप भारतीय शिक्षा के एजेंडे में तेजी से बदलाव शुरू हुआ। इसके कारण शिक्षा को मापने का मानदंड साक्षरता का प्रतिशत स्थापित हुआ है। यहाँ प्रारंभिक शिक्षा का औचित्य विमर्श का विषय भी नहीं रहा।
- ⊙ 1992 में संशोधित शिक्षा नीति के तहत प्रारंभिक शिक्षा हेतु रखे जाने वाले साधनों में हर स्तर पर भारी कटौती शुरू हुई।

### नीति के उल्लंघन से भटकाव

86वाँ संविधान संशोधन विधेयक प्राथमिक शिक्षा के अधिकार को मौलिक अधिकार के रूप में प्रस्तुत करता है। इसमें सभी बच्चों की शिक्षा-व्यवस्था के प्रावधान हेतु निम्न संशोधन हुआ है-

- ⊙ संविधान के 21वें अनुच्छेद के साथ 21 (क) जोड़ा गया है। इसमें यह कहा गया है कि राज्य निर्धारित कानून पद्धति से 6 से 14 आयु वर्ष के सभी बच्चों को निःशुल्क एवं अनिवार्य शिक्षा प्रदान करेगा।
- ⊙ संविधान के अनुच्छेद 51 (क) में खण्ड (जे) के बाद खण्ड (के) जोड़ा गया है। इसमें कहा गया है कि- अपने बच्चे या आश्रित बच्चे को, 6-14 वर्ष की आयु के बीच की अवधि में, माता-पिता अथवा अभिभावक शिक्षा के अवसर प्रदान करेंगे।
- ⊙ संविधान के नीति-निर्देशक खण्ड के अनुच्छेद 45 में सुस्पष्ट शब्दों में बयान किया गया है कि राज्य 6 वर्ष की उम्र होने तक सभी बच्चों की प्रारंभिक बाल्यावस्था के लिए आवश्यक देखभाल करने की व्यवस्था का प्रयास करेगा।

अतएव इस तरह के संवैधानिक बदलाव से अब यह लगता है कि-

- ⊙ समान शिक्षा प्रणाली के समानांतर राज्य को वैकल्पिक शैक्षिक प्रक्रिया की वैधानिक छूट मिल गयी।
- ⊙ संविधान के अनुच्छेद 51 (क) में खंड (जे) के बाद खंड (के) जोड़ दिये जाने से बच्चे के माँ-बाप या अभिभावक पर शिक्षा के अवसर प्रदान करने की संवैधानिक जिम्मेवारी तय हो गई है। इससे अब इसकी विफलता के मुख्य कारक के रूप में इन्हें चिह्नित होने का भय है। जबकि इसके पूर्व संवैधानिक निर्देशानुसार

प्रारंभिक शिक्षा की पूरी जिम्मेवारी राज्य को थी, जिससे अब राज्य बहुत ही होशियारी के साथ मुक्त हो रहा है।

- ⊙ राज्य वित्तीय साधनों का अभाव बताकर अब कम खर्च वाले एक कमरे के स्कूल में कम पढ़े-लिखे, कम अनुभव वाले, कम मानदेय पर काम करने वाले शिक्षक (पारा/लोक/शिक्षा-मित्र) का औचित्य स्थापित करना चाहती है। जबकि वर्ष 1999 में वर्तमान सरकार द्वारा गठित तापस मजुमदार समिति के अनुसार 6-14 आयु वर्ष के सभी बच्चों की शिक्षा के लिए 10 वर्ष में 1,40,000 करोड़ रु. की अतिरिक्त जरूरत बतायी गयी थी, जो जी.डी.पी. का लगभग 7 प्रतिशत होता है।
- ⊙ संविधान के नीति-निर्देशक खंड के अनुच्छेद 45 में अब सुस्पष्ट शब्दों में बयान किया गया है कि- 'राज्य 6 वर्ष की उम्र होने तक सभी बच्चों के लिए प्रारंभिक वात्स्यावस्था के लिए आवश्यक देखभाल करने की व्यवस्था का प्रयास करेगा।' इस तरह 6 वर्ष की उम्र तक के बच्चों की देखभाल के प्रावधान से सरकार की जिम्मेवारी को शक्तिहीन होने का भय है, जबकि इस उम्र समूह के बीच अभिवर्धित बच्चों की संख्या सबसे अधिक है। इनके समुचित देखभाल के अभाव से इन बच्चों का उही विकास नहीं हो पाता है।
- ⊙ इस तरह संवैधानिक बदलाव होने से शैक्षिक असमानता के बढ़ने की वैधानिक पृष्ठभूमि तैयार हो रही है, जिससे समाजिक अन्याय बढ़ने का भय है।

बच्चों की पढ़ाई के लिए अब सरकार नहीं, बल्कि इनके माँ-बाप जिम्मेवार होंगे और गरीब बच्चों के लिए अब पूर्ण नहीं, पारा शिक्षक ही पर्याप्त माने जायेंगे। यहाँ नीतिगत स्तर पर सवाल मौलिक शिक्षा की हो रही है, पर अभी तक अनौपचारिक वित्त व्यवस्था ही है।

#### प्रस्तावित विधेयक में विचारणीय खास तथ्य

भारतीय संविधान की मूल भावना के अनुरूप प्रारंभिक शिक्षा के लोकव्यापीकरण हेतु प्रस्तावित विधेयक अपरिहार्य है। परंतु इसका ढाँचा शैक्षिक व्यवस्था में समानता, सद्भाव एवं सामाजिक न्याय की अवधारणा के अनुरूप जरूरी है। अन्यथा देश के जनगण के बीच विषमता की खाई के विस्तार का यह आधार बन सकता है, जहाँ आपसी मतभेद, तनाव एवं हिंसा के कारण हर स्तर पर सामाजिक संस्कृति को विकृत होने का खतरा है। इसलिए इस प्रस्ताव के निम्न संदर्भों को गंभीरता से लेने की जरूरत है।

### प्रस्तावित अध्याय— एक

#### स्वीकृत विद्यालय की अवधारणा

प्रारंभिक शिक्षा का लक्ष्य पूरा करने हेतु उस स्तर का विद्यालय जरूरी है। इस तरह के विद्यालयों की जरूरत की भरपाई द्वयम दर्जे के दूसरे विद्यालयों से नहीं किया जा सकता है, क्योंकि दोनों विद्यालयों में पढ़ाई की स्थिति, उसके लिए विद्यालय में साधन की स्थिति, शिक्षकों की योग्यता, उनकी सेवा शर्त आदि में काफी अंतर है। ऐसी स्थिति में एक ओर इ.जी.एस. और अल्टरनेटिव स्कूल की स्वीकृति से विद्यालय की भरपाई करने की बात और दूसरी ओर इसके शर्त एवं कायदे कानून में बुनियादी अंतर बरकरार रखने की गुंजाइश बनाए रखने का प्रावधान है, जबकि निःशुल्क और अनिवार्य शिक्षा का अर्थ स्वीकृत विद्यालय में प्रारंभिक शिक्षा प्रदान करना है। इसलिए प्रारंभिक शिक्षा के लिए स्वीकृत या मान्यता प्राप्त एक समान शिक्षा प्रणाली का विद्यालय माना जाय और दूसरे को पूरक केन्द्र के रूप रखा जाय परंतु इन दोनों की व्याख्या, शर्त एवं स्थिति के आधार पर, स्पष्ट करने की जरूरत है।

#### अन्य विद्यालय के दायरा का निर्धारण

प्रारंभिक शिक्षा के स्तर पर अनेक तरह के विद्यालय चल रहे हैं। इसमें किस्म-किस्म के निजी विद्यालय और सामाजिक-धार्मिक संगठनों के विद्यालय भी हैं। इन विद्यालयों का राज्य द्वारा विभिन्न रूपों में (जमीन की बन्दोबस्ती, टैक्स में छूट, सेवा शर्त में सुविधा एवं अनुदान आदि) मदद एवं सहयोग का प्रावधान है और इन्हें शैक्षणिक मान्यता या स्वीकृति दी जाती है।

अतएवं प्रारंभिक स्तर पर चल रहे विद्यालयों के दायरा का निर्धारण हेतु शर्त एवं प्रतिबंध की व्याख्या इस प्रस्ताव में नहीं है। इससे एक बार पुनः विद्यालय की खुल्लम-खुल्ला छूट मिलने का भय है।  
स्थानीय निवास का संदर्भ

प्रस्तावित विधेयक में देश की संपूर्ण आबादी को समेटने का प्रयास हुआ है, जो एक सराहनीय पहल है, परंतु इसका अस्तित्व देश के वर्तमान प्रशासनिक ढाँचे के अन्दर निर्धारित है और इस क्षेत्र की आबादी की जनतांत्रिक सहभागिता हेतु वैधानिक रूप में स्थानीय निकाय का कार्य क्षेत्र तय है। ऐसी स्थिति में अलग संरचनात्मक स्वरूप खड़ा करने से अराजक स्थिति विकसित होने का खतरा है। इसलिए स्थानीय निवास की व्याख्या में किसी तरह की छूट घातक होगा।

स्थानीय प्राधिकार की व्याख्या में बदलाव

देश की संपूर्ण आबादी तक प्रशासन की पहुंच कायम करने और जनतांत्रिक अधिकार के उपयोग का अवसर जन-जन तक कायम रहने हेतु प्रशासन एवं जनतांत्रिक निकाय का सुदृढ़ ताना-बाना स्थापित है। ऐसी स्थिति में इन वैधानिक प्रावधानों के समानांतर नया वैधानिक ढाँचा खड़ा करने की गुंजाइश से प्रत्येक स्तर पर अव्यवस्था पैदा होने का भय है। इसलिए प्रस्ताव की व्याख्या में इस तरह की गुंजाइश को गंभीरता से समझने की जरूरत है।

निःशुल्क और अनिवार्य शिक्षा का प्रावधान

राज्य द्वारा सभी क्षेत्र में बच्चों की संख्या के अनुरूप स्वीकृत विद्यालय के तत्काल व्यवस्था का प्रावधान जरूरी है। इसके लिए पूर्व के विद्यालयों की क्षमता में वृद्धि या नया विद्यालय का निर्माण जरूरी है। इसी तरह बिखरी हुई आबादी के क्षेत्र के लिए फिडर स्कूल का प्रावधान हो सकता है, पर वह उसका विकल्प नहीं होगा।

## प्रस्तावित अध्याय— दो

प्रारंभिक शिक्षा में अवरोध का हल

प्रारंभिक शिक्षा की प्रक्रिया को जारी रखने हेतु प्राथमिक, मध्य एवं माध्यमिक विद्यालयों के अनुपात के बारे में इस प्रस्ताव में किसी स्तर पर कोई चर्चा नहीं है, जबकि बच्चों की प्रारंभिक शिक्षा की निरंतरता की लिए यह जरूरी है। यह प्रारंभिक शिक्षा में छीजन का महत्वपूर्ण कारक है। इस संदर्भ में विद्यालयी संरचना खड़ा करने हेतु इसके शर्त एवं प्रतिबंध की भी व्याख्या प्रस्ताव में जरूरी है। अन्यथा शैक्षिक विषमता और बढ़ सकता है, जहाँ सामाजिक न्याय एकमात्र नारा बनकर रह जायेगा।

