

The *'Fundamentals'* of the Fundamental Right to Education in India



Dr Niranjanaradhya
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United Nations
Educational, Scientific and
Cultural Organization



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Foreword

The Right to Education received considerable impetus during the last decade as a result of the concerted effort of many groups and agencies that made determined efforts to ensure that all children in India receive at least minimum education irrespective of their socio-economic status and their ability to pay for education in a situation of continuous impoverishment and erosion of basic needs.

The Campaign against Child Labour, the National Alliance for the Fundamental Right to Education, the contribution of several outstanding educationists, hundreds of civil society initiatives and most importantly the Judgements of the Supreme Court are among those who made this vital contribution to enshrine the right to education as a fundamental right. Through this combined effort, children of India gained the Fundamental Right to Education, first through Judgement made law and then through a Constitutional amendment. Unfortunately the introduction of Article 21–A watered down the Judgement of the Supreme Court in the celebrated Unnikrishnan Case. A Right which was available to all children up to the age of 14 years was reduced to a right for children in the age group of 6 to 14 only through the restrictive language of the Constitutional amendment. Even more critical to the future of this right is the wording of Article 21A which finally leaves it to the state to provide 'in such manner as the state may, by law, determine'.

After so much effort and the cumulative pressures generated from so many well-meaning quarters, **what has the Indian State done in order to give effect to this Fundamental Right as enshrined in Article 21A?**

This small booklet which is now in your hands must be seen and contextualised against the background of the above question. Niranjana and Aruna have done an excellent job in capturing the essence of the situation in a pithily written document commissioned by the UNESCO. The text was circulated among many friends and rewritten in order to achieve maximum focus and make the contribution contemporarily useful and constructive.

The authors analyse fourteen state legislations which touch upon the right to compulsory education. This is a very significant departure point to get to the gist of the matter. It is rightly pointed out that we now live in an era where this entitlement can be viewed either from the Rights Based Approach or from the old Colonial Truancy Model. If the latter guides us, then the compulsion is on the parents and the children and it is the 'policeman' nay Education Inspector who is expected to achieve the fulfillment of this right through penalisation. If the approach, however, is the former, then the state is under compulsion to convert the huge infrastructure of Government schools into functioning schools where children are attracted to come because teaching and learning are actually taking place inside the school. Niranjana and Aruna point out that all the fourteen states have legislation which is unfortunately of the wrong type and will not therefore deliver what is contained in the 86th Amendment.



The purpose of central legislation therefore should be to shift the existing paradigm of state laws from the Colonial to the post 21A era. If this is to happen, then the purpose of bringing education under the concurrent list must be fully realised. But, unfortunately, the opposite is the case. **Why is the Central Government dragging its feet and refusing to proactively introduce a paradigm shift?** Among several reasons, I would like to draw attention to one.

The desire to have a Common School System in India is as old as the Kothari commission. No one who is concerned with equity in education and the creation of a new citizenry can disagree with this goal. Unfortunately we are discussing about this goal at a point of time when private schools have mushroomed and become the institution of first choice for the children of the elite and even of the middle classes. India has provided highly stratified private schools in order to cater to different classes of people. These institutions are delivering 'good' results for their respective clients, while the huge bulk of the less fortunate are consigned to Government schools. Given the size of our population and the magnitude of illiteracy, no transformation is possible through the model of privatisation. **There is no short cut except to make the Government schools function.**

Seven draft bills have so far been produced to give effect to Art.21A. Most of them sought to achieve the goal of Common School System by seeking to transform private institutions. There could be no easier method of uniting the dominant private sector lobby against the proposed law and this indeed has happened. Consequently, the Central Government has put the legislative task on the back burner by circulating a text which is not even law. The authors rightly draw attention to this effort and point out that the Model Right to Education Bill has no legal value whatsoever. If this effort holds the field, it would be one huge setback to the renewed collective efforts of the last decade. The momentum gained recently would be lost and children will continue to be left out of schools. **Is there any way of averting such a catastrophe?**

I would like to suggest that the first phase of legislative effort should be more modest and realistic. We should replace the Colonial Truncy Model which prevails in fourteen states with the Rights Based Model and this can best be achieved through a skeletal legislation as the authors have suggested. Indeed, they advance more cogent reasons than what can be contained in this brief Foreword. Laws relating to education have multiple tasks to perform—these include regulation of grant-in aid, criteria for recognition, service condition of teachers etc. Let not the current thrust for new legislation get into these wider areas—instead let a separate skeletal legislation deal exclusively with the bare non-negotiables necessary to make Government schools function. That indeed would be the responsibility of the Central Government to prescribe and leave the details to the state governments in the spirit of the concurrent list.

The work of Niranjana and Aruna serve as a very useful backdrop to take forward the above-mentioned idea. It is indeed timely, succinct and valuable and I do hope it will serve as a catalyst to reunite the civil society process to push for the bare minimum without sacrificing the larger long-term goal of a Common School System. Just as we do not postpone the demand to make the public sector efficient pending the nationalisation of Multi National Corporations let us not postpone the task of attending to Government schools pending the creation of a Common School System. **A bird in hand is better than two in the bush – for the vast majority of the excluded children of India.**

Babu Mathew
Country Director
ActionAid India



Preface

UNESCO believes that education is an essential human right and achieving this for all children is one of the biggest moral challenges of our times. The Right to education is an integral part of the Organisation's constitutional mandate which expresses '*the belief of its founders in full and equal opportunities for education for all*' and '*to advance the ideal of equality of educational opportunity*'. In addition, the right to education is enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

During the World Education Forum held in Dakar, Senegal in 2000, the Right to Education was strongly re-affirmed through the Education for All (EFA) goals including expanding early childhood education, universal primary education, lifelong learning and skills, improving educational quality, increasing adult literacy and gender parity in education. The target devoted to primary education seeks to ensure that by 2015 all children, particularly girls, children in difficult circumstances, and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality. However, in spite of all the commitments made by governments in Dakar and although many countries are signatories to international instruments for providing education for all, millions of children still remain deprived of educational opportunities, especially free and compulsory quality basic education.

India has made a concrete effort to address this issue by amending its Constitution to make quality elementary education the right of every child, thereby strengthening the legal framework for providing free and compulsory quality elementary education for all the country's children.

I take pleasure in introducing this research study, *The Fundamentals of the Fundamental Right to Education in India* which will serve as a useful advocacy tool in prioritising education as an essential right as well as provide analysis about what a 'rights-based' model of education should involve. Through its insightful, yet concise overview of the features behind a rights-based approach to elementary education, the report states that there is a strong justification for a Centrally-led legislation that underlies the new Constitutional Amendment to make education free and compulsory which will ensure a degree of uniformity in the educational provision across India.

Significantly, it also argues that since the Right to Education in the Indian Constitution is limited to elementary education, there is a need for institutionalising a regular review of policy so that ongoing changes can be made to promote access to higher education and early childhood care and education. It recalls that recommendations of international human rights bodies and declarations state that whereas primary education should be compulsory and free, secondary and higher education should also be equally accessible to all.



I believe this study will be effective in raising awareness about India's legislative progress towards ensuring that the right of free and compulsory education is not denied and in sustaining the momentum to mobilise the Indian government and other stakeholders to keep their promise to achieve Education for All by 2015.

Ms Minja Yang
Director and UNESCO Representative
New Delhi



Abbreviations

CESCR	– Committee on Economic, Social and Cultural Rights
Committee	– Committee on the Rights of the Child
Covenant	– International Covenant on Economic, Social and Cultural Rights
CRC	– Convention on the Rights of the Child
DPEP	– District Primary Education Programme
FCE	– Free and Compulsory Education
NAC	– National Advisory Council
UDHR	– Universal Declaration of Human Rights
UN Special Rapporteur	– UN Special Rapporteur on Right to Education



Introduction

India is signatory to three key international instruments that guarantee the Right to Education – Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights (Covenant), 1966 and the (UDHR) Convention on the Rights of the Child (CRC), 1989. In 2002, India joined, albeit after fifty-two years of Independence, the host of countries that provide a constitutional guarantee for free and compulsory education (FCE).¹ Article 21–A of the Indian Constitution casts a duty upon the State to provide FCE to children in the age group of six to fourteen years, ‘as the State may, by law, determine’.

Historically, there has been a demand for a law for FCE in India and several Central-level legislative attempts have been taken towards this end. The last of such attempts resulted in the Draft Right to Education Bill, 2005. *One* of several oppositions to this Bill came from private unaided schools. They lobbied against a provision that required them to make a twenty-five per cent reservation for poor children.² The Centre kept this Bill in abeyance and circulated to all States a modified version – the Model Right to Education Bill, 2006 (Model Bill). A reading of the Model Bill reveals that some provisions were removed from the original draft. The provision for reservation in private unaided schools was one of them.

Bridging the gap between private unaided schools and ‘government schools’³ is a prerequisite for establishing a ‘common school system’.⁴ However, before embarking upon such a mammoth task, one should prioritise and strengthen government schools across the country. A recommendation to this effect was made by the Acharya Ramamurti Committee – “...*the fundamental problem in our system is caused, not by a minority of schools but by the majority of schools, namely by the two categories that are fully supported by public funds, the Government schools and the Local Body schools. These have, by and large, remained outside the purview of any real educational audit, though they are required to submit many forms of how small amounts of money are spent. Abolition of the private schools, urged by several persons, will not solve the major educational problem, we feel. It can only be solved when the majority school sector finds it possible to substantively raise its present level of educational attainments and effectiveness.*”⁵ The authors therefore believe that energies should first be focused on strengthening government schools as has been suggested by the Acharya Ramamurti Committee. It follows therefore that legislative processes for FCE should be broadly divided into two phases, where the first focuses on existing government schools. At a later stage, the first process may be expanded to gradually bring within its ambit private unaided schools.

In addition to the category of schools that the law should govern, a cohesive policy and legislation on FCE requires greater clarity regarding the constituent elements of the ‘right to education’. Need for such clarity has been highlighted by the UN Special Rapporteur on Right to Education. She observes that, “...neither educational strategy nor educational standards are necessarily informed by the right to education.”⁶ A similar concern has been



expressed by Indian educationists who fear that the phrase “as the State may, by law, determine” (in Article 21–A of the Constitution) gives sufficient scope for legitimising practices that are inconsistent with a rights-based approach to education.⁷ A thorough inquiry into the meaning and implication of a rights-approach will assist policy-makers, legislators and activists guard against any inadvertent dilution of the fundamental right. Such an inquiry will go a long way in strengthening existing dialogues for a law governing FCE. Above all, it will contribute to the development of rights-based indicators which would be useful to evaluate educational policies and schemes. This paper primarily aims to facilitate the creation of a rights-framework which may be used to evaluate all existing policies, schemes and judicial decisions. The authors believe that such a policy review using rights-based indicators is an important pre-legislative step.⁸ However, it is important to clarify that this paper itself does not undertake such a review, and hence it does not provide a descriptive narrative/critique of either existing policies and schemes or judicial decisions. Further, one must also point out that even though this paper attempts to analyse the different threads of a rights-based model of school education,⁹ it certainly does not provide an exhaustive rights framework. We urge all readers to view this as an effort at raising issues for a national debate on a rights-based model of school education.

Section 2 of this paper explores the historical demand for FCE and traces the developments leading up to the Constitutional Amendment in 2001. Section 3 examines the need for a comprehensive policy and programme of action on school education. It presents two models of school education – a truancy model and a rights-based model and explores the latter in some detail. Section 4 analyses existing State-level legislations on school education to determine how they fare in a ‘rights-based’ assessment. Further, this section also examines and builds the need for Central-level legislation on education, giving effect to the constitutional guarantee for FCE.



En route to a Fundamental Right to Education in India

The demand for free and compulsory education in the pre-constitution era

A reading of Indian education history reveals that it was notorious for its lack of social inclusiveness.¹⁰ The legendary tale of Ekalavya from the India Epic of Mahabharata showcases such social exclusion.¹¹ Till the nineteenth century A.D., education was largely considered a privilege restricted to persons at the higher end of the caste and class spectrum.¹² Religious content of education, coupled with its elitist medium of instruction were two factors that contributed to such exclusion. People from the lower castes, and the so-called *shudras* (Dalit Bahujans) in particular were denied admission into *Gurukulas* or *Ashramas*.¹³ A small reprieve came when the dominance of classic Vedic education was overthrown by Buddhism and Jainism; and education was no longer confined to hermitages.¹⁴ The Muslim rulers of the Indian Sub-continent also did not consider education as a function of the State. It was largely perceived as a branch of religion and was entrusted to theologians called Ulemas.¹⁵ In short, in ancient and medieval India, education was a privilege available only to a chosen few.

The British introduced modern education into the Indian-subcontinent.¹⁶ However, being largely confined to Brahmins and higher classes, this system of education also excluded the 'masses'.¹⁷ For instance, while reporting about the educational situation in Bellary (presently in the State of Karnataka) in the early nineteenth century A.D., Campbell, the then District Collector observed that "it cannot have escaped the government that of nearly a million of souls in this district, not 7000 are now at school ... In many villages where formerly there were schools, there are now none." Similarly, missionary notice of 1856 stated that in all other parts of the country "*a school, either government or missionary is as rare as a light house on our coast... there are four schools existing among three or four million of people.*"¹⁸ The neglect of education by the British was also acknowledged by Wood's Despatch.¹⁹

The demand for a law on FCE which was made during the freedom struggle, sought to break the above-mentioned heritage of an inequitable and neglected education system. In their evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule demanded State-sponsored free education for all children for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education.²⁰ The Commission also recommended that schools should be open to all castes and classes.²¹ Thereafter, the first



law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education to boys and girls in the age groups of seven to twelve years and seven to ten years respectively.²² In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Assembly, albeit unsuccessfully, and in the midst of stiff resistance.²³ The Legislative Council of Bombay was the first amongst the Provinces to adopt a law on compulsory education.²⁴ Gradually, other Provinces followed suit as control over school education was transferred to Indian Ministers under the Government of India Act, 1919.²⁵ However, even though Provincial Legislatures had greater control and autonomy in enacting laws, progress in universalising education was poor due to lack of control over resources.²⁶

The idea of compulsory education was reiterated in 1937, at the All India National Conference on Education held at Wardha where Gandhi mooted the idea of self-supporting 'basic education' for a period of seven years through vocational and manual training. This concept of self-support was floated in order to counter the Government's persistent excuse of lack of resources.²⁷ The next landmark development in the history of FCE in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended FCE for eight years (six to fourteen years' age group).

Despite the consistent demand for FCE during the freedom struggle, at the time of drafting the Constitution, there was no unanimous view in favour of a fundamental right to education.²⁸ The Constituent Assembly Debates reveal that an amendment was moved to alter the draft Article relating to FCE. By this amendment, the term 'entitled' was removed from the draft Article to ensure that education remained a non-justiciable policy directive in the Constitution.²⁹ Therefore, FCE made its way into the Constitution as a Directive Principle of State Policy under former Article 45,³⁰ whereby States were required to ensure the provision of FCE to all children till the age of fourteen years within a period of ten years of the commencement of the Constitution.

The demand for a fundamental right to education

The period spanning between 1950 to the judgement in Unnikrishnan's Case in 1993 saw several policy developments. The Indian Education Commission (Kothari Commission) 1964–1968, reviewed the status of education in India and made several recommendations. Most important amongst these is its recommendation of a common school system with a view to eliminating inequality in educational opportunities.³¹ Immediately thereafter, the National Policy on Education (NPE), 1968 was formed. This Policy was the first official document evidencing the Indian Government's commitment towards school education. It dealt with issues of equalisation of educational opportunity and sought to adopt a common school system in order to promote social cohesion.³² Interestingly, it even required special schools to provide a proportion of free studentships to prevent social segregation in schools.³³ Nevertheless, it retained the status of FCE as a 'directive principle'.³⁴

Subsequently, the National Policy on Education, 1986, re-affirmed the goal of universalisation of school education and promised to take measures to achieve a common school system.³⁵ This policy document once again did not discuss or aim to alter the legal status of FCE in India, i.e., FCE continued to remain a non-justiciable Directive Principle of State Policy. On the contrary, the 1986 Policy has been criticised for having introduced non-formal education into India, and therefore having reduced the constitutional obligation of full-time schooling.³⁶

The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti Committee.³⁷ Thereafter, several political as well as policy level changes influenced the course of FCE. The country witnessed an



increased international focus on its initiatives regarding FCE after its participation in the World Conference on Education for All in 1990. India also ratified the UNCRC in 1992. The World Bank funded District Primary Education Programme (DPEP) was introduced in 1994 under the auspices of the IMF-World Bank Structural Adjustment Programme. DPEP introduced a five-year 'primary education' programme and a system of appointment of para-teachers. From the point of view of a 'right' to education, this five-year programme and the appointment of para-teachers have been criticised as having diluted the constitutional norm of quality compulsory schooling for children till the age of fourteen.³⁸ The use of the phrase 'primary education' and its corresponding five-year programme under DPEP may be contrasted with Dr B R Ambedkar's observations at the time of drafting the Constitution. He opposed the introduction of the phrase 'primary education' in draft Article 36 (corresponding to former Article 45) on the ground that the State was obliged to keep children below the age of fourteen years in an educational institution to prevent them from being employed as child labour.³⁹

A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in *Mohini Jain v State of Karnataka*⁴⁰, that "the 'right to education' is concomitant to fundamental rights enshrined under Part III of the Constitution" and that "every citizen has a right to education under the Constitution". The Supreme Court subsequently reconsidered the above-mentioned judgement in the case of *Unnikrishnan, J P v State of Andhra Pradesh*⁴¹. The Court (majority judgement) held that "though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21⁴²... (and) must be construed in the light of the Directive Principles of the Constitution. Thus, 'right to education' understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes fourteen years, his right to education is circumscribed by the limits of the economic capacity of the State and its development."

The Unnikrishnan Judgement empowered people with a legal claim to FCE. This is evidenced by a spate of litigations that relied upon the principle of law laid down in the Unnikrishnan Judgement.⁴³ A combination of forces from different quarters, viz, support from the judiciary, greater international attention and increased civil society and grass-roots level campaigns exerted tremendous pressure on the Government to introduce a fundamental right to education.⁴⁴ A Constitutional Amendment bill⁴⁵ for the inclusion of a fundamental right to education was moved in the Parliament amidst much criticism and debate regarding the contents of the Bill.⁴⁶ The said amendment proposed that Article 21-A (fundamental right to free and compulsory education for children in the age group of six to fourteen years) be introduced, former article 45 (the then existing directive principle on FCE) be deleted and Article 51-A(k) (fundamental duty on parents) be introduced. In November 2001 the Bill was re-numbered as the 93rd Bill and the 83rd Bill was withdrawn. The 93rd Bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. Despite continued criticism against the altered version,⁴⁷ the Bill was passed in 2002 as the 86th Constitutional Amendment Act.⁴⁸

Currently, under Article 21-A of the Constitution, every child between the ages of six and fourteen has a fundamental right to 'free and compulsory' education, which the State shall provide 'in such manner as the State may, by law, determine.' Early childhood care and education (for children up to six years of age) is provided for as a Directive Principle of State Policy under Article 45 of the Constitution. Furthermore, Article 51-A(k) imposes a 'fundamental duty' on parents to provide educational opportunities to their children in the age group of six to fourteen years.



Determining the Content of Law

Coercive and non-coercive rules within a rights framework

While Article 21–A of the Constitution provides for a fundamental right to FCE and mentions the age group for which the right is guaranteed, the remaining content of the right is left to be regulated by law. As has already been mentioned, one needs to understand the various strands of such a ‘fundamental right’ in order to develop a clear rights-based policy and legislation.