माता-पिता एवं अभिभावक के कर्तव्य

कर्तव्य के नाम पर बच्चों के नामांकन की जिम्मेवारी माता-पिता या अभिभावक पर डालने से पक्षपातपूर्ण कार्रवाई होने का भय है। इसलिए प्रस्ताव में इनके सहयोग की बात करनी चाहिए, जिसमें बच्चे के नामांकन के साथ उसे स्कूल में टिके रहने में उनकी भूमिका की गुंजाइश के लिए प्रावधान गढ़ना जरूरी है, जिससे कर्तव्यबोध के दायरे को सामाजिक आधार दिया जा सकता है।

स्वीकृत विद्यालयों में नामांकन का संदर्भ

प्रारंभिक शिक्षा से वंचित बच्चों के नामांकन के लिए स्वीकृत विद्यालय की संख्या महत्वपूर्ण कारक है और इन विद्यालयों में नामांकन के बाद बच्चों को टिके रहने हेतु शिक्षक एवं छात्र का अनुपात तथा विद्यालय में आवश्यक साधन की उपलब्धता जरूरी है।

शिक्षकों का चयन

शिक्षकों की चयन-प्रक्रिया के बारे में प्रस्ताव की दिशा स्पष्ट नहीं है। इसलिए इसकी मनचाही व्याख्या का भय है। अतः प्रारंभिक शिक्षा के लोकव्यापीकरण हेतु केवल स्वच्छ चयन की बात करना पर्याप्त नहीं है। बल्कि निष्पक्षता के लिए न्यायोचित प्रावधान की स्पष्टता जरूरी है।

शिक्षकों का कर्तव्य

शिक्षक के कर्तव्य में प्रत्येक स्तर पर कर्तव्यत्यागी (अभिभावक, समुदाय, छात्र आदि) के बारे में प्रतिवेद लिखने और तैयार करने से गैर शैक्षिक प्रवृत्ति का विकास संभव है। इससे एक-दूसरे के प्रति आरोप-प्रत्यारोप का परिवेश बन सकता है। इसलिए इसकी भावना के बदले हुए स्कूल और अभिभावक के बीच बेहतर परिवेश निर्माण की जिम्मेवारी तय करना अच्छा होगा।

शिक्षकों की योग्यता

शिक्षकों की योग्यता के संदर्भ में समझौता अर्थात् छूट देने से शिक्षा की गुणवत्ता प्रभावित होगा। इसलिए शिक्षकों की योग्यता के स्तर में समझौता का प्रावधान नहीं होना चाहिए। बल्कि योग्यता के स्तर में ज़रूरी शर्त और प्रतिबंध कारगर होगी।

निःशुल्क और अनिवार्य शिक्षा की बुनियादी व्यवस्था

राज्य को निःशुल्क प्रारंभिक शिक्षा की व्यवस्था करने का दायित्व तय है। इसलिए सभी बच्चों के पहुंच तक स्वीकृत विद्यालय की व्यवस्था करनी है और उन विद्यालयों के लिए आवश्यक मानव एवं भौतिक साधन उपलब्ध कराने हैं, जिसमें यह ख्याल रखना है कि इस व्यवस्था-निर्माण की प्रक्रिया में स्कूल से बाहर के बच्चों की पहचान एवं समुदाय की तैयारी का काम सहज बने। परंतु इसमें यह ध्यान रखना जरूरी है कि इसमें कर्तव्य के नाम पर पूरी कार्रवाई का केन्द्र बिन्दु कोई व्यक्ति नहीं बन जाय। इससे समाज में आभयान की प्रक्रिया विकसित नहीं हो सकेगी।

### प्रस्तावित अध्याय— तीन

स्थानीय क्षेत्र की अधिसूचना में बदलाव

देश के संपूर्ण शहरी एवं ग्रामीण क्षेत्र में विकास एवं कल्याण के लिए निगम, बोर्ड, पंचायत आदि जैसी स्थानीय जनतांत्रिक निकाय कायम हैं, जिसकी संरचना में छोटे-छोटे इलाके के प्रतिनिधि काम करते हैं। ऐसी स्थिति में स्थानीय क्षेत्र की अधिसूचना की कार्रवाई से नया भ्रम कायम होगा। इससे संवैधानिक स्थानीय निकाय कमजोर होगा। इसलिए प्रस्तावित दिशा में बदलाव जरूरी है।

स्थानीय क्षेत्र के लिए स्थानीय निकाय का संदर्भ

देश के सभी क्षेत्रों में स्थानीय निकाय की सबसे छोटी इकाई को स्थानीय स्तर पर केन्द्र माना जाय और उसमें स्थानीय निकाय के प्रतिनिधि के साथ अभिविचिit समुदाय की भागीदारी को सुदृढ़ करने का प्रावधान बेहतर विकल्प होगा। इसमें स्थानीय स्तर पर अभिविचिitों के बीच सक्रिय समूह की भागीदारी का प्रावधान रखा जाय। अतः स्थानीय प्राधिकार की भावना में बदलाव जरूरी है।

निवास स्तरीय प्रारंभिक शिक्षा प्राधिकार

प्रस्तावित विधेयक के प्रारूप चाप्टर-III के सेक्शन 16 में HEEA की अवधारणा प्रस्तुत की गयी है। इसमें निवासस्तरीय प्रारंभिक शिक्षा प्राधिकार की कल्पना की गई है और उसके नामकरण के प्रावधान को खुला रहने दिया गया है, जबकि राष्ट्र का प्रत्येक क्षेत्र जनतांत्रिक निकाय का हिस्सा है। इसलिए स्थानीय स्तर पर समुदायिक पहल या भागीदारी के नाम पर इससे समुदाय और खंडित होगा, जहाँ समुदाय जनतांत्रिक निकाय का हिस्सा नहीं बन सकेगा।

**स्थानीय प्रारंभिक शिक्षा प्राधिकार**

प्रस्तावित विधेयक के प्रारूप चाप्टर-III के सेक्शन 17 में LEEA की अवधारणा प्रस्तुत की गयी है। इसमें निवासस्तरीय प्रारंभिक शिक्षा प्राधिकार की कल्पना की गई है और उसके नामकरण के प्रावधान को खुला रहने दिया गया है जबकि राष्ट्र का प्रत्येक क्षेत्र जनतांत्रिक निकाय का हिस्सा है। ऐसी स्थिति में जनतांत्रिक निकाय के समानांतर एक और परत खड़ा हो जायेगा, इसमें अधिकार क्षेत्र के मसले को लेकर अव्यवस्था कायम होने की संभावना है।



### जिला प्रारंभिक शिक्षा प्राधिकार

प्रस्तावित विधेयक के प्रारूप चाप्टर-III के सेक्शन 18 में DEEA की अवधारणा प्रस्तुत की गयी है। इसमें निवासस्तरीय प्रारंभिक शिक्षा प्राधिकार की कल्पना की गई है और उसके नामकरण के प्रावधान को खुला रहने दिया गया है जबकि राष्ट्र का प्रत्येक क्षेत्र जनतांत्रिक निकाय का हिस्सा है। इसलिए संबद्ध सभी इकाइयों के बीच समुदायिक भागीदारी के आधार पर समन्वयन खड़ा करने की जरूरत है, परंतु प्रस्तावित अवधारणा में इसकी भावना को नकारा गया है। जबकि DEEA की प्रस्तावित अवधारणा से कार्य क्षेत्र में अव्यवस्था फैल सकती है।

### महानगरीय प्रारंभिक शिक्षा प्राधिकार

प्रस्तावित विधेयक के प्रारूप चाप्टर-III के सेक्शन 19 और 20 में MEEA तथा SEEA का अवधारणा प्रस्तुत की गयी है। इसमें निवासस्तरीय प्रारंभिक शिक्षा प्राधिकार की कल्पना के आलोक में उसके नामकरण के प्रावधान को खुला रहने दिया गया है, जबकि राष्ट्र का प्रत्येक क्षेत्र जनतांत्रिक निकाय का हिस्सा है। जिसके कारण शिक्षा व्यवस्था में अराजक स्थिति पैदा होने का भय है, क्योंकि स्तर पर हमेशा के लिए कार्यक्रम आधारित गुट खड़ा हो जायेगा, इसमें प्रारंभिक शिक्षा के बुनियादी पक्ष लिए कोई स्थान नहीं होगा।

### प्रस्तावित अध्याय— पाँच

#### अनुच्छेद के उल्लंघन पर दंड

प्रस्तावित विधेयक में केवल अभिभावक और शिक्षक जैसे संबद्ध व्यक्ति के कर्तव्यबोध की व्याख्या की गयी है और उसके उल्लंघन होने पर दंड का प्रावधान गढ़ा गया है, जिसमें भय के आधार पर राष्ट्रीय लक्ष्य तक पहुंचने की कल्पना की गयी है, जबकि अभी तक यह रास्ता उपयोगी साबित हुआ है। इसलिए उल्लंघन पर दंड के प्रावधान की प्रकृति में बदलाव की जरूरत है और इसके दायरे में संबद्ध दूसरे लोगों की जिम्मेवारी भी तय किया जाय।

### प्रस्तावित अध्याय— छह

#### संबद्ध अनुसूची में बदलाव

प्रस्तावित अध्याय छः के साथ एक अनुसूची जुड़ा है, जिसमें प्राथमिक स्कूलों की प्रकृति के साथ-साथ शिक्षकों की योग्यता और उनके प्रशिक्षण की अवधि का भी वर्णन है। इसलिए पूर्व में उठाए गए स्कूली बदलाव के अनुरूप इसमें बदलाव जरूरी है।



Shri Kapil Sibal  
Chairman, Committee on the Subject of Free and Compulsory Education Bill  
And other Issues related to Elementary Education,  
AB-7 Purana Quila Road  
New Delhi I

Sub: **Free and Compulsory Education Bill:**

Dear Mr Sibal,

We are pleased that the government is in the process of framing the long awaited 'Free and Compulsory Education Bill' which will undoubtedly give impetus to the universalization of elementary education in India.

We draw your attention to the urgent need to include the issue of ECCD in this Bill before it goes to Parliament and urge you to ensure the issue gets addressed at the highest level. We recall your strong speech in Parliament in 2002 (86<sup>th</sup> Amendment) and are confident that you are not only well aware of the intimate link between ECCD and the realization of the goal of Universal Elementary Education but are the best person to bring it up at this critical juncture.

Just for a quick recapitulation: as you know, it is widely accepted and understood that education begins at birth and depends heavily upon the quality of general care and nutrition available to children in the earliest years of their lives. Systems of education must begin long before school entry at the age of six years. India has acknowledged this in the programmes we have developed for the comprehensive care and development of the under sixes, including 'pre school education', such as the ICDS.

However, we wish to emphasise that educational services must start from preschool at age 3 years and that this is an essential part of education *per se* as well as preparation for formal school later on. Therefore, any Education Act that is being developed as a means to achieve equity for the vast majority of our children, and quality in the area of education, must treat the requirement of **universal and quality preschool services as a matter of urgency and priority within its main agenda.**

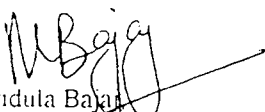
Sadly, as you know, this is far from the situation at the moment and needs serious attention.

We recommend that the following points be included in the main text of the Education Act:

- The universalisation of good quality pre school services as an essential part of elementary education must be given priority;
- This should be achieved within a time frame of five years with priority to dalit, tribal and urban poor areas;
- Health checkup and referral and supplementary nutrition must be considered an essential part of these services.