Before getting into an inquiry into the elements of the ‘right to education’, it is important to briefly discuss Amartya Sen’s caveat on legislating for a human right. He points out that legislations, which go a long way towards ensuring enforceability of specific minimum entitlements, may also have the negative effect of giving restrictive or limited interpretations. Legislations may also give rise to policy inaction on the ground that specific legal rules have been complied with.⁴⁹ For example, if a law lays down that the duty of the State is to ensure x, y, z, then the State will restrict its activities to ensuring x, y, z, without looking beyond that framework. Therefore, while legislation is certainly a welcome development, it should not be treated as the only vehicle of implementing human rights. The legislation should be supplemented by non-coercive rules for effective implementation of the human right.⁵⁰ A similar observation has also been made by the Committee on Economic, Social and Cultural Rights (CESCR), that mere adoption of legislative measures is not exhaustive of a State’s international obligation under the Covenant.⁵¹

Most importantly, Amartya Sen’s caveat reiterates the need for a comprehensive policy and programme of action (as non-coercive rules) that can supplement legislation. Therefore, legislation is a necessary, but not a sufficient means of implementing the fundamental right to education. In this context, it is useful to introduce Evans’ method of developing legislation. He discusses the importance of non-legislative tools for implementing human rights and further develops a model of legislative process that incorporates human rights analysis. The first step in the Evans Model entails ‘policy formulation, including consultation within and outside government’.⁵² It is amply clear that policy formulation is indispensable not only from the point of view of legislative processes but also from the point of view of implementing human rights. It follows therefore that the State should develop a comprehensive policy and programme that will guide all actions taken by the State in the field of school education.



Further, the caveat needs to be factored into legislative processes and adequate safeguards need to be built into any law governing FCE. While there cannot be a fool-proof mechanism of countering negative outcomes of law, the identifiable negative outcomes may be mitigated. For instance, governmental inaction could be countered through institutionalised periodic review of policy as well as law to ensure that periodic progressive changes are made to both.⁵³ In addition to such periodic review of policies, there should be an institutionalised periodic review of implementation of both policy and law. Under the Evans' legislative model, such a review process constitutes the final step of the very 'legislative process'.⁵⁴ The recommendation of the Constitution Review Commission (the Commission) is extremely useful in this context. The Commission recommended that an independent National Education Commission, on the lines of the Finance Commission, should be set up every five years to assess and report to the Parliament the progress made in achieving constitutional directives.⁵⁵ It also recommended that the Planning Commission should devote a section to socio-economic rights (including the right to education) in all its plans.⁵⁶

Another area in which non-coercive measures assume importance is in the enhancement of teaching and non-teaching staff quality. The quality of school education depends on the quality of teaching staff, non-teaching staff, sensitivity and awareness of administrative staff in various government departments. Therefore, training and developing the capacities of such personnel is a critical component of school education.

This caveat is also significant in India because the fundamental right to education is limited to the age group of six to fourteen years. This not only excludes early childhood care and education (ECCE) but also excludes higher education. Internationally, the human right to education includes the right to education at all stages that are fundamental and basic, including the right to ECCE.⁵⁷ Ideally, any law implementing the fundamental right to education should off-set this exclusion. However, in the event that the law does not provide for a right to ECCE, the State should draw up concrete schemes (non-coercive rules) to ensure that ECCE is provided. Currently, the Integrated Child Development Scheme provides for the same. However, the nature of pre-school education, the quality of pre-school education as well as its linkage with formal school education needs to be examined in greater detail.⁵⁸ Similarly, if the State does not provide a right to higher education, then it may provide schemes facilitating access to such education.

The interdependent and inter-connected nature of human rights⁵⁹ also underscores the need for non-coercive measures for implementing a particular human right. The success of any rights-based model seeking to implement the right to education would depend upon the realisation of other rights of a child, such as health, nutrition, freedom from exploitation and abuse, and so on. Therefore, it becomes imperative to strengthen the implementation of allied rights through non-coercive means, if not through legislative provisions. Hence, it would be useful to examine the linkages between the right to education and other rights and suggest methods of strengthening the implementation of such other rights in the context of school education.

Conceptualising a rights-based model

Having discussed the importance of the supplementary role of non-coercive rules, this section will now examine the building blocks of a rights-based model. In its most simple and common formulation, 'x' is said to have a right to something (claim) only if there is a corresponding duty/duties on some other person/persons. Therefore, rights are grounds for duties in others.



First, the human rights claims of rights-holders (to education) and the corresponding obligations of duty-bearers should be outlined.⁶⁰ Such a process should be preceded by the identification of rights-holders and corresponding duty-bearers. Thereafter, the scope and nature of legally enforceable claims should be outlined, i.e., the law should unambiguously lay down minimum entitlements of rights-holders.⁶¹

While identifying minimum entitlements, it would be helpful to keep in mind the range of relationships and spaces within and outside the school education system that impact a child's participation in school education. At least the following four relationships may be used as a starting point for an inquiry regarding minimum entitlements - "State-child", "child-parent", "State-parent" and "State-community-child-parent".⁶² The law should be very clear on whether each of these relationships will be regulated and the scope of such regulation.⁶³ The scope and extent of human rights claims and duties would vary according to the relationship (context) within which they are located. For instance, how much responsibility does the State have towards the child and how much responsibility does the parent have towards the child? What measures can the State take in order to protect the rights of the child without completely superseding the rights of parents? Similarly, at least the following two spaces, namely, 'school' and 'home' (including institutions, hostels and so on), influence the performance of a child in school. Therefore, claims and duties should also be examined at least in these two contexts.⁶⁴

Minimum entitlements may broadly be categorised as quantitative and qualitative. There is no fixed or clear demarcation between quantitative and qualitative entitlements. Alternatively, without classifying minimum entitlements as quantitative/qualitative, they may be classified according to the framework developed by the UN Special Rapporteur on Right to Education, and subsequently adopted by the CESCR in its General Comment on Right to Education.⁶⁵ According to the said framework, the State has four duties, namely, the duties to make schools 'available', 'accessible', 'acceptable' and 'adaptable'.⁶⁶ One of the most important components of the duty to make schools available obliges the State to make a financial investment to ensure that a sufficient number of 'functional' schools are provided.⁶⁷ Further, the State should also make public schools 'accessible' by ensuring that they are free of cost⁶⁸ and free from discriminatory practices.⁶⁹ Right to acceptability in education obliges the State to ensure that the curriculum is acceptable to parents and children; that language does not form a barrier to education; and that schools are 'child-friendly'.⁷⁰ Adaptability imposes on the State the duty to make the content flexible enough to adapt to the changing needs of students within their cultural settings.⁷¹ Therefore, a legal system that seeks to address the right to education should necessarily develop enforceable minimum norms that correspond to each of the above-mentioned duties. Such enforceable minimum norms should be developed taking into account various human rights principles.⁷²

Furthermore, a rights-based model should develop capacity-building strategies for not only rights-holders' to claim their rights but also for duty bearers to fulfill their obligations.⁷³ Capacity-building of rights-holders involves two fundamental elements: a) building awareness of the right and b) creating an enabling environment to access the rights that have been guaranteed. Therefore, awareness-building and dissemination of information are an inherent part of a rights-model of school education. Likewise, capacity-building of duty bearers through human rights education and requisite professional training (for teaching staff, non-teaching staff, district education officials, officers in the ministry of education and so on) is also part of such a model.⁷⁴



Most importantly, the law should clearly lay down methods of locating accountability for failures in the system, which can be used as a method of grievance redressal in case of rights violations.⁷⁵ In order to succeed in such a process, the duty-bearers at each level should be identified clearly. A grievance redressal mechanism should be set up to expedite disposal of grievances and ensure that children are admitted into schools in the shortest possible time. For example, the Karnataka Grama Panchayat's (School Development and Monitoring Committees [SDMC]) (Model) bye-Laws, 2006 has a separate time-bound school-level grievance redressal mechanism for a range of complaints such as employing children as child labour, physical and sexual abuse, sexual harassment, other forms of indignity, negligence, dereliction of duties, misdemeanor and misconduct, mismanagement, misappropriation of funds and so on by teaching, non-teaching staff as well as SDMC members.⁷⁶

The framework should also clearly set out mechanisms that incorporate human rights principles and standards for monitoring and evaluating progress and processes in school education.⁷⁷ It may be argued that the right to education falls within the overall child-rights framework and should therefore adhere to at least the following four non-negotiable 'general principles' laid down by the Convention on the Rights of the Child, 1989 (CRC).⁷⁸ These are the principles of non-discrimination and equality, best interests of the child, survival and development of the child and child participation. In addition to other criteria that may be developed, these should also be used to evaluate the performance of the State in implementing the right to FCE.

Another useful aide in developing a rights-based model of legislation is Asbjørn Eide's three-level typology of States' duties, which was developed in the context of right to food. This typology is now widely accepted and used as a framework for examining States' human rights obligations generally. According to Eide, human rights impose a three-fold duty on the State – the duty to respect, the duty to protect, and the duty to facilitate or fulfill human rights.⁷⁹

- The duty to respect implies that the State should refrain from taking measures that interfere with implementing the right.⁸⁰ For example, in the context of right to food, the CESCR observed that the duty of the State to respect the right to food casts an obligation on them to refrain from imposing food embargoes.⁸¹ Similarly, in the context of education, it may be argued that the State's duty to respect education casts a duty on it to ensure that measures interfering with access (to education) are not introduced.
- The duty to protect requires the State to ensure that the State/enterprises/individuals do not deprive children of their right.⁸² For example, engaging children as labour would amount to an act of depriving the child of her right to education. The State should provide adequate safeguards against such deprivation or alternatively provide methods of locating responsibility and rectifying such problems.
- The duty of the State to facilitate and fulfill the human right calls upon the State to proactively facilitate and provide the right to FCE.⁸³ The State should therefore take measures to strengthen people's access to and utilisation of resources. Further, whenever an individual or group is unable to enjoy the right to FCE for reasons beyond their control, the State has an obligation to fulfill (provide) that right directly. This third element is extremely crucial as it creates a positive duty on the State as opposed to a negative duty. It necessitates the creation of an enabling framework of law that removes barriers (at least those that can be identified) to education.⁸⁴ For example, in the context of school education, demand of documentary proof of residence, birth certificate and so on, which operate as a barrier against admission into schools, should be eliminated/



mitigated. It also distinguishes the traditional truancy model of legislation from a rights-based model. Compulsory education laws have traditionally revolved around monitoring attendance and imposing penalty on truants/ their parents. Historically, police officers worked part-time as truant officers. Therefore, truant officers' primary function was akin to that of the police; and many of the attendance order boxes were also placed in police stations.⁸⁵

The policing model of education and crime is theoretically opposed to a rights-approach because it is not enabling. Moreover, it shifts the onus of the State on to the parent/guardian. It is largely premised on a fundamentally flawed assumption about human behaviour which claims that poor parents are unwilling or reluctant to send their children to school. Based on this assumption, the law draws up an elaborate framework of monitoring and penalising defaulting parents and children instead of strengthening access and resource-utilisation of poor parents and their children. For example, consider a situation where a poor parent is unable to send her child to school because of her need for an additional source of income or additional help for household chores. Under the truancy model, such a parent is automatically denounced as an unwilling parent who does not or is unable to appreciate the benefits of formal school education. This unwilling parent is penalised under the truancy model and very little is done to change the underlying causes of truancy.⁸⁶ In complete contrast to this, a rights-based model demands the State should take measures to strengthen the access right of the child by creating an environment conducive to formal schooling. In this context, it is pertinent to mention MV Foundation's experiments with re-allocating time and household chores of mothers to ensure that girl children are allowed to go to school, i.e, a simple time-management technique solved truancy as opposed to imposition of penalty. Alternatively, provision of crèches at the work-site has dramatically improved attendance of girl children. Such examples buttress the argument that policing is not the best method of enforcing attendance. More importantly, a rights-based model does not have any room for punishing poor parents and their children for absenteeism. It is the duty of the State to create an enabling framework of law as part of its duty to fulfill the right.

Finally, an ideal rights-based model should not only be in accordance with the remaining provisions of Part III of the Constitution (i.e. other fundamental rights) but should also incorporate the recommendations of international human rights bodies to inform each step of the process.⁸⁷ Article 14 of the Constitution guarantees equality before the law; Article 15 of the Constitution prohibits discrimination but empowers the State to take affirmative action measures for the socially and educationally backward; Article 21 of the Constitution guarantees right to life, which includes right to dignity. The provisions of the CRC should be read into Article 21 in order to give it meaning in the context of school education.⁸⁸ Finally, it is also important to take note of Article 24 of the Constitution, which prohibits the employment of children in hazardous employments.

A combination of the various rights frameworks outlined above clearly indicates that the right to education should be protected not only by positive rights but also by negative rights.

Core principles in a rights-based model

As mentioned before, the claim or scope of the right would be influenced by international human rights principles and other fundamental rights enshrined in the Constitution. The CRC has laid down four core rights which have subsequently been interpreted as 'general principles' by the Committee on the Rights of the Child (the Committee) – principles of non-discrimination⁸⁹, best interests of the child, survival and development of the child and child participation. These could be used to understand how a school should operate within a rights-based model.⁹⁰



Exploring the principle of equality and non-discrimination, the first component of equality is equality of resources and the problem of economically generated inequalities in education. Economic inequality leads to inequality in access, participation and outcomes in education.⁹¹ Scholars have identified processes within education systems that contribute to such inequality. For example, studies have repeatedly shown that selection or admission procedures, grouping procedures used to locate students in different streams in higher education, systems of curriculum, syllabus design and assessment contribute to inequality in the education system.⁹² Most Indian schools have entrance examinations, collect capitation fees, have strenuous interview procedures and so on at the stage of admission; several schools also adopt a system of classifying 'toppers' in one class and failures in another. Tackling such inequality is a very complicated process and requires intervention that may fall outside the purview of coercive rules (*laws*). Nevertheless, one solution that has been presented is that admission, selection procedures, and grouping should be made transparent and open to democratic scrutiny and public challenge'.⁹³ Therefore, a rights-based law which adopts the principle of equality should adopt a two-pronged approach of banning identifiable discriminatory processes as well as ensuring that all other processes in schools are made public in order to facilitate public scrutiny and challenge, if required.

Another facet of equality in education is the equality of respect and recognition. In aiming to achieve such equality, the law should address status-related inequalities based on class, caste, race, religion, language, gender and sexuality, profession of parents, disability and so on. In order to solve problems that arise out of status-discrimination, two approaches have been suggested – a policy of inclusion coupled with information dissemination on status-inequality, i.e. equality education and human rights education.⁹⁴ Therefore, it is also important to look at 'human rights education' from the point of view of minimum entitlement in school curriculum.

Equality of power also forms an important element of equality in education. Power operates from the macro to the micro level. At the micro-level or school-level, equality of power may be facilitated through democratic decision-making on issues concerning the school, where children as well as parents are allowed to participate in the decision-making processes. For example, the Government of Karnataka has introduced school-level democratic decision-making to some extent through the Karnataka Grama Panchayat's (School Development and Monitoring Committees [SDMC]) (Model) Bye-Laws, 2006. The bye-laws provide that an SDMC, a body which includes parents and children, should be formed in every government/government-aided school. All decisions regarding the school are required to be taken by this body; and all members are given equal decision-making power during meetings. At the macro-level, democratising education would imply that all actors in education have the opportunity to engage in education planning. An ideal rights-based law should also acknowledge and provide for methods of participatory education planning at the Centre and State levels.

Therefore, in a rights-based model of school education, all facets of equality should be included and methods of facilitating such equality should be made part of the legal entitlements of a child.

Minimum entitlements in the context of availability and accessibility

This section will explore minimum entitlements within the framework presented by the UN Special Rapporteur and the CESCR. They have developed a four-fold duty framework of availability, accessibility, acceptability and adaptability. Since there are several overlaps



between these categories, this paper combines availability and accessibility on the one hand and acceptability and adaptability on the other.

The State should make an adequate financial investment to make schools 'available'.⁹⁵ Further, the law should clearly define the 'availability and accessibility' norm as a legally enforceable minimum. In defining the same, different components should be considered – physical accessibility (radius within which school should be available, problems pertaining to safety in access and so on), economic accessibility (cost of access) and socio-cultural accessibility (language barriers, issues pertaining to discrimination at the time of access). The said norm should also be constructed in light of the State's constitutional duty towards socially and educationally backward communities.⁹⁶ It should also clarify the 'type of school' that is required to be made available by the State. For example, while studying the educational status of Muslims in the country, and in light of the State's policy of modernising Madarsas (centres for religious education of Muslims), the Sachar Committee has observed that the 'type of educational institution in which children study is also an important marker of educational status'.⁹⁷ It has further observed that the Government has a duty under Article 21–A to ensure that sufficient 'mainstream schools are made accessible to Muslim children'.⁹⁸ The Sachar Committee also categorically stated as follows: "... *The need for mainstream schools to provide free and compulsory education (which is the responsibility of the State) cannot be overlooked. 'Reform' of Madarsas and providing education through mainstream schools are not substitute strategies...*"⁹⁹ The issue raised in this report viz-a-viz, the 'type of school' (mainstream/non-mainstream) is crucial from the point of developing a rights-based legislation for school education. The minimum norm that is enshrined in any statute should categorically define the 'type of school' (for example, 'mainstream, full-time formal school') that children should have access to. In addition to an enforceable common minimum norm, the State may also be required to take affirmative action measures targeting special groups. For example, the UN Special Rapporteur has pointed out that the duty to make schools 'available' to girls may necessitate special measures targeting girls.¹⁰⁰

In relation to 'economic accessibility', while the CESCR is against imposition of 'direct costs' such as fees, donations, capitation fees etc., there seems to be some ambiguity with respect to 'indirect costs'. The CESCR has laid down that indirect costs, though generally are not permissible, may be allowed on a case-to-case basis.¹⁰¹ The UN Special Rapporteur has recommended that all direct and indirect costs of education are the responsibility of the Government. A similar approach is taken by the Committee on the Rights of the Child (the Committee). For example, in its 27th Session, the Committee observed as follows: "*In addition, the Committee is concerned that in practice primary education is not free and that many parents have to pay school fees as well as related costs such as for uniforms and equipment, which remain too expensive for most families.*"¹⁰²

There is no uniform international State practice on this issue. While assessing a demand that textbooks should also be provided free of cost as part of 'free education', the constitutional Court of the Czech Republic has held that free does not imply that the State has to bear all costs. The Court has stated that 'free' in primary education means that the State would bear the costs of establishing schools, their maintenance and operation. However, tuition and teaching materials need not be free.¹⁰³ Textbooks are reportedly provided free of charge in Austria, Bulgaria, Denmark, Finland, Germany, Iceland, Italy, Japan, Sri Lanka and Sweden.¹⁰⁴ In some others, like Nepal and Russia, subsidies are provided for textbooks. Loan arrangements are also made in countries like Armenia where textbooks are reportedly loaned to pupils against the payment of an annual fee and/or the parents have to contribute to the cost of textbooks.¹⁰⁵



Despite the international variance in the meaning of this term, if costs, both direct and indirect, are viewed as a 'barrier' to education, then automatically, in a rights-approach, there can be no room for direct or indirect costs of education. Experiences at the field show that the notion of free education cannot be limited to a tuition fee waiver or to few incentives such as mid-day meal scheme. For example, a majority of children from scheduled castes and scheduled tribes require residential schools to receive meaningful school education. Despite existing incentives, the economic and social conditions of such parents compel them to withdraw their children from schools due to their inability to provide them with bare minimum requirements at home which would facilitate learning after school hours. Therefore, the concept of free education should take into account such factors. For example, as suggested by the Sachar Committee, economically and educationally backward children should also be given a right to access 'community resource centres' for the purpose of studying after school hours.¹⁰⁶ Other important aspects of minimum entitlements are related to minimum schooling years, infrastructure requirements, number of schooling hours, ratio of students to teacher, qualification of teachers, guarantee against violence and exploitation in schools and guarantee of safe school environment.¹⁰⁷

Another crucial component of minimum entitlement is closely connected with the issue of bridge/transition course. In order to ensure that the right to formal schooling ultimately reaches children who have been marginalised due to socio-economic conditions, the law should also provide for a right to be integrated into mainstream schools.

This section has therefore explored some ideas in relation to minimum entitlements within the framework of the State's duties to make schools 'available and accessible'.