We would be happy to supplement our recommendations with details regarding infrastructure, training and selection criteria for pre school teachers, curricula etc. if subsequently required.

Yours sincerely

  
Mridula Bala  
Executive Director, Mobile Crèches

On behalf of: (See list overleaf)

Dr Vandana Prasad (Jan Swasthya Abhiyan)

Ms Devika Singh (Consultant, ECCD)

Prof Jean Dreze

Ms Razia Ismail (India Alliance for Child Rights)

Dr Shiv Kumar

Ms CP Sujaya ( CWDS)

Dated : 11<sup>th</sup> March 05.

New Delhi

## Creating a school system with excellence and equity for all children at the elementary level

### Guiding principles of the bill

While aiming at equity and excellence in school education, the bill has been drafted in the rights and equal opportunity perspectives as elementary education is now a fundamental right and non-discrimination, equality and social justice are corner stones of the Indian Constitution. It is a constitutional obligation of the state to provide facilities and for people it should be an enabling provision, rather than an imposition.

The right of judgment regarding quality and excellence in education cannot be entirely taken away through legislation. The principle of compulsion should be contingent upon twin principles of 'equity' and 'excellence' or at least of assured quality, for otherwise it will be violative of the principle of equal opportunity besides restricting the freedom to exercise one's rights.

A state centric legislation should be avoided in respect of functioning and control of the schools. Community should have a say and ultimate ownership of schools. State should refrain from *prescribing* curriculum and pedagogy. There should be enough freedom allowed to schools and framework of choice should be decentralized and contextual.

### Explanatory notes

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Drafted by Vinay K. Kantha and Madan M. Jha following their participation in a series of discussions and consultations in regard to a 'free and compulsory education bill' and the common school system under the auspices of the PUCL, Bihar State Unit; Social Jurist; NAFRE and PSG on CABE committees. Individuals, groups and organizations are free to adopt or adapt the bill for submission to the CABE and/or the government. Any modifications or additions may please be intimated at [madan.jha@wolfson.ox.ac.uk](mailto:madan.jha@wolfson.ox.ac.uk) and [enw1@rediffmail.com](mailto:enw1@rediffmail.com)

The following notes are submitted as an attempt to explain why a particular provision or groups of provisions have been included in the bill.

## **Preamble**

The bill gives a comprehensive background drawing from our Constitution and the UN declarations regarding children and those with special needs that have guided the framing of its provisions. It refers to the preamble, part III of the constitution particularly article 21A, and article 45 of the directive principles and article 51A of the fundamental duties. The UN convention on child's rights (CRC) and the UNESCO Salamanca Statement calling of educating all children in inclusive school environments have also guided drafting of the bill.

## **Title**

The exiting draft bill on government website has been named as 'free and compulsory education bill' giving an impression that government is doling out education to the country's children who have compulsion of receiving the education doled out. The name negates the rights perspectives and state's duties and responsibility to create such conditions and give choice to its children to avail the educational opportunity thus created with excellence, equity and social justice in the background. Hence, the bill is proposed with a changed title as *The Right to Education for Children (Equity, Excellence and Social Justice) Bill 2005*.

## **An enabling legislation**

In view of the federal character of the Indian nation and education being in the 'concurrent list', while it is intended to make an enabling law by the centre, the states would have to come up with detailed legislations within a maximum period of two years (section 1.3 of the bill).

## **Definitions**

A child has been defined in the bill in conformity with the child as defined and understood in the UN convention on the child's right (CRC), the Juvenile and Justice (Care and Protection of Children) Act, 2000 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. The other definitions are such as understood commonly.

The common school system and neighbourhood schools have been defined as the bill intends to implement the national education policies laid down in this regard since the Kothari commission report in 1966, and the NPE of 1986/92. Non-government recognized schools or private schools have also been brought within the CSS fold.

The bill recognizes a 'school' and a 'teacher', not a 'learning or non-formal/AE centre' and a 'para-teacher' by whatever name he/she is called.

Disability or special needs have *not* been defined keeping in view the sociological or social model approach, which considers disability a social and legal construct. However, the bill provides adequate provisions for facilities, support and inclusion of children with disabilities.

## **Core or basic provisions**

The bill affirms an unequivocal recognition to the child's right to admission into a neighbourhood school without discrimination and with equality in opportunity in any school run by the central or state governments, the local bodies or the private schools. The selection of any nature up to the age fourteen shall be prohibited under the law (section 6 in the bill). It is expected that admission rules of even the central and Navodaya schools should be changed to bring them under the concept of the CSS and the neighbourhood school.

## **A school**

A school has been defined as a place of study with a minimum of three teachers and three classrooms. The provision for drinking water, toilet access for the disabled, playground etc. will be an integral part of the school infrastructure but its details will be worked out in the state legislations. A class size has been suggested at a maximum of 40 to begin with which should progressively be reduced to 20 with one teacher for each class within a maximum time period of ten years to match the international standard.

### **Common school system and the neighbourhood school**

A framework of common school system and neighbourhood schooling has been suggested in the bill. Along with the government schools, other non-government recognized schools would be included in the CSS fold. All such schools shall admit students from the neighbourhood free of any fee or charges up to a minimum of fifty percent of its strength. Such schools will be entitled to seek financial assistance from the local bodies.

Any individual or group or organisations can run elementary or secondary schools by registering with local bodies (section 8 of the bill). But for the purpose of recognition and affiliation with the central or state boards they would require coming within the fold of the CSS and neighbourhood schooling.

### **Quality issues**

The mechanism for ensuring quality of education has been indicated in the legislation but its assessment is left under the charge of the academic bodies together with community-based organizations. The role of the state should be focused upon providing the basic minimum infrastructure facilities for every school, which have been laid down in the bill (section 16). Besides teachers will be actively involved in the curriculum development and the scope for innovations and experimentation would be there.

Use of teachers for non-teaching purpose shall be prohibited except under any central law (the idea is to make exceptions only for the parliament and assembly elections and the census), and similarly school premises shall not be used for any other purpose except

under the specific order of the local bodies (the idea is to make exception in situation such as major natural calamities).

## **Teachers**

Teachers are key players in the scheme of education. Their recruitment may be decentralized up to the district level or below but norms regarding minimum qualifications, at present prescribed by the NCTE, should not be diluted, and for innovative experiments teachers should have a direct say in curriculum and pedagogy related issues. The state should formulate policies for a career growth path and other service conditions of teachers.

## **ECCE and Secondary Schools:**

The bill requires the State to extend facility for early childcare and education at the secondary level for all children as soon as possible and in no case exceeding ten years from commencement of this Act. Adequate facilities should be provided by for linking education with world of work and for developing life skills.

## **Medium of education:**

Medium of education at the primary level should be mother tongue or regional language, beyond which three- language formula will be operative as prescribed by the official language policy.

## **Disability and special needs:**

Care has been taken *not* to define disability and thereby create a segregated class of children, and also limit the facilities and support needed for children irrespective of the nature and categories of disabilities. In view of right of each child to education and state's responsibility to provide that free of charge at the elementary level, any definition is



likely to become counterproductive. Hence, the bills makes it mandatory for the state to give such facilities, accessibility and support services and calls upon the schools to create inclusive environments so that these children do not feel segregated and stigmatized, while scope for innovative teaching and curriculum practices for some children would remain open (sections 16.4, 17, 22, 25.2.V and VI take cognizance of the needs of children with disabilities).

### **Children in difficult circumstances**

The bill takes cognizance of children affected by natural disasters, riots, violence and other such situations and children with complex disabilities, who may not be able to learn in neighbourhood and CSS schools immediately. It calls for making special arrangements for such children by innovatly designing curriculum for them, so that their schooling does not suffer, and also create inclusive settings in the neighbourhood schools expeditiously (section 22).

### **Governance, management and financing**

The bill makes it mandatory for the government to transfer the management and functioning of schools to the Panchayti Raj Institutions (PRIs) as envisaged in the 73<sup>rd</sup> and 74<sup>th</sup> amendment of the constitution. It however makes it obligatory for the central and state government to give adequate funds to the local bodies for discharging their functions. A separate statement on the financial requirements is being worked our and will be placed in the public domain very soon. However, it is assumed that in the background of the Tapas Majumdar committee report, which has said that with an increase of one percent of GDP on elementary schools it should be possible to provide formal schools to all children in India, it should be possible to arrange for the finances to achieve UEE, since the present government in its CMP has committed to increase the expenditure on education from the current 3.8% to at least 6%, the education cess is being charged, and giving equal opportunity is its one of its main aims.

The bill also provided for setting up school committees for each school as recommended in the Kothari commission report to give functional autonomy and a level playing field to

the government school similar to those available to the private school. The parents and guardians of the children studying in that school shall duly elect at least half of the committee members (section 14).

The bill is giving legal status to the CAGE and also provides for the states to constitute state advisory of education (SAGE) as committed in the NPE 1986/92.

**Penalty etc.**

The bill prohibits corporal punishment including smacking and humiliation causing mental injury to children (in consonance with the child's rights and the JJ Act) and asks the states to formulate rules for the same. Similarly, it asks the states to make rules for the consequences for contraventions of other important legal provisions like non-registration and non-government recognized schools not offering their fifty percent seats to neighbourhood children free of any charge.

## **The Right to Education for Children (Equity, Excellence and Social Justice) Bill 2005**

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Drafted by Vinay K. Kantha and Madan M. Jha following their participation in a series of discussions and consultations in regard to a 'free and compulsory education bill' and the common school system under the auspices of the PUCL, Bihar State Unit; Social Jurist; NAFRE and PSG on CABE committees. Individuals, groups and organizations are free to adopt or adapt the bill for submission to the CABE and/or the government. Any modifications or additions may please be intimated at [madan.jha@wolfson.ox.ac.uk](mailto:madan.jha@wolfson.ox.ac.uk) and [enw1@rediffmail.com](mailto:enw1@rediffmail.com)

# **The Right to Education for Children (Equity, Excellence and Social Justice) Bill 2005**

Whereas the Article 21A of the Constitution, guaranteeing fundamental right to education, mandates the State to provide free and compulsory education to all children of the age six to fourteen years;

And whereas the Preamble and provisions in Part III the Constitution prohibits discrimination and assures equality in opportunity;

And whereas the Article 45 of the Constitution requires the State to provide early childhood care and education for all children until they complete age of six years;

And whereas the Article 51 A of the Constitution posits that the State will create conditions conducive to discharge of fundamental duties by every citizen for individual and collective excellence in all spheres;

And whereas the UN Convention of Child's Right assures all children up to the age of eighteen right to survival, protection, development and participation.

And whereas the Salamanca Statement of the World Conference on Special Needs Education declares regular schools with inclusive orientation as the most effective means of combating discriminatory attitudes and for achieving education for all.

BE it enacted by Parliament in the fifty-fifth year of Republic of India as follows:

## **Chapter I**

### **Preliminary**

#### **1. Short title, extent and commencement**

1. The Bill may be called The Right to Education for Children (Equity, Excellence and Social Justice) Bill, 2005
2. It extends to the whole of India except the State of Jammu and Kashmir.

3. The Act containing the basic principles and framework, which will come into force with immediate effect except where mentioned otherwise, and the detailed legislation within the framework of this act shall be enacted by the states within a maximum period of two years.

## 2. Definitions

In this Act, unless the context otherwise requires:

- a. 'appropriate government' means central or state government as the case may be.
- b. 'child' means a person who has not completed eighteenth year of age.
- c. 'common school system' means a network of schools comprising government and non-government recognized schools providing right to free admission to children in the manner prescribed, up to the age of fourteen, in a defined neighborhood.
- d. 'elementary education' means eight years of education of equitable quality to children up to the age of 14 years;
- e. 'elementary school' means a school imparting elementary education;
- f. 'government school' means a school under the direct management of the appropriate government or under the management by bodies and organisations created by it including the local bodies.
- g. 'local body' means Panchayati Raj Institutions at different levels or municipalities and like bodies for urban areas, including the district councils.
- h. 'neighbourhood school' means a school in each habitation according to the norms prescribed regarding distance by the government or the local body, and will include government school or non-government recognized school.
- i. 'non-government recognized school' means schools, which are not government schools but are duly recognized.
- j. 'recognized school' means a school satisfying norms not below the standards prescribed for a school under this Act and/or by the local body for granting recognition, as a part of the common school system.
- k. 'registered school' means any school started by an individual or association and registered with the local body.

- l. 'school' means a place for a child to study with facilities as prescribed by the government from time to time with a minimum of three teachers and three classrooms, and each classroom to accommodate the number of children not exceeding forty, which shall be progressively reduced to twenty within a maximum period of ten years.
- m. 'secondary school' means a school imparting education to children up to a minimum of age 18 and includes senior or higher secondary or intermediate schools.
- n. 'teacher' means every teacher in the common school system framework with qualifications and training as prescribed by the NCTE from time to time.

## Chapter II

### Basic provisions regarding right to elementary education

#### 3. Right to elementary education

No child shall be denied admission into a neighbourhood school on the ground of religion, caste, creed, sex, disability or socio-economic or any such other background. Every child will be entitled to free elementary education of equitable quality up to the age of fourteen years.

#### 4. Children without Parents Or Guardians

In respect of children who have no parents or guardians, either permanently or for the time being, the village panchayat or the urban local bodies within whose jurisdiction the child ordinarily resides shall be deemed to be the guardian for the purpose of the Act.

#### 5. Rights of Children

- (1) Every school and all persons connected with its functioning should respect the child and give due recognition to their rights for their survival, protection, development and participation as enshrined in the UN conventions on child's rights.
- (2) All agencies and government departments working for the well being of children, like those working for health care, nutritional support, immunization etc. will focus on neighbourhood schools.

#### 6. No selection or interviews for admissions

Government or non-government recognized school within the common school system shall not resort to a practice of selection or interviews or interactions with children or their parents or guardians for the purpose of admissions.

## Chapter III

### Duties of State and A Framework of Common School System

#### **7. Duty Of State to Create Facilities For Elementary Education**

- (1) The local body, supported by the appropriate government shall take steps to ensure that, within a period not exceeding three years from the commencement of this Act, a neighbourhood school becomes available within such distance from every habitation as may be prescribed.

Provided that different distances maybe prescribed for neighbourhood schools imparting education at different sub-stages of the elementary education taking care that all children have adequate seats and facilities for education at all stages;

- (2) Every school in the common school system shall fulfill such norms and conditions as the appropriate government may notify in this behalf.

Provided that the norms and conditions so notified shall conform to and be not less than those specified under this Act.

#### **8. All schools to register with local bodies**

- (1) All elementary and secondary schools shall register themselves with the local bodies in whose jurisdiction they lie and local bodies shall maintain a list of such registered schools.
- (2) All existing schools shall register within a period of one year from the date of commencement of this Act.
- (3) Registered schools shall provide information relating to local area educational planning to the local body as and when asked for.

#### **9. Recognition of elementary schools for inclusion in common school system**

- (1) A registered school may seek recognition from the local body for inclusion in the common school system, which would be granted subject to the norms laid down and acceptance of other conditions attached thereto from time to time.

- (2) Every non-government recognized school shall be designated as a neighbourhood school and shall admit half of its children from the defined neighbourhood without charging any fees or other charges. The local body, if it so chooses, may provide financial assistance to such schools to the extent possible and in no case exceeding the per learner cost within its jurisdiction.
- (3) Existing non-government recognized
- (4) No school outside the common school system shall be entitled to any government aid or affiliation to state school boards of examinations or Central Board of Secondary Education or Indian Council of Secondary Education or any other examining body notified by the appropriate government.

## **10. Control, ownership and functioning**

- (1) The local bodies, that is, panchayati raj institutions in the rural areas and nagarpalikas or other such institutions in urban areas shall have the control over the functioning of the schools under the common school system.
- (2) The ownership of the elementary schools run by the state governments shall be made over to the local bodies within a year of commencement of this Act.

## **11. Prohibition Of Deployment Of Teachers & Use Of School Premises For Non-Education Purposes**

- (1) No teacher of a neighbourhood school shall be deployed for any non-educational purpose except under specific provisions of the Union laws.
- (2) Premises of a neighbourhood school shall not be used for any non-educational purpose except under specific order of the local bodies.

## **12. Responsibilities Of Central Government and National-Level Resource Institutions**

- (1) Central Government shall render financial and other assistance to State Governments and local bodies in the discharge of their functions under this Act.
- (2) Central government shall constitute a central advisory board of education (CABE) in the manner and with responsibilities prescribed in the rules for a term of three years;
- (3) National-level resource institutions shall render technical assistance to appropriate governments and local bodies in the discharge of their functions under this Act, subject to requests of appropriate government.



- (4) Central Government shall present an annual report to Parliament on the State-wise of implementation of this Act.

### **13. Responsibilities Of State Governments and State-Level Resource Institutions**

- (1) State Government shall render financial and other assistance to local bodies in the discharge of their functions under this Act. State finance commissions shall take the requirements of the local bodies in this regard into consideration while making recommendations on devolution of resources to the local bodies.
- (2) State government shall constitute a state advisory board of education (SABE) in the manner and with responsibilities prescribed in the rules for a term of three years;
- (3) State-level resource institutions shall render technical assistance to local bodies in the discharge of their functions under this Act, subject to their requests.
- (4) The State government shall either establish or help the local bodies to establish resource centres at district and lower levels for rendering technical assistance and supporting and monitoring the work of neighbourhood schools located in their jurisdiction, and for performing such other functions as may be prescribed.
- (5) State Government shall present an annual report to the Assemblies on the district wise implementation of this Act.

### **14. School Committee**

Each government school shall have a duly constituted committee in which at least half of the members shall be elected by the parents or the guardians of the children studying in that school

### **15. Promotion Of Voluntary Support To Schools in Common School System**

- (1) Parents, citizens, senior students, organizations and the community at large may render voluntary support for ensuring right to quality elementary education to every child and to bring about improvement in the neighbourhood schools, by way of money, material, voluntary service or in any other form.
- (2) Appropriate government and local bodies may seek support from organisations and institutions for ensuring right to education of equitable quality to every child and to bring about improvement in the neighbourhood schools.

## Chapter IV

### Quality Issues in Elementary Education

#### **16. Minimum requirements of a recognized school**

- (1) The minimum requirements of a school shall be 3 teachers and 3 classrooms.
- (2) Every neighbourhood school shall have toilet and drinking water facilities within a year from the commencement of the Act.
- (3) Within a maximum of three years from the commencement of this Act every neighbourhood school shall have at least one teacher and one classroom for each class with number of students not exceeding 40, which should be progressively reduced to 20, within a maximum of 10 years.
- (4) The other facilities for a neighbourhood school such as play ground, library, laboratory, computers, adequate access and support facilities for children with disabilities, etc as decided by the appropriate government and the local bodies shall provide local bodies with support from the appropriate government.

#### **17. Facilities commensurate with the specific needs of children.**

Facilities to be provided in a school should be commensurate with the specific needs of individual or group of children. For example, children with disabilities may need special appliances, services of special teachers etc, or children from weak socio- economic background will need free supply of textbooks, stationeries and uniform apart from mid-day meals.

#### **18. Medium of education**

Medium of education shall be mother tongue or regional language at the primary level, beyond which three-language formula will be operative as prescribed by official language policy.

#### **19. Involvement of teachers in quality issues**

Teacher shall be involved in the design of curriculum, pedagogy and textbooks at different levels.

## **20. Scope for experimentation and innovation.**

The Act shall be implemented in a manner that provides scope and actively encourages experimentation and innovation within the common school system and outside.

## **Chapter V**

### **Transitional & Supplementary provisions.**

#### **21. Transitional arrangement**

Necessary transitional arrangement may be made in the habitations not covered by a school for a period not beyond three years and for teaching of children not above grade three level. Neighbourhood schools conforming to norms as laid down elsewhere in the Act shall be set up during this period to cover the areas currently not covered according to the existing norms in this regard.

#### **22. Special Arrangement**

Suitable educational arrangements may be innovatively designed for children in especially difficult circumstances, like those affected by natural calamities, riot, violence, migration of families, children regarded as having complex disabilities and released from adverse situations and circumstances. Efforts may be made to create inclusive environments for such children in neighbourhood schools expeditiously.

#### **23. Facility of Early Childhood Care and Education and Secondary Education**

- (1) State shall strive to extend facility of early childhood care & education and secondary schools for all children as soon as possible and in no case exceeding ten years from commencement of this Act.
- (2) Adequate care should be taken to prepare the child for world of work and life skills at secondary and senior secondary levels.

## Chapter VI

### Miscellaneous

#### 24. Residential Schools

Nothing in this Act shall prevent the appropriate government or non-government bodies from setting up from establishing residential schools of excellence or for special categories of children subject to the conditions that at least fifty percent of the children admitted for first five years of education shall be from the neighbourhood.

#### 25. Minority Schools

Nothing in this Act shall prevent a minority from establishing and administering an elementary school in terms of Clause 1 of the Article 30 of the Constitution.

#### 24. Provisions relating to teachers

- (1) Teachers of government schools shall be recruited at the district level or below according to the norms regarding minimum qualification prescribed by the NCTE except for transitional arrangements for a period not exceeding two years.
- (2) Teachers' autonomy should be maintained in all matters relating to academic environments, which may include conditions of their work.

#### 25. Power To Make Rules

- (1) The appropriate Government may, by notification in the official Gazette, make rules to carry out the purposes 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
  - I. Prohibition of corporal punishment and smacking of children (deliberate humiliation, or causing unnecessary physical and mental suffering).
  - II. Consequences for corporal punishment, smacking etc.
  - III. Penalty for contravention of sections 8 regarding registration and 9 (2) regarding admission of children from the neighbourhood.

- IV. Networking of secondary schools with elementary schools, and of elementary or middle schools with primary schools of locality under the common school system.
  - V. Prevention of segregation and discrimination on the basis of disabilities including learning disabilities or socio economic background by creating separate learning or special or resource centres or under any such other name within the premises of the school or outside.
  - VI. Making of all different and special education systems for various groups of children a part of the mainstream education based on the common school system.
  - VII. Laying down a policy relating to recruitment, transfer and service conditions ensuring among other things, a career growth path for teachers and recruitment of at least fifty percent women teachers at the elementary level.
  - VIII. Composition, responsibilities and manner of functioning of the central advisory board of education and state advisory board of education.
- (3) Every rule notified by the appropriate government under this section shall be laid, as soon as may be after it is notified, before the appropriate Legislature.