Minimum entitlements in the context of acceptability and adaptability

One of the most complex aspects of 'acceptability and adaptability' is the curriculum of education. Curriculum is not only important from the point of view of entitlements but is also important in the context of compulsion and the nature of relationship between the State and the parent regarding the child's education. Since 'compulsion' involves State coercion, it has on several occasions been diametrically opposed to parental religious, moral and philosophical convictions.¹⁰⁸ Therefore, any law on FCE should clarify the following aspects of compulsion – first, compulsion of attendance and consequences of non-attendance; second, compulsion in curriculum.

Compulsory attendance within a rights-based framework

Compulsory attendance rules, which are backed by punitive measures, place the onus on parents to ensure that children are attending schools. This is a central attribute of a truancy model of legislation. As mentioned before, in contradistinction to a truancy model, a rights approach should necessarily be enabling and place the onus on the State. Interestingly, the National Advisory Council of India also observed that the existing Indian State laws place the onus on the parent/guardian and are therefore 'not in the spirit of the 86th amendment of the Constitution'.¹⁰⁹ This therefore corroborates our argument that the 'right' as envisaged in the Constitution is diametrically opposed to existing truancy models. A rights-based law should aim to provide solutions to problems/barriers. In any event, a rights-approach does not permit the imposition of punishment on persons who are unable to send their children to school due to socio-economic or cultural barriers. It should be reiterated at this point that the nature of the punitive measure is immaterial, i.e., even community service (punitive measure) as provided for under the Draft Right to Education Bill, 2005 goes against the basic tenor of a rights-approach to education. The imposition of punitive measures is also a classic illustration of Amartya Sen's argument that in the over zealous attempt to



create a law enforcing a human right, the human right itself may be detrimentally affected.¹¹⁰ A rights-based model should bring about a complete focus shift from policing attendance to creating environments which are conducive to compulsory education. This can be done only by addressing complex problems arising out of child labour, child marriage, lack of housing, malnutrition, migration and so on.

The other aspect of compulsory attendance is the creation of legal exceptions to compulsion. A truancy model coupled with so-called exceptions to compulsion may result in negating 'social accountability.'¹¹¹ For example, several State laws make 'absence of a neighbourhood school' an exception to compulsion.¹¹² Instead of imposing a positive duty on the State to make available adequate schools in the neighbourhood, the State exempts parents from penalty where there are no schools. Such an approach is opposed to a rights-based model. In a rights-approach, availability of schools according to the prescribed norm would be a minimum entitlement which is justiciable.

Compulsory education vs. freedom of religion

While dealing with the issue of compulsion and legal exceptions, one needs to examine the conflict between compulsory education and right to freedom of religion. At the outset it is important to clarify that all human rights instruments re-affirm parental choice with respect to education in accordance with their religious and moral conviction.¹¹³ Article 25 of the Constitution guarantees freedom of religion. However, this is subject to the other provisions in Part III of the Constitution, which deals with fundamental rights.¹¹⁴ This would imply that the fundamental right to freedom of religion (Article 25) is subject to the fundamental right to FCE (Article 21–A).

Two types of conflicts may arise between compulsory education and religion. The first is a direct conflict where parents may want to provide purely religious education to their children. In cases of such direct conflict, it may be argued that the parent's freedom of religion under Article 25 of the Constitution is subject to Article 21–A. Therefore, taking the argument to its logical conclusion, it may be said that no parent would be in a position to choose religious education to the complete exclusion of free and compulsory formal education.

The second type of conflict occurs where religious beliefs are opposed to the curriculum of education in government schools. The following case illustrates the need for clarity around right to content in education. The issue of parental choice and content regulation was dealt with by the European Court of Human Rights in the case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark*.¹¹⁵ The applicants were parents of children who were going to State primary schools in Denmark. As per the Danish Constitution, all children have the right to FCE in State primary schools.¹¹⁶ The State had introduced compulsory sex education in State primary schools as part of the curriculum. This change in curriculum was introduced by a Bill passed by the Parliament. There were guidelines and safeguards against:

- Showing pornography.
- Teachers giving sex education to pupils when they were alone.
- Giving information on methods of sexual intercourse.
- Using vulgar language while imparting sex education.

The applicants, who were parents of school going children, gave several petitions to have their children exempted from sex education in concerned State schools. However, these requests were not met and all of them withdrew their children from the said schools.

The applicants argued that the Denmark Government had violated Article 2 of Protocol No. 1 to the European Convention on Human Rights, which states: "*No person shall be*



*denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.”*¹¹⁷

The State argued that Article 2 would cover only religious instruction and not all forms of instruction. The Court rejected this argument and held that any teaching should respect parents' religious and moral convictions. However, the Court also held that Article 2 would be violated only if while imparting sex education, the teachers advocated sex at a particular age or particular type of sexual behaviour. Moreover, the parents still had the freedom to educate their children at home to instill their own religious convictions and beliefs and therefore, imparting sex education per se was not a violation of Article 2.

This case is merely illustrative of the possible tensions between freedom of religion and right to content in education. It also brings to fore the importance of factoring in such tensions while outlining a child's right to content in education.

Content regulation

While the Danish Case assumes importance in the Indian context because there have been similar objections to sex education in schools,¹¹⁸ it is also important to examine objections to content on other grounds. For example, objections to content have been raised on the ground that the content prejudices children or incites them against a particular section of the society.¹¹⁹ At this juncture, it is pertinent to mention the observations of the UN Special Rapporteur on Education with respect to content. She notes that curriculum should be devoid of prejudice and incitement.¹²⁰ Therefore, a combination of a positive and a negative right to curriculum may adequately guard against such problems. For example, every child should have a right to a core non-negotiable secular content in education that is coupled with the duty of the State to refrain from arbitrarily interfering with such content. Right to education should include safeguards against propaganda-driven curriculum or syllabus. Therefore, guarding against arbitrary alteration or revision of existing curriculum would necessitate the creation of systematic processes and procedures for developing and revising syllabus at all levels – Centre, State, District and so on. Therefore, the negative right is a procedural right against arbitrary revision whereas the positive right is a substantive right to minimum secular content.

Compulsion and medium of instruction

Another controversial issue in the Indian context is the medium of instruction. For example, while defining the nature of the relationship between the parent and the State and also defining the scope of compulsion, the law should address whether a child should be compelled to attend a government school where the medium of instruction is completely alien to the child. Alternatively, the law should examine whether the right to education includes the right to be educated in a manner that is not alien to the child, i.e., where language is not a barrier to education. It is pertinent to note that the UN Special Rapporteur has discussed language as a barrier while examining the State's duty to make education 'acceptable'.¹²¹

This issue has been examined by the European Court of Human Rights in the Belgian Linguistic Case.¹²² The applicants were French-speaking Belgian nationals who were aggrieved that the Belgian Government had not set up any government school in their district, whose language of instruction was French. It is important to note that there were other French-medium schools, which were not within the same district. The Court held that the State was under no obligation to respect the linguistic preferences of parents. This is because Article 2 of Protocol No. 2 to the European Convention on Human Rights states that the State “...shall respect the right of parents to ensure such education and teaching



in conformity with their own religious and philosophical convictions.” The Court held that the phrase ‘religious and philosophical convictions’ does not include linguistic preferences.¹²³ The Court further held that non-provision of education in a particular language of instruction does not amount to discrimination based on language.¹²⁴

Even though it may be argued that lack of schools in a particular medium of instruction does not amount to discrimination, given the extent of migration and diversity in language in the Indian context, language may be termed as barrier to school education.¹²⁵ Therefore, in order to make school education an effective right, the law should necessarily address the language issue in such a manner that it enables all children to attend schools and participate meaningfully.

Role of the community within a rights framework

The law should also spell out the kind of relationship the State should create with respect to ‘State–communities–children’ in the context of education. For example, how should the law respond to employers who engage children in labour; how should education be factored into disaster management and rehabilitation plans? The State’s duty to protect the right implies that the State has a duty to protect a child’s right to education from any form of interference or hindrance.

Another aspect of the ‘State–communities–children’ relationship is the empowerment of communities, i.e., communities should be empowered with a right of participation in school education. As mentioned before, the Karnataka example of community participatory methods of school management is a case in point.

This section has attempted to identify some factors that form the back-bone of a rights-based approach to school education. Each of these factors needs to be debated and discussed in light of already existing policies, schemes and pronouncements by the judiciary. This section has also sought to provide a brief insight into some controversial issues that need to be threshed out before drawing up policy and legislation for school education.



Model of Legislation

Assessment of state level legislations from the ‘Rights’ perspective

Clarity regarding the phrase ‘rights-based’ alone is not sufficient for realising the fundamental right to education. In order to effectively ensure that every child is guaranteed the core non-negotiable minimum education outlined, the type of legislation becomes crucial. For example, how can a child in Sikkim and a child in Kerala enjoy the same core non-negotiable guarantees to education? If for example, a child in Sikkim receives only five years of compulsory education and a child in Kerala receives eight years of compulsory education, then this would definitely be violative of ‘equitable’ education. In the words of the National Knowledge Commission, “...it (the right to education) cannot be dependent upon which state a citizen lives in...”¹²⁶ Therefore, there exists a prima facie case for the creation of uniform standards across India for ensuring that children are entitled to the same guarantees and core non-negotiable minima. This prima facie case for uniformity is further strengthened by our analysis of existing State-level laws on school education.

The State legislations that have been analysed in this paper were enacted prior to the Constitutional Amendment in 2002. The following States’ laws have been examined – Jammu and Kashmir, Maharashtra, West Bengal, Himachal Pradesh, Karnataka, Tamil Nadu, Kerala, Rajasthan, Delhi, Sikkim, Punjab, Andhra Pradesh, Madhya Pradesh and Meghalaya. The Meghalaya law does not recognise the concept of compulsory school education.