## **26. Power To Remove Difficulties**

- (1) If any difficulty arises in giving effect to the provisions of this Act, Central Government may, by Order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty.

Provided that no Order shall be made under this section the expiry of two years from the commencement of this Act.

- (2) Every Order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

## **27. Repeal & Saving**

As from the date this Act come into effect the existing state legislations in respect of free and compulsory education shall stand repealed.

Provisions of the other existing central and state Acts and Rules in contravention of the provisions of this Act shall also stand repealed from the date of commencement of this Act.

**MINUTES OF THE 1<sup>ST</sup> MEETING OF THE CUBE COMMITTEE ON "GIRLS EDUCATION AND COMMON SCHOOL SYSTEM" held on 1<sup>st</sup> December, 2004 in the Committee Room, Zakir Hussain Block, NCERT, New Delhi**

The meeting started with a welcome address by the Director, NCERT, Prof. Krishna Kumar, also the Member Secretary of the Committee, who welcomed the delegates to the first meeting of the Committee of CUBE on the subject of "Girls Education and the Common School System" under the Chairmanship of Shri Tarun Gogoi, Chief Minister of Assam ( The list of the Members present in the meeting is annexed). Prof. Krishna Kumar stated that the sub-committee of CUBE has special significance and the fundamental issue, it needs to deal with, is the education of Girls and the problems arising out of structures within the education system. He informed the Committee Members that Prof. Poonam Agrawal, Head, DWS, NCERT is the co-opted Member Secretary for this Committee and that in its functioning, the committee will be assisted by the Department of Women's Studies, NCERT in terms of research inputs and other logistical support. Prof. Krishna Kumar laid emphasis on the aim of NCERT to focus on issues related to state of girls education, particularly in the rural hinterland of India. He stated that the rural category is conspicuously absent in policy discourse. There is a lack of adequate knowledge and information on the status of rural schools and the way they function. How do rural children fare in the examination system? We also do not have enough statistics to show the vast difference in the education system in the rural and urban areas. Available statistics shockingly reveal that out of 100 rural girls, only one girl reaches class XII. This group must aim to find out how many girls actually manage to stay in the education system and what are the problems which arise in the concept of the Common School System and why has the same not been achieved.

Prof. Krishna Kumar's address was followed by the address of the Chairman of the Committee Shri Tarun Gogoi, Chief Minister of Assam.

Shri Tarun Gogoi expressed concern over the fact that the recommendations that are made are mostly very good, be it Kothari Commission or others, but somehow they are

not successfully implemented. We must look into why the implementation fails. He was also concerned over the dismal picture which continues to prevail in our society that is still male dominated. Bias towards male child in the form of infanticide and foeticide prevails. There is a need to change attitudes and mindsets to bring about equality between girls and boys. Disparities continue to widen particularly between the Government and Private Schools and between the rural and urban schools and in this context the common school system becomes important. Although teachers from the Government schools are better trained and paid better, their performance is not satisfactory. This situation is dangerous as it could lead to social division. He stated that the committee should deliberate on how to improve the quality of government schools, particular attention has also to be given to the slums in the cities. He opined that as far as girls' education is concerned, poverty could be a reason as in Kalahandi poverty is prevalent and the literacy is also the lowest. Therefore there is a need to improve economic conditions.

Shri Gogoi's address was followed by comments by Prof Poonam Agrawal, Head, Department of Women's Studies, NCERT.

Prof. Poonam Agrawal, Head, Department of Women's Studies, NCERT explained the terms of reference and the time given to the Committee for submitting the report i.e. 6 months. She also informed the Committee that Smt. Anandi Ben Patel, Minister In-charge of School Education of Gujarat and Shri Kanti Biswas, Minister In-charge of School Education, West Bengal, were unable to attend the meeting owing to prior commitments. Also, that a copy of the views of the Education Minister from W. Bengal is placed in the folder of each member for kind perusal. She quoted from NPE "The concept of a National System of Education implies that, up to a given level, all students, irrespective of caste, creed, location or sex, have access to education of a comparable quality. To achieve this, the Government will initiate appropriately funded programmes. Effective measures will be taken in the direction of the Common School System recommended in 1968 Policy." Thus, the policy advocates quality education for all and also common school system. The committee may analyse these and other provisions in

the Policy, POA etc., the Schemes and Programmes initiated in pursuance, their impact and ways to ensure the desired outcome.

Prof. Agrawal's address was followed by introduction of the Members of the Committee after which each member addressed the meeting with their respective views/ suggestions.

Smt. Asha Kumari , Education Minister, Himachal Pradesh, revealed that comparatively her State held a better track record in education, teachers; and the poverty was minimum. Nevertheless, there was lack of facilities in the government schools and the parents were reverting to private schools. Teachers recruited are primarily from urban areas, who are reluctant to go to rural and backward areas. Smt. Kumari expressed concern over the disparities in the educational facilities in urban and rural areas , even in the same district. She quoted the example of Simla. Simla particularly has a large number of private schools in which students from all over India are enrolled. She also stated that the main reason for high drop out rate among girls is that education is not job-oriented. She stated that in Himachal Pradesh women are traditionally involved in agricultural pursuits and after pursuing education upto class X they are neither inclined to do the traditional work in the fields nor have any career opportunities. Hence, there is a need to introduce vocational training in schools itself. She also said that the growth of population in her state is not alarming compared to other States and a family can afford to send two children to school. However, the dropout rate of girls is directly proportional to rise in population and sons are generally given preference where education is concerned, when number of children is more. There is a need to deliberate on the quality of education at the school level and how can the common school system be implemented. . She said this committee should look into and more emphasis should be given on girls education, drop out problem, vocationalisation and job orientation at the school level.

**Director, SCERT and Secretary, Education, Delhi (Nominee, Education Minister, Delhi )**

They informed about some latest measures taken by Delhi government to curb the disparity between public and government schools, the results of Government schools in Delhi have improved due to these special measures. 20 percent seats have been reserved



for slum and BPL students in public schools in Delhi. It was suggested that the hidden subsidies given by the government to the private sector should be reduced as education provided by them is no charity but a business and they are making profits out of it. Further, there should be reservations in these schools for girls, SC,ST etc. This was emphasized that women's empowerment is a major issue which needs to be looked at and there is a need to change the outlook towards girls and women. Social evils like infanticide and foeticide can be dealt with by empowering girls and women. Incentives for girls need to be examined learning from experiences from other states. Such as, in Delhi transport subsidy has been provided to the rural girls. But it was proving to be too costly, so now cycles will be provided..

**Shri Pandey** informed the Members about the work done by ASHA which works mostly in South with children of dalits and sex-workers and those from slums.. The organization which was constituted in 1991 has supported over 300 different projects. He mentioned that there should be an honest attempt of giving and receiving education removing evils such as mass copying. This puts specially girls in a disadvantageous position as they usually don't resort to copying to pass or get good marks. Girls should be given due respect which comes along with education rather than viewing education of girls only to enable them to get married into good families. There is a huge surplus of sub-standard guides and materials by private publishers and there is a need to put a curb on this; there is a demand for college for girls in every block since the distance from home to college is too far which prevents girls from pursuing their education. Shri Pandey also expressed concern over the increasing instances of foeticide in prosperous states such as Punjab. He said that the curriculum needs to address the issue of gender bias.

With regard to common school system, he suggested that :

- Education should be a basic right of all children
- Need for a common curriculum
- One system governing all educational institutions/ system
- Education to be made free in real sense that children can go to any school
- Need to make functioning of the mid-day meal scheme smooth with Minimum interference of government
- Proper training of teachers (no contract system for teachers)
- Retired professors and teachers can form Public Commission for Education at district/state level to oversee education , Panchayat could evaluate schools.

Shri Pandey also stated that ASHA has been conducting surveys and hopes to provide data on ground realities in the next CABE meeting. Grass root level meetings are being conducted by ASHA and the first meeting was held at Balia where inputs from students (girls), teachers (government schools & colleges) and citizens were received. ASHA also brings out a Journal of Education which will concentrate on girls education and common school system in the next issue. He also made a request to NCERT to organize a bigger meeting in Lucknow which will constitute all stakeholders of education to get their feedback on issues related to girls' education.

**Director of Education, Himachal Pradesh** informed that in their State incentives have worked well and there is not much disparity in enrolment of girls at all levels. Education is provided free to all girls upto university level, scholarships are being provided to girls and also to girls from SC/ST/OBC. Scholarships are also being given to Valmiki girls irrespective of marital status. Provision of incentives are very important but they depend upon the availability of resources of the government. The idea of a common school system is a dream which needs to be realized to reduce social tensions and disparities. There should be a uniform examination system but the autonomy of Boards should be maintained. He concluded by stating that the permanent nature of jobs for teachers does not deliver goods. He therefore suggested that contractual system in appointing teachers would be better, however, properly qualified trained teachers should be selected and they should be paid well.

**Smt. Reva Nayar, Secretary – Women & Child Development** emphasized the need to give importance to the survival, education and empowerment of the girl child and women. She expressed her concern over the 86<sup>th</sup> Constitutional Amendment Bill which gives right to education to all children in the age group of 6-14 years. She pointed out that this amendment takes away the rights of about 117 million children between 0-6 years. She stated that the age group of 0-6 years is very crucial since they are the foundation years in terms of mental, psychological and physical development hence, attention should be paid to ECCE. In the private sector there is the advantage of pre-school and

nursery school which though expensive, yet facilitates the cognitive development of children. But in the public sector the status of Aanganwadis are pathetic where staff are educationally under qualified and infrastructure is inadequate. Though India has always supported the rights of the child, but only a minimal amount is spent on children between 0-6 years who do not receive the required nutrition which leads to reduced physical and mental growth. More disadvantaged are the girls because if they are not sent to Aanganwadis or schools, they remain deprived of the supplementary nutrition & mid-day meals provided there, respectively, leading to poor health and development.

She suggested that there must be a reservation of jobs for women in all government jobs. She also pointed out that the physical needs of women as child bearers and maternity leave need to be looked at. They should be provided with pre-school facilities and crèche system so that they can perform other functions. She stated the Child Marriage Restraint Act should be made effective and all parties who are promoting/ participating in child marriage must be punished for the offence.

She concluded by suggesting that instead of hidden subsidies give open subsidy to schools/ institutions which enroll 50% girls and sustain it, especially in tribal and backward areas.

**Prof.Zoya Hasan** stated that the issue of high drop out rate is a major concern and needs to be addressed. Quality in education is important but more crucial are the equity, access, and gender sensitivity. She pointed out that girls' education is a class, caste and minority issue and they converge to create problems with regard to poor enrolment and high drop out. Certain social categories such as dalits and tribals are lagging behind in education. Moreover not much attention has been given to minority education. This committee needs to address this issue in the larger socio-cultural contexts such as patriarchy, attitudes, early marriage etc.

The other important issue is that of financial constraints leading to lesser access among dalits, tribals and minorities, with regard to girls' education.

The average age of marriage is below the official age particularly in states which are educationally backward and this can have serious impact on the education of girls. Parents are not convinced about investment in girls' education. The legal age of marriage must be made effective. Another issue is that of employment opportunities. There is a need for strong focus on women's employment schemes, increase budgetary allocation, generate more employment and schemes; vocationalization of education. However, one must be cautious with vocationalising education – it must not be linked with feminisation i.e. stereotyping has to be avoided.

Though the government is concerned in achieving millennium goal of girl's education, the attempt to achieve this goal through short cuts is disturbing. Further, the constant focus on non-formal schooling is also an area of concern. There is no substitute to formal schooling. She gave the example of madarsas which are functioning as substitutes to formal schooling. Madarsas cannot provide solution to the education of Muslim girls and this mindset of sending Muslim girls and boys to madarsas is only creating divisions in education and enhancing stereotypes. Prof. Hasan concluded by stating that the main area of focus should be recruiting more female teachers, strict enforcement of the legal age of marriage, of vocationalisation, without feminisation and women's empowerment schemes.

Prof. Majumdar stated that he was in consensus with whatever has already been stated by the various members. But he pointed out that everyone has disregarded the points of reference for which the committee has been constituted. He referred to the Supreme Court that the right to education follows from basic fundamental right to life and the most important thing is the right to life from 0 years till death. No constitutional amendment can make this Supreme Court judgment invalid. He questioned as to what kind of education is required at the age of 0 years. It is the right to life which begins at the age of 0 and even before. The right to survival and preparation for education is equally important.

Prof. Anil Saddagopal pointed out that the 86<sup>th</sup> amendment is a disaster. It violates the basic structure and goals of the constitution. The Public Study Group on C.A.B.E.

Committees of which Prof. Sadagopal is a member has made an analysis of Policy and Impact on Girls' Education and Common School System, the report of which would be made available to the members of the committee for reference. He said that the second term of reference of this Committee regarding Common School System has no mention in the POA but the NPE mentions it. He pointed out that the idea of the Common School System originated from the Kothari Commission (1964-66). From the Common School System emerged the instrumentality of neighborhood schools which is the most revolutionary recommendation of the Kothari Commission. But there is a need to have a critique of the Kothari Commission recommendations on the Common School System. The Common School System is not a synonym to Uniform School System, it advocates plurality but does not mean disparity.

Prof. Sadagopal also pointed out that it is important to make a distinction between curricular framework and curriculum. Curriculum cannot be uniform, while the curricular framework can be, although the latter also provides room for plurality. He further stated that schooling and education should be used for promoting cohesion. But alternative schooling and non-formal schooling cannot be suitable solutions since they have started creating disparities. One such example is the Education Guarantee Scheme which is providing low standard education. He also criticized the idea of contract teachers who are being replaced by para teachers, underpaid and underqualified. Prof. Sadagopal pointed out that Operation Blackboard although twice approved by the Parliament has been forgotten and instead multi grade teaching is being promoted which is not the commitment of the nation. He also mentioned the dilution of resource allocation in the area of education which was destroying the common school system. For a long time the government has been unable to increase funds for education. Our GDP is more than 25 lakh crore rupees. The Expert Group headed by Prof. Tapas Majumdar suggested only 6% of this amount to be spent on education. Yet the government has not been able to allocate this amount towards education. He also stressed on the importance of the pedagogic requirement of the Common School System.

As regards gender and girl child education the NPE 1986 has made a powerful statement on girls education and empowerment but it was not reflected in programme planning. 19 years later the situation has not improved. The gender parity index remained at the constant value. He pointed out that Mahila Samakhya is the only women's empowerment programme while the rest are only girl child enrolment programmes. Mahila Samakhya gets merely 10-20 paise out of every 100 rupees spent on elementary education. It therefore becomes extremely difficult to improve education of the girl child. Unless both parents and girls are convinced as to how education will benefit the girl after class X, things will not improve. There is need for powerful Women Empowerment Programmes in the society.

**Smt. Kumud Sharma**, Sr. Fellow, was of the opinion that there is a need to revisit NPE and POA and that equity, access and equality are still illusive. There is a need to encourage pre-school education because the children who go to pre-school have been found to fare much better physically and mentally. The ECCE needs to be given special attention. She also expressed concern over increasing instances of female foeticide in Haryana and Punjab. The right to life and dignity is of no use if we do not address these issues. She opined that merely the lack of resources is not the cause of girls not attending the schools. The kind of schools, the gender biased textbooks are also responsible. Further, there is a need to revisit incentive schemes for girls, particularly where issues such as retention of the girl child are concerned.

The observations of **Shri Kanti Biswas**, Minister Education, West Bengal, who due to pre-occupations could not attend the meeting, but sent his remarks through e-mail are annexed.

### **Concluding Remarks**

**Prof. Krishna Kumar** pointed out that often an opportunity to make a small difference has been missed for desire of making a big difference. Education responds to socio-cultural realities. It is not just education which lacks a common system, but nothing else is common, be it access to drinking water, postal or health services or the transport system. In such a situation we should not lose an opportunity to make even a small difference. As regards the feminization of vocationalisation **Prof. Krishna Kumar** pointed

out that if papad making makes a difference to the life a girl in terms of livelihood, then there should not be anything wrong with it. Though it is politically incorrect to promote stereotypes but extremely poor people also need to survive and if they can use such skills to survive there is no harm in it. As regards the issue of logistics NCERT will provide all research support to the committee and make available NCERT studies, reports, etc. to the members of the committee.

**Secretary, Education, Delhi** suggested that all State governments should provide a list of schemes, programmes and policies on girls education.

**Shri Tarun Gogoi** stated that NGOs could also be asked to provide such information.

**Prof. Sadagopal** pointed out that most schemes in elementary education are centrally sponsored schemes. It is more important to have information on those schemes which have differed from the centrally sponsored schemes.

**Prof. Poonam Agrawal** stated that the department of Women's Studies has already taken up such a programme but the response from the states is not satisfactory.

**Prof. Krishna Kumar** requested the members to kindly provide information on schemes, incentives and programmes on girls education and about the status of girls education and the common school system in their respective states.

**Prof. Sadagopal** suggested that there is a need to hold further meetings outside Delhi in states which have made outstanding contributions in girls education and also in those states which are lagging behind.

The Meeting ended with vote of thanks to the Chair.

**List of Members who participated in the first Meeting of the CABE Committee on Girls' Education and Common School System**

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# बिहार माध्यमिक शिक्षक संघ

जमाल रोड, पटना-800001

केदार नाथ पाण्डेय

एम० एल० सी०  
महासचिव



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पत्रांक. 146

दिनांक. 09/4/05

प्रेषक,

श्री केदार नाथ पाण्डेय- एम. एल. सी.  
महासचिव,  
बिहार माध्यमिक शिक्षक संघ, जमाल रोड पटना।

सेवा में,

श्री कपिल सिब्बल  
राज्यमंत्री, विज्ञान एवं प्रावैधिकी  
भारत सरकार  
अध्यक्ष, केब कमिटी (अनिवार्य एवं निःशुल्क शिक्षा बिल और प्राथमिक शिक्षा से संबंधित अन्य मुद्दे)  
द्वारा- एन.सी.ई.आर.टी., अरविंद मार्ग, नई दिल्ली।

महोदय,

बिहार माध्यमिक शिक्षक संघ के 45वें लेखीशराय अधिवेशन में स्वीकृत घोषणापत्र एवं पारित प्रस्तावों की प्रति संलग्न है। संघ ने पूरे देश में समान विद्यालय पद्धति लागू करने, माध्यमिक शिक्षा के लोकव्यापीकरण तथा अनिवार्य एवं निःशुल्क शिक्षा के बिल प्रारूप में संशोधन हेतु जनजागरण करने, पूरे देश के शिक्षकों को गोलबंद करने और संसद के समक्ष आन्दोलन करने का निर्णय लिया है।

आपसे अनुरोध है कि 'केब कमिटी' के द्वारा इन विषयों पर अविलम्ब कार्रवाई करने की कृपा की जाय ताकि शिक्षकों को समान विद्यालय पद्धति के लिये आन्दोलन का रास्ता नहीं अख्तियार करना पड़े।

विश्वासभाजन

(केदार नाथ पाण्डेय)  
महासचिव

शापांक- 146 पटना, दिनांक- 09/4/05

प्रतिलिपि:- श्री के० एम० आचाई, सदस्य सचिव, केब कमिटी (अनिवार्य एवं निःशुल्क शिक्षा बिल और प्राथमिक शिक्षा से संबंधित अन्य मुद्दे) द्वारा-एन.सी.ई.आर.टी. अरविंद मार्ग, नई दिल्ली एवं प्रो० अनिल सद्गोपाल, सदस्य, केब कमिटी, द्वारा- एन.सी.ई.आर.टी., अरविंद मार्ग, नई दिल्ली को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

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## विमर्श हेतु विचारणीय प्रसंग

बिहार माध्यमिक शिक्षक संघ को माध्यमिक शिक्षा की स्थिति में सुधार का लंबा अनुभव है। जिस तरह बबूल का पेड़ रोपकर आम के फल को प्राप्त करने की आशा नहीं की जा सकती, वैसे ही विष कलश में अमृत की संभावना नहीं तलाशी जा सकती। इसी तरह वर्तमान शैक्षिक वातावरण के विषाक्त होने के मूल में देश की शिक्षा नीति और उसके कार्यक्रम हैं। अनुपयुक्त शैक्षिक प्रक्रिया एवं अनुपयुक्त पाठ्यक्रम के कारण शिक्षा का वास्तविक रूप सामने नहीं आ पाया है।

अतएव, वर्तमान शिक्षा नीति के विश्लेषण के आधार पर उपयुक्त शैक्षिक कार्य योजना का निर्माण करना केब समिति का तात्कालिक कार्यभार है और इसके लिए अभी उपयुक्त समय भी है, क्योंकि वर्तमान राष्ट्रीय सरकार द्वारा राजग सरकार द्वारा बिगाड़े गये शैक्षिक काम में सुधार हेतु ही केब समिति का पुनर्गठन हुआ है। सकारात्मक बात यह है कि इसमें देश के तमाम संवेदनशील शिक्षा प्रेमियों को कुछ करने का अवसर मिला है। अतः समय रहते हम सबका यह दायित्व है कि संविधान की भावना के अनुरूप बुनियादी शैक्षिक मसलों को केब समिति के समक्ष विमर्श का मुद्दा बनाया जाय।

बिहार माध्यमिक शिक्षक संघ ने इस संदर्भ में अपनी कार्रवाई के आलोक में प्रमुख शैक्षिक मसलों को रेखांकित किया है और अपने सम्मेलन में निम्न प्रस्ताव स्वीकार किया है:-

- शैक्षिक सुधार हेतु संघ द्वारा न्यूनतम कार्य योजना का निर्माण।
- शैक्षिक कार्य योजना के क्रियान्वयन के लिए शैक्षिक आंदोलन चलाना।
- कार्य योजना के निर्माण तथा क्रियान्वयन हेतु शैक्षिक आंदोलन की रूपरेखा तैयार करने हेतु उप समिति का गठन।

उपर्युक्त संदर्भ में संघ के स्तर पर कई महत्वपूर्ण काम हुए हैं। इसके अनुभव के आलोक में केब समिति के लिए माध्यमिक शिक्षा के लोकव्यापीकरण के संदर्भ में रूपरेखा विकसित करने का प्रयास जारी है। इसके प्रथम चरण में निम्न पक्षों की पहचान की गयी है। इसे माध्यमिक शिक्षा के लोकव्यापीकरण के लिए केब समिति के विमर्श का मुद्दा अवश्य बनाया जाना चाहिए।