From amongst the laws that we analysed, it was found that all States penalise parents for their children’s poor attendance (without adequate justifications)¹²⁷ in schools, and therefore they fall squarely within a truancy model of legislation.¹²⁸ Some even criminalise non-attendance and make the offence punishable with a fine.¹²⁹

In addition, most States’ laws do not guarantee compulsory education to all children. On the contrary, to quote Weiner, “...compulsory education laws in India do not make education compulsory: they merely establish the conditions under which state governments may make education compulsory in specified areas”³⁰, i.e., they merely make compulsory education permissive. It is entirely up to the discretion of the local authority concerned to draw up a scheme for compulsion under such laws. Therefore, where compulsory education is merely permissive, the question of a justiciable right to education does not arise at all, unless a particular area is brought under a scheme of compulsory education. The Bombay Primary Education Act, 1947; The Kerala Education Act, 1958; Delhi Primary Education Act, 1960; Punjab Primary Education Act, 1960; The Rajasthan Primary Education Act, 1964; The



West Bengal Primary Education Act, 1973; The Assam Elementary Education Act, 1974; The Andhra Pradesh Education Act, 1982 fall under this category. These require immediate amendments bringing them in line with the constitutional mandate of FCE. The Karnataka Education Act, 1983; The Tamil Nadu Compulsory Primary Education Act, 1994; The Himachal Pradesh Compulsory Primary Education Act, 1997; Sikkim Primary Education Act, 2000; The Jammu and Kashmir School Education Act, 2002; and the Madhya Pradesh Jan Shiksha Adhiniyam, 2002 make primary education compulsory.

However, even amongst the laws that make primary education compulsory, two are superseded by Article 21–A of the Constitution. The Himachal Pradesh law defines a child as a person between the age of six and eleven years, which has been superseded by Article 21–A of the Constitution.¹³¹ The Madhya Pradesh law makes compulsory education mandatory for all children from the age of five to fourteen years.¹³² It also incorporates the principle of non-discrimination.¹³³ It defines 'free' as a tuition fee waiver. However, it provides that where the Parent Teacher Association of a particular school consents to imposing a school development fee, then such a fee may be imposed.¹³⁴ It may be argued that this provision has been superseded by Article 21–A of the Constitution.

Therefore, the only law that provides for compulsory education and is not superseded by the Constitution is the Jammu and Kashmir Act. It defines a child as a person aged between six and fourteen years.¹³⁵ However, it does not elaborate upon any other details or minimum entitlements; does not affirm any principle of human rights law; and does not provide for a grievance redressal mechanism or monitoring method.

Therefore, most State laws are obsolete and do not reflect the current legal position post-constitutional Amendment. In addition, all of them fall squarely within the truancy model of legislation and do not follow a rights approach to school education.

Understanding the significance of education as a concurrent list entry in the constitution

Education transferred from state list to concurrent list

Since the State laws are obsolete and also require uniformity, the question that needs to be examined is how can one ensure uniformity in the enforcement of standards in school education? This can be answered only after a brief description and analysis of legislative powers that are vested with the Centre and States with respect to school education.

The Constitution, based on the principle of federalism, adopts a three-fold distribution of legislative powers. Different subjects for legislation find mention in one of three lists namely the Union List (List I), State List (List II) and Concurrent List (List III) in the Seventh Schedule to the Constitution. While the Parliament and State Legislatures have exclusive legislative power over entries in the Union List and the State List respectively,¹³⁶ both the Parliament and State Legislatures have the power to legislate over entries in the Concurrent List.¹³⁷ The three identified rationales¹³⁸ underlining the placement of certain entries in the Concurrent List are as follows:

- Secure uniformity in the main principles of law.
- Guide and encourage local efforts.
- Provide remedies for mischief arising in the local sphere, but extending, or liable to extend beyond the boundaries of a single province.¹³⁹

Interestingly, education was enlisted as a legislative item originally in the State List. It was subsequently transferred to the Concurrent List by means of a Constitutional Amendment in 1976.¹⁴⁰ Today, entry 25 of the Concurrent List reads as follows: "*Education, including*



technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.” The exclusion of entries 63–66 from the Concurrent List is immaterial for the purposes of this paper.

Purpose and implication of the transfer of education from state list to concurrent list

The significance of the 1976 amendment and its implications are discussed in the National Education Policy of 1986 and 1992. The Policy clearly refers to the “substantive, financial and administrative” implications of the amendment. The Policy states as follows:

*“...the Union Government would accept a larger responsibility to reinforce the national and integrative character of education, **to maintain quality and standards** (including those of the teaching profession at all levels), to study and monitor the educational requirements of the country as a whole in regard to manpower for development, to cater to the needs of research and advanced study, to look after the international aspects of education, culture and Human Resource Development and, in general, to promote excellence at all levels of the educational pyramid throughout the country.”¹⁴¹* Therefore, clearly, the Department of Education (Government of India) envisaged standard-setting by the Centre as one of the outcomes of this amendment.

Interestingly, such an argument was even made at the time of drafting the Constitution, where Mr Frank Anthony strongly argued for Central control over school education to build a strong uniform cohesive policy on education:¹⁴²

“...I feel that my proposal that education throughout the country should be controlled from the Centre will have the approval and endorsement of eminent educationists, men of vision and of men with statesmanship. What is happening today? On the threshold of independence (I cannot help saying it) certain provinces are running riot in the educational field. Provinces are implementing not only divergent but often directly opposing policies. And it is axiomatic that a uniform, synthesised, planned education system is the greatest force to ensure national solidarity and national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country.

It may be inferred from the above discussion that the 1976 transfer from the State List to the Concurrent List had a specific purpose and significance. It created an avenue for Centre’s intervention in the field of school education.

Advocating skeletal central-level legislation

Having emphasised upon the purpose of this amendment, a question arises as to the legal tools that are at the disposal of the Centre for standard-setting. The only legally enforceable tool of standard-setting that is available to the Centre is that of enacting a Central legislation. Since education is in the Concurrent List, State Legislatures too have complete power to legislate on education. This power of the States is subject to Article 254 of the Constitution, i.e., provisions of a State law that conflict with provisions of a Central law on the same subject are void to the extent of repugnancy. Where there is no Central law on a particular legislative item in the Concurrent List, the State Legislatures have the competence to enact a law governing the said field.¹⁴³ Till date there has been no Central law on school education. Some States that have enacted laws on school education are – Jammu and Kashmir, Meghalaya, Madhya Pradesh, Andhra Pradesh, Punjab, Sikkim, Delhi, Rajasthan, Kerala, Tamil Nadu, Karnataka, Bihar, Himachal Pradesh and West Bengal.

In addition to State level legislations, between 1996 and 2005, several draft Central Bills on Right to Education, albeit with different names, have been debated and discussed at the



national level.¹⁴⁴ The latest effort in 2005–2006, as mentioned before, was abandoned and the Draft Right to Education Bill, 2005 was circulated to all States as the Model Right to Education Bill, 2006. Unfortunately, such a Model Bill does not have any legal value. The Model Bill is not only unenforceable in a court of law but also does not affect the legality of existing State laws. It further does not legally prohibit State Governments from introducing measures (legislative or executive) that are inconsistent with the Model Law. For example, even after the Model Bill was circulated amongst all States; the Minister for Education from Maharashtra stated that ration cards of parents of out-of-school children would be cancelled.¹⁴⁵ Interesting, the so-called Model Bill clearly envisages only one punitive measure for compelling attendance, namely mandatory community service by parents.

It may be useful to examine legally enforceable model rules that have been adopted by the Centre in other branches of law. For example, under the Industrial Employment (Standing Orders) Act, 1946, the Centre has incorporated several Model Standing Orders that have the force of statutory orders which cannot be derogated. Similarly, under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006, the Central Government's Model Juvenile Justice (Care and Protection of Children) Rules, 2002 will acquire legal enforceability (which they did not have prior to the 2006 amendment) after they are adopted by the Parliament.

Unless a Central law is enacted governing FCE, the entire purpose of transferring education from the State List to the Concurrent List through the 1976 Constitutional Amendment would be defeated. Moreover, the idea of '*partnership*' and standard setting that is envisaged by the current National Policy on Education would also be defeated in the absence of a Central law. It is important to develop a Central law in such a manner that it balances the two-fold purposes of standard-setting and Centre-State partnership as envisaged in the Indian Education Policy. True partnership would be possible only where the Central law gives adequate flexibility to States to develop and incorporate innovations into the law without diluting core minimum standards. This flexibility is crucial to give effect to the constitutional mandate of local self-governance in the context of education.¹⁴⁶

Apart from the 1976 constitutional Amendment, the need for a Central level legislation can also be justified from the point of view of creating a 'common language' in the field of school education. At the international level, the concept of a 'common language' was floated by the UN Special Rapporteur, who has argued that a common language is required to help further dialogue, gather and compare statistics and reduce gender discrimination across the different countries.¹⁴⁷ The same need for a 'common language' is also applicable at an intra-country level. If for example, different States continue to have different standards in school education, it would be impossible to contrast and evaluate the performance of FCE at the national level.

In order to ensure flexibility, the Central core minimum standards should be such that it enables need-based localised interventions. For example, Karnataka has developed delegated legislation to institutionalise community participatory methods of monitoring and developing schools in rural areas within the existing Panchayat Raj Institutional framework. This has been done by constituting School Development and Monitoring Committees at the school level. Similarly, in Andhra Pradesh, novel experiments have been initiated drawing linkages between child labour and education. Such processes should be encouraged and permitted within the overall framework of the Central law and the latter should not operate as a bar against such regional innovations. Therefore, the Central law should merely lay down core norms, standards and systems of accountability that are required to be adhered



to by all States. These can best be accommodated through a skeletal Central legislation. Interestingly, a similar recommendation was made by the Parliamentary Standing Committee of the Human Resources Development which considered the Constitution Amendment (Eighty Third) Bill, 1997.¹⁴⁸ In order to supplement skeletal legislation, Model Rules that have statutory force should be enacted. Such Model Rules would be binding on States in the event of State inaction with respect to delegated legislation.

It is amply clear that in order to ensure there is a uniform standard for school education across all States, the Centre should direct its efforts at enacting a skeletal legislation. Without such skeletal legislation, it is not possible to legally enforce uniformity, as the States have concurrent legislative powers in the field of education.