### माध्यमिक शिक्षा के लोकव्यापीकरण की अपरिहार्यता

बच्चों की शिक्षा का मतलब कुछ पढ़ना लिखना, कुछ हिसाब-किताब करना अथवा केवल सीखना नहीं है, बल्कि कुछ उत्पादक कार्य करना भी है, जिसके लिए रोजगारोन्मुखी शिक्षा जैसा प्रशिक्षण जरूरी है। इसलिए बच्चों की शिक्षा को माध्यमिक स्तर तक जारी रखना अत्यंत आवश्यक है। इसके बिना स्वावलम्ब्य या विवेकशील इंसान के निर्माण की बात नहीं सोची जा सकती, क्योंकि बच्चों के लिए यही समय है जब हमारे चिंतन की प्रक्रिया शुरू होती है और व्यवसाय तथा उत्पादक प्रक्रियाओं के लिए आवश्यक कौशल विकसित होता है।

### माध्यमिक शिक्षा का विस्तार

प्रारंभिक शिक्षा के लोकव्यापीकरण के लिए सर्वशिक्षा अभियान के विभिन्न शैक्षिक पहलू में जारी प्रारंभिक शिक्षा की कार्रवाई को जारी रखने के लिए माध्यमिक शिक्षा का अभियान जरूरी है। इससे प्राथमिक, मध्य एवं माध्यमिक शिक्षा का अनुपात भी समन्वित होगा और शैक्षिक प्रक्रिया को प्रभावकारी बनाने के लिए गुणवत्ता वाली शैक्षिक प्रक्रिया का आधार होगा। बिहार में जबकि बच्चों की संख्या बढ़ रही है फिर भी

वर्ष 1983 से एक भी माध्यमिक विद्यालय का सरकारीकरण नहीं हो रहा है। इससे शहर में निजी स्कूल खुल रहे हैं परन्तु ग्रामीण क्षेत्र इससे अबतक अछूता है। इस कारण विद्यालयों के बीच संतुलन काफी बिगड़ गया है।

### माध्यमिक शिक्षा के लोकव्यापीकरण का संदर्भ

माध्यमिक शिक्षा के लोकव्यापीकरण की बात हम सब वैसे समय में कर रहे हैं जबकि प्रारंभिक शिक्षा के लोकव्यापीकरण का काम आजादी के लगभग 57 वर्षों में भी संभव नहीं हो पाया है। जबकि प्रारंभिक शिक्षा के लोकव्यापीकरण के नाम पर देश में अनेक समानांतर शैक्षिक कार्यक्रम चले हैं और औपचारिक शैक्षिक प्रक्रिया के संदर्भ में नाना प्रकार के भ्रम गढ़े गये हैं।

ऐसी स्थिति में माध्यमिक शिक्षा के लोकव्यापीकरण के विमर्श को संपूर्णता में चलाने की जरूरत है, जिसमें शिक्षा के दार्शनिक पक्ष और इसके बुनियादी शैक्षिक पहलू तथा व्यावहारिक प्रशासनिक ढांचे के प्रत्येक अवयव पर गंभीरता से विचार करना जरूरी है। अन्यथा टुकड़ों में बात करने से इस अभियान का भी उपहास हो जा सकता है। इसलिए माध्यमिक शिक्षा के लोकव्यापीकरण की रूपरेखा तैयार करने हेतु निम्न संबद्ध पहलुओं को चर्चा का विषय बनाया गया है, जिसके आधार पर लोकव्यापीकरण का संपूर्ण ढांचा खड़ा किया जायेगा।

### शिक्षा तंत्र की भूमिका

माध्यमिक शिक्षा के लोकव्यापीकरण के लिये जारी शैक्षिक कार्रवाई के अनुभव के आधार पर शिक्षातंत्र की भूमिका पर विचार करना जरूरी है। अन्यथा सभी कार्रवाई शिक्षातंत्र के माध्यम से तैयार ढांचे के अंदर पुनः तय हो जा सकती है। जहां कुछ नये नारों के साथ हम सब कुछ क्षण के लिए सक्रिय भी हो सकते हैं। परन्तु उसमें मूल रूप से अभी तक हम सब जहाँ खड़े हैं वहां से आगे बढ़ने की संभावना नहीं होगी।

### बिहार माध्यमिक शिक्षा परिषद्

07 अगस्त, 1922 को बिहार में माध्यमिक शिक्षा के प्रशासन और माध्यमिक शिक्षा को दिशा देने के लिए इसका गठन हुआ। यह 19 सदस्यीय समिति थी जिसमें 6 शिक्षकों के प्रतिनिधि के लिए स्थान था। 1949 के पूर्व यह परिषद् माध्यमिक विद्यालयों को प्रखीकृति प्रदान करती थी। परन्तु 1950 के बाद विद्यालयों की संख्या बढ़ी। इससे परिषद् का कार्यभार बढ़ा। इसी क्रम में 1955 में सेवा नियम का निर्माण हुआ, जिसमें अपील सुनने का अधिकार परिषद् को प्राप्त हुआ। इसी दौर यानी 1960 में इसके सदस्यों की संख्या घटाकर 15 कर दी गई और सदस्यों के मनोनयन का अधिकार सरकार के हाथ में कर दिया गया। किन्तु माध्यमिक शिक्षा के बढ़ते दायित्व भार में उसके संबद्ध सांगठनिक ढांचा की कमजोरियों के निवारण के अनुरूप संस्थागत तैयारी नहीं हुई। इस कारण संबद्ध शैक्षिक संस्थाओं-संगठनों पर अविश्वास पैदा हुआ और इसकी सांगठनिक एवं प्रशासनिक स्थिति और कमजोर होती चली गई।

ऐसी स्थिति में अगर सरकार माध्यमिक शिक्षा में सचमुच सुधार चाहती है तो उसे चाहिए कि इन संस्थाओं/संगठनों में बहुमत सदस्यों का मनोनयन बिहार माध्यमिक शिक्षक संघ की मदद से करे और शेष सदस्यों का मनोनयन विश्वविद्यालय तथा विद्यालयकी प्रबंध व्यवस्था से संबंधित सदस्यों से किया जाय। इसके प्रबंधन के लिए पर्याप्त कार्यालय सहायक एवं उपस्कर की व्यवस्था की जाय। इसमें प्रत्येक स्तर पर शिक्षा स्थिति के विस्तार के साथ-साथ शैक्षिक वातावरण एवं शैक्षिक उन्नयन का काम समान रूप से हो सकता है।

### बिहार विद्यालय परीक्षा समिति

बिहार में माध्यमिक छात्रों की परीक्षा लेने वाली एकमात्र संस्था है लेकिन परामर्श, अपेक्षा, आयाचार,

जातीयता, कदाचार, अन्याय, पक्षपात और धांधली में यह माध्यमिक शिक्षा पर्षद से बहुत आगे बढ़ गयी है। स्था के अध्यक्ष प्रायः वे रहे हैं, जिन्हें माध्यमिक शिक्षा से कभी कोई संबंध नहीं रहा है। फलतः इसकी अपर्याप्त एवं दिशाहीन कार्रवाई से कुछ शिक्षक प्रभावित हुए हैं, जिसे इसकी विफलता का मुद्दा बनाया जाता है जबकि विफलता की जड़ें वैचारिक स्तर की हैं, जिसमें कभी भी सुधार संभव है।

### संयुक्त शिक्षक परिषद का गठन

शिक्षकों की समस्याओं के समाधान के लिए भारतीय शिक्षा आयोग के प्रतिवेदन की धारा 3 66 के आधार पर ज्वाइंट टीचर्स कौंसिल का गठन किया जाय, ताकि शिक्षा तथा शिक्षकों की समस्याओं पर समय-समय पर परामर्श करके शीघ्र कदम उठाया जा सके।

### पाठ्यक्रम में संशोधन

सरकार पाठ्यक्रम संशोधन समिति का गठन करती है। इस समिति के सदस्यों में 99 प्रतिशत कॉलेज के विद्वान प्राध्यापक रहते हैं या सरकार के शिक्षा विभाग के प्रशासन से सम्बद्ध लोग। फलतः पाठ्यक्रम और पाठ्यपुस्तक तैयार करने वाली समिति भू-सांस्कृतिक परिप्रेक्ष्य से नहीं जुड़ पाती है। इसलिए अबतक पाठ्यक्रम एवं पाठ्य पुस्तक बोझिल हैं। जबकि बोझिल और अव्यावहारिक पाठ्य पुस्तकों के आधार पर स्कूली शिक्षा को रूचिकर नहीं बनाया जा सकता है।

उल्लेखनीय है कि बिहार माध्यमिक शिक्षक संघ के अध्यक्ष श्री शत्रुघ्न प्रसाद सिंह की अध्यक्षता में बिहार में माध्यमिक कक्षाओं की पाठ्य पुस्तकों की समीक्षा की गई थी। जिसकी रपट सरकार को भी सौंपी गयी थी।

### पाठ्य-पुस्तक प्रकाशन निगम

अभी राज्य में पाठ्य-पुस्तक शोध परिषद्, परीक्षा शोध परिषद् जैसी संस्थाएँ शिक्षा क्षेत्र में कार्यरत हैं, पर इनके कार्य का कोई प्रभाव शिक्षा जगत में पड़ता दीख नहीं रहा है। ऐसे इनके द्वारा कभी-कभी विचार गोष्ठियों एवं कार्यशालाओं का आयोजन होता है। पता नहीं है कि सरकार की ओर से इन पर कुछ नियंत्रण भी है या नहीं? अगर है तो इन्हें समृद्ध करने की कब कौसी कार्रवाई किस स्तर पर की गई है इसकी खबर शिक्षा के क्षेत्र में काम कर रहे लोगों को नहीं होती है।

अतएव, निगम या परिषद् की स्थापना करते समय एक बात की ओर सरकार का ध्यान अनिवार्यतः जाना चाहिए, वह है उपभोक्ताओं का हित साधना। इसमें छात्रों को, जो पाठ्य-पुस्तकों के उपभोक्ता हैं, सर्वाधिक लाभान्वित कराना है। वे राष्ट्र की सबसे बढ़कर सम्पत्ति हैं। अतः उनके हितों की रक्षा में सक्रिय मुरुचि रखनेवाले उनके शिक्षक तथा पितृजनों को उक्त निगम में सदस्यता अवश्य मिलनी चाहिए। जो शिक्षक या जो नागरिक शिक्षा की समुन्नति में समय लगाते आ रहे हैं, जिन्हें पर्याप्त अनुभव है, जो क्रमशः छात्रों की कठिनाईयों को समझते-बुझते हैं या उनके व्यवस्थानुसार मानसिक स्तरका ज्ञान रखते हैं या उनकी बात मुतब प्रकृति तथा अभ्यासों का ज्ञान रखते हैं, उन्हें ही इस निगम में स्थान देना चाहिए। पुस्तकों के लेखकों का चयन भी इसी दृष्टिकोण से वांछनीय है। इसमें यह भी ख्याल रखना जरूरी है कि समय पर पुस्तकों का प्रकाशन हो तथा जाली पुस्तकें बाजार में न आवें।

टेक्स्ट बुक कमिटी की पुस्तकों की लागत मूल्य के निर्धारण के माध्यम से चोरी से चोरी की व्यापारियों की प्रवृत्ति बन्द की जा सकती है, जिससे जगह-जगह पुलिस को न छपा भारना पड़ेगा व सरकार की पुस्तकें गोदाम में सड़ेंगी। लेकिन कमिटी अबतक टोकर खाकर भी नहीं चेंती है और अपनी असफल नीति को दुहराने की भयंकर भूल करती जा रही है।

## योग्यता का उचित मूल्यांकन

योग्यता के मूल्यांकन के संदर्भ में बिहार माध्यमिक शिक्षक संघ लगातार संवेदनशील रहा है और इस दिशा में संबद्ध सभी स्तरों पर सार्थक हस्तक्षेप हुआ है, जिससे बिहार विधान परिषद् में यह संवाद का विषय बना। बिहार विधान परिषद् के अनेक सत्रों में शिक्षा संबंधी समस्याओं के संबंध में कई प्रमुख बातें, कार्य-स्थगन, ध्यानाकर्षण और प्रश्नों के जरिए सामने आईं। परन्तु प्रशासन की नौकरशाही तरीके से लगातार काम करने के फलस्वरूप आज की परीक्षा तो मात्र योग्यता का एक कागजी प्रमाण-पत्र प्राप्त करने का साधन बनी हुई है। इस कारण इसका उद्देश्य केवल जीविका प्राप्त करना रह गया है। इसलिए परीक्षा की प्रणाली पर विचार करना जरूरी है, जबकि बिहार माध्यमिक शिक्षक संघ द्वारा समय-समय पर परीक्षा पत्रों एवं पाठ्य-पुस्तकों के मूल्यांकन के आधार पर उसे विमर्श का मुद्दा बनाने हेतु एक सीमा तक पहल हुई है।

शिक्षक संघ से परामर्श किए बिना ही विकेन्द्रीकरण के इस युग में परीक्षा या अन्य शैक्षिक कार्रवाई का केन्द्रीकरण जारी है। इससे बाहरी लोगों को ऐसा प्रतीत होता है कि सारी गड़बड़ी शिक्षकों में ही है।

## अंतर विद्यालय परीक्षा समिति

बिहार माध्यमिक शिक्षक संघ के अंतर्गत अंतर विद्यालय परीक्षा समिति का संचालन लंबे काल से हो रहा है। इस समिति का कार्यभार सबसे पहले वर्गाकार प्रश्नपत्रों की तैयारी और अपेक्षित विद्यालयों को समय पर प्रश्न पत्र पहुंचाना है। दूसरा कार्यभार प्रश्न पत्रों का स्तर परीक्षा समिति के प्रश्न पत्रों से अपेक्षाकृत उत्तम बनाये रखना है।

अतः अंतर विद्यालय परीक्षा समिति के परीक्षा कार्यक्रम के माध्यम से बिहार माध्यमिक शिक्षक संघ को सभी विद्यालयों तक पहुंचाने की चेष्टा रही है, जिसके अपने खास अनुभव हैं। इसमें पहले दौर में विद्यालयों में पूर्व जांच (Pre Test) एवं जांच परीक्षा का प्रश्न पत्र प्रमुख रहा है। इस तरह परीक्षा समिति के सफल संचालन में इसके कार्यों की गोपनीयता और मानव संसाधन की समुचित रूपरेखा का अनुभव बिहार मा. शि. संघ को है। परन्तु माध्यमिक शिक्षा के प्रशासनिक ढांचा में व्यवहार हेतु इसके लिए अब तक कोई जगह नहीं है।

## विद्यालयी विकास में सामुदायिक सहभागिता

विद्यालय समाज के विकास का महत्वपूर्ण केन्द्र है। इसलिए विद्यालय का समाज के साथ जीवंत रिश्ता जरूरी है। जहां विद्यालय के निर्माण और विकासकी प्रक्रिया संभव है। परन्तु विद्यालय और समुदाय के बीच सामाजिक-सांस्कृतिक अंतर्विरोध भी मौजूद हैं। इसका इस्तेमाल आज समाज के निहित स्वार्थी तत्व करते हैं, जिसके बारे में वर्तमान प्रशासनिक ढांचे के अंदर किसी तरह की चिंता नहीं की गई है। फलतः दोनों के बीच में तनावपूर्ण स्थिति बनती है। अतः एक बेहतर समन्वयन का अब तक इस स्तर पर अभाव दिखता है, फिर भी इस दिशा में संघ द्वारा पहल की गयी है।

## शिक्षकों की नियुक्ति

शिक्षकों की नियुक्ति माध्यमिक शिक्षा आयोग के द्वारा की जाय तथा इनके वेतन भुगतान की जिम्मेवारी परिषद् के जिम्मे रहे। इसमें इस सावधानी की जरूरत है कि शिक्षक पूरी तरह नौकर नहीं बन जाय क्योंकि उनका नौकर रहना भविष्य के लिए खतरनाक है।

## शिक्षकों की समस्याओं का निराकरण

यह सर्वमान्य सत्य है कि एक भयभीत, हीन भावना से ग्रस्त और भविष्य के प्रति शंकालु शिक्षक बुलंद और स्वस्थ चरित्र के बच्चों का निर्माण नहीं कर सकता है। इसलिए शिक्षकों की समस्याओं के निराकरण हेतु नौकरशाही की प्रक्रिया से अलग सहज प्रक्रिया का निर्माण जरूरी है, जहां शिक्षकों की सेवा की सुरक्षा का प्रावधान हो।

## माध्यमिक शिक्षक संघ का हस्तक्षेप

माध्यमिक शिक्षा के क्षेत्र में राष्ट्रीय एवं राज्य स्तर पर जारी शैक्षिक पहल में माध्यमिक शिक्षक संघ को सार्थक भागीदारी तथा हस्तक्षेप हुआ है। इसके कारण कोठारी आयोग के नीतिगत शैक्षिक निर्देश के आलाोक में संपूर्ण राज्य में विमर्श खड़ा किया गया था जिसमें शिक्षा की चुनौतियों के संदर्भ में काम हुआ और कोड ऑफ प्रोफेशनल इथिक्स या राममूर्ति आयोग की समीक्षा या राष्ट्रीय शिक्षक आयोग तथा राष्ट्रीय पाठ्यक्रम की रूपरेखा विषय पर पहल की गयी थी। इसमें एन.सी.ई.आर.टी. एवं अन्य राष्ट्रीय तथा राज्यस्तरीय संस्थाओं एवं संगठनों का सहयोग भी मिला है और समय-समय पर उनकी भागीदारी भी हुई है।

अतः इस महत्वपूर्ण राष्ट्रीय शैक्षिक पहल में हम शिक्षकों की भागीदारी सभी स्तर पर जारी रखने पर जोर देना चाहते हैं। इन पहलुओं के अन्तर्गत हम सभी के सुझाव अपेक्षित हैं।

बिहार माध्यमिक शिक्षक संघ, जमाल रोड, पटना के सभाकक्ष में राष्ट्रीय शिक्षा नीति के संबंध में दिनांक 11/02/05 को आयोजित विमर्श में पारित

## प्रस्ताव

बिहार माध्यमिक शिक्षक संघ द्वारा आयोजित यह सभा इस बात पर चिन्ता व्यक्त करती है कि राष्ट्रीय शिक्षा नीति में स्वीकृत समान विद्यालय पद्धति की शिक्षा व्यवस्था को अभी तक लागू नहीं किया गया है। फलतः देश में समानांतर स्कूल प्रणाली की प्रक्रिया चल रही है और दो तरह की शिक्षा धारयें चल रही हैं।

भारतीय संविधान की मूल भावना के अनुरूप 1968 एवं 1986 की राष्ट्रीय शिक्षा नीति, 1992 की कार्ययोजना में भारतीय संसद द्वारा दुहराई गई प्रतिबद्धता के प्रति सभा आस्था व्यक्त करती है और 'केब' समिति से अनुरोध करती है कि राष्ट्रीय समानता, सद्भाव एवं सामाजिक न्याय की स्थापना हेतु सरकारी एवं गैर सरकारी क्षेत्रों में जारी समानान्तर स्कूल प्रणाली की प्रक्रिया को तत्काल बन्द किया जाय और समान विद्यालय प्रणाली की स्थापना की दिशा में प्रभावी कदम उठाने हेतु ठोस अनुशंसा की जाय।

सभा का मत है कि माध्यमिक शिक्षा के लोकव्यापीकरण के संदर्भ वाली 'केब' समिति की बैठक तत्काल बुलाई जाय और इसमें माध्यमिक शिक्षा के मसलों पर माध्यमिक शिक्षकों के साथ सीधी बातचीत की जाय। बिहार माध्यमिक शिक्षक संघ संबंधित 'केब' समिति को जमाल रोड, पटना स्थित संघ भवन में बातचीत आयोजित करने के लिये आमंत्रित करता है।

बिहार माध्यमिक शिक्षक संघ अपने स्थापनाकाल 1925 से माध्यमिक शिक्षा के सवालों से जूझता रहा है। राष्ट्रीय शिक्षा से संबंधित मसलों पर हस्तक्षेप करता रहा है। राष्ट्रीय शिक्षा नीति 1986 एवं राष्ट्रीय शिक्षक आयोग द्वारा उठाये गये विन्दुओं पर संघ ने सार्थक हस्तक्षेप किया है। संघ का मानना है कि शैक्षिक मसलों के समुचित समाधान की प्रक्रिया को प्रभावकारी बनाने हेतु 'केब' समिति की बैठक में बिहार माध्यमिक शिक्षक संघ की भागीदारी सुनिश्चित की जानी चाहिये।

शिक्षक संघ केन्द्रीय मानव संसाधन मंत्री, भारत सरकार, संबंधित 'केब समितियों' के अध्यक्ष एवं सदस्य सचिव से अनुरोध करता है कि माध्यमिक शिक्षा से संबंधित तथा अनिवार्य एवं निःशुल्क शिक्षा बिल से संबंधित केब समिति में संघ की भागीदारी सुनिश्चित की जाय।

ह० ( कंदार नाथ प्राण्डय )

MADHUR BAJAJ

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From: nathvaly [nathvaly@sancharnet.in]  
Sent: Wednesday, March 30, 2005 11:31 AM  
To: MADHUR BAJAJ  
Subject: school

Dear Madhur,

Just received your fax regarding restrictions for private schools.

At present there are very few restrictions imposed on schools that already have recognition. We can choose our own staff and have our own policies for admission. The only thing is that staff should be qualified and students should have passed the previous class and have a regular TC (Transfer Certificate). Granted schools have much more interference from the local education authorities.

The problem will begin to come when this reservation for **economically backward students** is made law by the Parliament. The problems will include things like admission criteria; academic performance of the students; social adjustment for both the existing students and **economically backward students**; financial burden on the school and the question as to who will bear it and lastly the interference that will come from local education authority as they try and enforce the rule.

Another facet of the bill is the concept of "Neighbourhood Schooling" this means that all schools, private or granted should take students who live in their local areas. This obviously will be a problem for boarding schools which are out in the countryside or for a school like Nath Valley, which is in the Suburbs. Do we have to take students from Kanchanwadi or Itkheda?

This concept is an American concept (and I must admit it has worked well there) because it is a much more homogenous society with minimal economic and social disparities. Furthermore, it is largely applied to government schools and not private schools. There is always a danger in importing a foreign concept which has worked in another milieu and context into a totally different environment. Such experiments have been tried in the past and have caused disruption of an existing equilibrium and trauma at the social level.

I hope this throws some light on the issues you have raised.

With best wishes,

Ravi Datta