Conclusion

This paper has briefly traced the demand for FCE. Starting from the period around the freedom struggle, there has been a consistent demand for FCE. The Constitution originally provided for FCE as a Directive Principle of State Policy, and now provides for a fundamental right to FCE, 'as the State may by law determine.' Therefore, the details and content of such a right are to be regulated by the State. Under the Constitution, both the Centre and the States have concurrent legislative powers with respect to education. However, in order to maintain uniform standards across India and to create a 'common language', it is imperative to enact skeletal Central-level legislation in such a manner that it allows room for local need-based innovations.

Further, there have been concerns that the freedom given to the State to enact a law (implementing the right to education) may be used to dilute the scope of the right itself. In order to respond to such concerns, this paper has explored some elements that form the backbone of a rights-based approach. Therefore, these elements may be used to evaluate policies and proposed laws to ensure that they fall within a rights framework.

Legislation, if viewed as the sole method implementing a human right, will not be successful in achieving its objective. Therefore, any model of implementing human rights should incorporate coercive as well as non-coercive rules. Moreover, the first step in any legislative process is the formulation of clear policy directives. Before enacting skeletal legislation, the Centre should undertake a detailed evaluation of all existing educational policies and schemes using the suggested rights-based approach. This will help identify aspects of such policies that fall within and outside a rights framework. There is an urgent need to consolidate the experiences of providing school education in the last five decades and evolve a realistic pro-child rights-based policy on education, which may then be translated into legislation. The institutional framework required to implement such a policy can be determined only after the policy itself is evaluated and updated using a rights matrix.

The following aspects provide some guidelines in defining the non-negotiable minimum matrix of rights, which is useful not only for policy analysis but also for developing an institutional framework for implementation:

- Identifying minimum entitlements related to availability and accessibility.
- Identifying minimum entitlements related to acceptability and adaptability.



- Respecting and implementing non-negotiable principles such as equality, non-discrimination, survival and development of the child, child participation and best interests of the child.
- Creating an enabling framework where solutions to barriers against FCE are provided.
- Ensuring that barriers against FCE are not punished.
- Ensuring that relationships between child–State, parent–child, parent–State and community–child/parent–State are clearly defined.
- Locating social accountability of different actors and creating a grievance redressal mechanism. This would entail clear identification of duty-bearers at different levels – Centre, State, District, Local level bodies and school.
- Capacity building of the right–holders as well as the duty–bearers.

A clear rights-based policy should be translated into skeletal Central legislation. Such skeletal legislation should be supplemented by Model Statutory Rules that will operate in the absence of State Rules. Such a model of legislation will allow for State-level flexibility without compromising on non-negotiable minimum standards.



Endnotes

1. See Annexure 1 for a Table of all the Countries that have provided for constitutional guarantees to education.
2. See "Private Schools in India Wriggle Out of 25% Seats for the Poor", *The Economic Times*, August 8, 2006; S Singh, "Right to Education Only on Paper", *The Statesman*, October 22, 2006; See also, Seethalakshmi S and M Seshagiri, "Private Schools Have the Last Laugh", *The Times of India*, August 8, 2006, available at <http://timesofindia.indiatimes.com/articleshow/1874504.cms>, visited on November 13, 2006.
3. In this paper, the term 'government schools' has been used to refer to two categories of schools: a) schools that are owned and run by the government/local bodies and b) private schools that receive a substantial grant-in-aid from the respective Government.
4. See *infra*, Section 2.2 on 'The Demand for a Fundamental Right to Education', and related notes for more details regarding the common school system.
5. *Report of the Committee for the Review of National Policy on Education, 1986: Final Report*, Department of Education, Ministry of Human Resources Development, Government of India, 1990, at para 3.12.7, available at <http://www.education.nic.in/cd50years/g/T/V/Toc.htm>, visited on November 13, 2006; herein after cited as Acharya Ramamurti Committee Report.
6. *Preliminary Report of the Special Rapporteur on the Right to Education*, Commission on Human Rights, 1999, 55th Session, E/CN.4/1999/49, available at www.un.org, visited on November 13, 2005, at 15; herein after cited as Special Rapporteur's Preliminary Report, 1999.
7. See for example, A Sadgopal, "Dilution, Distortion and Diversion: A Post-Jomtien Reflection on Education Policy", *The Crisis of Elementary Education in India* (R Kumar ed., New Delhi: Sage Publications, 2006) at 120; herein after cited as Sadgopal's Reflection on Education Policy.
8. S Evans, "Improving Human Rights Analysis In the Legislative and Policy Processes", Melbourne Law School, Legal Studies Research Paper No. 124, July 2005, available at <http://ssrn.com/abstract=771225>, visited on July 28, 2006; herein after cited as Evans. The author makes a case for a detailed human rights evaluation and analysis and further develops models of conducting such analysis.
9. See Dr Niranjana Radhaya V P, *Universalisation of School Education, The Road Ahead* (Bangalore: Books for Change, 2004) where the phrase 'school education' was coined in contradistinction to the phrases 'elementary' or 'primary' education. School education refers to a scheme of compulsory education till at least class 10. The 10 years comprise the first limb within the scheme of education suggested by the Indian Education Commission (1964–6) i.e. 10 years + 2 years + 3 years.
10. T N Siqueira, *The Education of India* (Bombay: Oxford University Press, 1952) at 3.
11. Section CXXXIV, *The Mahabharata, Book 1: Adi Parva: Sambhava Parva* (K M Ganguli trans.), available at <http://www.sacred-texts.com/hin/m01/m01135.htm>, visited on December 10, 2006. "Vaisampayana continued, 'Thereafter Drona began to teach Arjuna the art of fighting on horse-back, on the back of elephants, on car, and on the ground. And the mighty Drona also instructed Arjuna in fighting with the mace, the sword, the lance, the spear, and the dart. And he also instructed him in using many weapons and fighting with many men at the same time. And hearing reports of his skill, kings and princes, desirous of learning the science of arms, flocked to Drona by thousands. Amongst those that came there, O monarch, was a prince named Ekalavya, who was the son of Hiranyadhanus, king of the Nishadas (the lowest of the mixed orders). Drona, however, cognisant of all rules of morality, accepted not the prince as his pupil in archery, seeing that he was a Nishada who might (in time) excel all his high-born pupils.'"
12. J P Naik, *Equality, Quality and Quantity, The Elusive Triangle in Indian Education* (New Delhi: Allied Publisher, 1975) at 1–2; See B C Rai, *History of Indian Education* (Lucknow: Prakashan Kendra, 1977) at 39, 51–54, 59 for examples of such discrimination.
13. K Motwani, *Manu Dharma Sastra* (Madras: Ganesh and Co., 1958) at 3.
14. R Thaper, *A History of India*, Volume I (Middlesex: Penguin Books, 1966) at 63–68, 153–161.
15. S M Edwardes and H L O Garrett, *Mughal Rule in India* (New Delhi: Asia Publication Services, 1979) at 221.
16. S Nurullah and J P Naik, *A History of Education in India* (Bombay: Macmillan, 1943) at xi; herein after cited as Nurullah and Naik. See R Sharma, "Decentralisation, Professionalism and the School System in India", *Economic and Political Weekly*, October 14, 2000, for a clear but concise description of *ancient versus modern* education systems.



17. *Ibid* at 42.
18. B B Misra, *The Indian Middle Classes* (New Delhi: Oxford University Press, 1961) at 160.
19. K G Siayidian et al., *Compulsory Education In India* (Delhi: Universal Book and Stationery Co., 1966) at 19; herein after cited as Siayidian.
20. William Hunter, *Report of the Indian Education Commission* (Calcutta: Superintendent of Government Printing, India, 1883) at 586 available at <http://www.chaf.lib.latrobe.edu.au/dcd/>; herein after cited as Hunter Commission Report. See Chapter XIII, Recommendations on Primary Education: "...3. *That while every branch of education can justly claim the fostering care of the State, it is desirable, in the present circumstances of the country, to declare the elementary education of the masses, its provision, extension, and improvement, to be that part of the educational system to which the strenuous efforts of the State should now be directed in a still larger measure than here-tofore.*"
21. *Ibid* at 587. "...25. *That all primary schools wholly maintained at the cost of the school-boards, and all primary schools that are aided from the same fund and are not registered as special schools, be understood to be open to all castes and classes of the community.*"
22. See "Elementary and Adult Education in India – Historical Perspective", *Report of National Development Council Committee on Literacy*, Planning Commission, 1993, available at <http://education.nic.in/cd50years/y/3P/45/3P450401.htm>; herein after cited as Literacy Committee Report 1993.
23. *Ibid* at 18.
24. *Id.* See also, M Weiner, *The Child and the State in India, Child Labour and Education Policy in Comparative Perspective* (Oxford: OUP, 1994) at 103; herein after cited as Weiner.
25. Literacy Committee Report, *supra* note 22. See also Weiner, *id.*
26. S P Mookerjee, "Education in British India", 233 *Annals of the American Academy of Political and Social Science* 30 (1944) at 32.
27. B G Kher et al., *Wardha Education Scheme, First Committee's Report*, available at <http://www.education.nic.in/cd50years/g/52/4U/524U0101.htm>, visited on July 28, 2006; herein after cited as First Wardha Committee Report. See also, Mahatma Gandhi's Inaugural Address, All India National Education Conference at Wardha, available at <http://ca.geocities.com/jill.sandwell@rogers.com/shoreditch/pages/gandhi.pdf>, visited on July 28, 2006.
28. See for instance the views of Sir S Radhakrishnan during the Constituent Assembly Debates. *Constituent Assembly Debates, Volume 1*, December 11, 1946, available at <http://parliamentofindia.nic.in/ls/debates/vol1p3.htm>, visited on July 28, 2006. "*It is essential for any constitution which is drawn up to make all the citizens realise that their basic privileges—education, social and economic are afforded to them...*"
29. See the amendment moved by Pandit Lakshmi Kanta Maitra during the Constituent Assembly Debates. *Constituent Assembly Debates, Volume 7*, November 23, 1948, available at <http://parliamentofindia.nic.in/ls/debates/vol7p11.htm>, visited on July 28, 2006. "*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."*

It will thus be seen that this article 36 will be brought into line with the preceding and the subsequent articles, in form, at any rate. The House will observe that article 30, 31, 32, 33, 34, 35, 37 and 38 all begin with the words - "The State shall.....so and so". But article 36 alone begins with - "Every citizen is entitled to....etc." Therefore if we delete the words I have referred to, this article also will come into line with the other articles. Besides the question of form there is also a question of substance involved in this. Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of State policy is coupled with a sort of a fundamental right, i.e. "that every citizen is entitled.....etc." This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted. 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"."
30. Article 45 (as originally enacted) reads as follows: "*The State shall endeavor to provide, within a period of ten years from the commencement of this constitution, free and compulsory education to all children until they complete the age of fourteen years*".
31. J P Naik, *The Main Recommendations of the Education Commission, A Summary* (New Delhi: NCERT, 1969) at 9–10; herein after cited as *Kothari Commission Recommendations Summary*. The Commission recommended a common school system of public education with the following key features – i) open to all children without any discrimination ii) no tuition fee will be charged. The Commission also suggested that the 'neighbourhood school' concept be used as a method of establishing a common school system. Under the



neighbourhood school concept, all children (from different backgrounds) within a particular neighbourhood are required to attend a school in that neighbourhood. Thereafter, the concept of a “common school” has become one of the focal points of several campaigns in India. See A. Sadgopal, “A Compilation of Notes on the Common School System” (document presented before the Central Advisory Board of Education on 14–15 July 2006), at 3, available at http://www.ashanet.org/campaigns/rte/docs/aniil_sadgopal.pdf, visited on December 10, 2006. “Common School System means the National System of Education that is founded on the principles of equality and social justice as 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, both aided and unaided, or otherwise – will be obliged 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, 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.”

32. National Policy on Education, 1968, para 4(4); herein after cited as NPE 1968.
33. *Id.*
34. See NPE 1968, para 4(1). “*Strenuous efforts should be made for the early fulfilment of the Directive Principle under Article 45 of the Constitution seeking to provide free and compulsory education for all children up to the age of 14. Suitable programmes should be developed to reduce the prevailing wastage and stagnation in schools and to ensure that every child who is enrolled in school successfully completes the prescribed course.*”
35. See National Policy on Education, 1986, para 3.2.
36. *Towards an Enlightened and Humane Society: Report of the Committee for Review of National Policy on Education, 1986*, Department of Education, Ministry of Human Resources Development, Government of India, 1990, at section 6.4.6. See also Sadgopal’s Reflection on Education Policy, *supra* note 7 at 95.
37. Acharya Ramamurti Committee Report, *supra* note 5, at paras 6.1.2 and 6.1.3.
38. See A Sadgopal, “Goal Posts Shifted”, *The Hindustan Times*, November 11, 2003, available at http://www.hindustantimes.com/2003/Nov/11/181_454037_00120002.htm, visited on December 10, 2006.
39. See the amendment moved by Mr Naziruddin Ahmad during the Constituent Assembly Debates. *Constituent Assembly Debates, Volume 7*, November 23, 1948, available at <http://parliamentofindia.nic.in/ls/debates/vol7p11.htm>, visited on July 28, 2006. “*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.’ Sir, this article, as has been clearly pointed out by the previous speaker, deals with primary education. It begins with primary education and the marginal note also makes it clear. But as has been pointed out, towards the end what is said is that the State shall provide within a period of ten years from the commencement of this Constitution for ‘free and compulsory education.’ I believe from the context and from other internal evidence that what was intended was compulsory ‘primary’ education. The State cannot undertake to give compulsory education of a secondary character.... The Honourable Dr B R Ambedkar:... 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, 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.*”
40. AIR 1992 SC 1858.
41. (1993) 1 SCC 645.
42. Article 21 reads as follows: “21. No person shall be deprived of his life or personal liberty, except according to procedure established by law.”
43. See for example, *N Kunhichekku v. State of Kerala* (1995) Supp. 2 SCC 382; *Muralidhar Kesekar v. Vishwanath Berde* (1995) Supp. 2 SCC 549; *State of Himachal Pradesh v. Himachal Pradesh State Recognised and Aided Schools Managing Committee* (1995) 4 SCC 507; *Ganapathi Nath Middle School v. M D Kannan* (1996) 6 SCC 464; *Avinash Nagra v Navodaya Vidyalaya Samiti* (1997) 2 SCC 534; *K Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering* (1997) 3 SCC 571; *State of Tamil Nadu and others v. Melapalayam Muslim Magalir Kalvi Sangam*, 1997 WLR 619; *Gramvikas Shikshan Prasarak Mandal v. State of Maharashtra and Ors.*, AIR 2000 Bom 437; *Yerram Venkata Reddy v. Commissioner and Director of School Education, Hyderabad and Ors.*, 2001(2) ALD 250.
44. A Mehendale, “Right to Education and Constitutional Amendment: A Case of India”, Revised Final Project Report, Global Development Network’s Bridging Research and Policy Programme, August 2005, at 3, available



at <http://www.gdnet.org/middle.php?oid=203>, visited on April 20, 2006. The author explores the reasons that facilitated the introduction of the Constitutional Amendment Bill. She concludes that there were several critical contributing factors which led to the amendment – era of liberalisation and globalisation, beginning of external financial assistance for primary education, growing discourse on human rights, social/grass-root movements and judicial activism.

45. The Constitution (Eighty-Third) Amendment Bill, 1997.
46. See A Sadgopal, "A Convenient Consensus", 18(26) *The Frontline*, December 22, 2001–January 04, 2002, available at <http://www.hinduonnet.com/fline/fl1826/18261070.htm>, visited on December 10, 2006. The author, an eminent educationist of India, describes the November 28, 2001 "Shiksha Satyagraha" at Ramliia Grounds as follows: "It was probably for the first time in the history of independent India that people had gathered to demand the right to education. These peasants, landless labourers and slum-dwellers, both men and women, demolished the myth promoted by the state and the educated civil society that the poor people are interested only in roti, kapda and makaan (food, clothing and shelter) and not in educating their children. The rallyists were aware that the gains made through the Unnikrishnan judgement would be lost if the Bill was passed." See also, V Surya, "For the Right to Learn", 18(26) *The Frontline*, December 22, 2001–January 04, 2002, available at <http://www.hinduonnet.com/fline/fl1826/18261090.htm>, visited on December 10, 2006; T K Rajalakshmi, "A Regressive Bill", 18(26) *The Frontline*, December 08–21, 2001 available at <http://www.hinduonnet.com/fline/fl1825/18250300.htm>, visited on December 10, 2006. See also, similar campaigns and protests that have been documented in "Campaign for the Right to Education", National Centre for Advocacy Studies, *Advocacy Update*, No. 17, July – September 2002, available at http://www.doccentre.net/eldoc/n00/_campaign_right_education.pdf, visited on December 10, 2006.
47. See "Chapter 3, Fundamental Rights, Directive Principles and Fundamental Duties", Report of the National Commission to Review the Working of the Constitution, Volume 1, Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, Government of India, 2002, at paras 3.20.1–2, 3.30.1–2, available at <http://lawmin.nic.in/ncrwc/finalreport/volume1.htm>, visited on December 10, 2006; herein after cited as Report of the Constitution Review Commission. The Commission recommended the inclusion of a fundamental right to education till the age of 14; the inclusion of a Directive Principle of State Policy for education beyond the age of fourteen years within the limits of economic capacity and stage of development. The recommendations of the Commission are useful: "...3.20.2 The Commission feels that the constitutional commitment for free and compulsory education for all children until the age of fourteen should under no circumstances be diluted and the State should fulfill this solemn obligation to the nation... It is recommended that the relevant provisions in the Constitution (93rd Amendment) Bill, 2001 making the right to education of children from six years till the completion of fourteen years as a Fundamental Right should be amended and enlarged to read as under: "30-C Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Scheduled Tribes, until they complete the age of eighteen years."
48. See The Constitution (Eighty-Sixth Amendment) Act, 2002, available at <http://indiacode.nic.in/coiweb/amend/amend86.htm>, visited on December 10, 2006.
49. A Sen, "Human Rights and the Limits of Law", 27 *Cardozo L Rev.* 2913 (2006) at 2921; herein after cited as Sen. See also, I Robeyns, "Three Models of Education: Rights, Capabilities and Human Capital", 4(1) *Theory and Research in Education* 69 (2006) at 70.
50. See Sen, *id.*
51. See also Committee on Economic, Social and Cultural Rights, *The Nature of State Parties Obligations*, General Comment No. 3, E/1991/23., December 14, 1990, available at, <http://www.unhchr.ch>, visited on November 13, 2005; herein after cited as CESCR General Comment No. 3. The CESCR observed that State Parties can take "appropriate measures" that are non-legislative as well. Such measures may include but are not limited to administrative, financial, educational and social measures.
52. Evans, *supra* note 8 at 7.
53. See for example A D Exter et al., "A Conceptual Model of Health Care Law Making in Central and Eastern Europe", 19 *Med. & L* 165 (2000) where the author advocates the review method of law making in the context of reforming the health care system in the United States.
54. Evans, *supra* note 8 at 7.
55. Report of the Constitution Review Commission, *supra* note 47 at para 3.31.3.
56. *Ibid* at para 3.35.2.
57. The right to education has been recognised in several international instruments, of which the three key international instruments are the Universal Declaration of Human Rights, 1948 [UDHR], the International Covenant on Economic, Social and Cultural Rights, 1966 [ICESCR] and the Convention on the Rights of the Child [CRC]. While some instruments uphold the right to "elementary education", others use the phrase "primary education." Article 26 of UDHR lays down that free education should be provided at least in the "elementary and fundamental stages" and is compulsory. Article 13 of ICESCR and Article 28 of CRC provide *inter alia* that "primary education" shall be free and compulsory. See Committee on Economic, Social and Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights*,



Right to Education (Article 13 of the Covenant), General Comment No. 13, E/C.12/1999/10, December 8, 1999, at para 15, available at, www.un.org, visited on November 13, 2005; herein after cited as CESCR General Comment No. 13. The CESCR has tried to clarify the meaning of “primary education.” The Committee has stated that primary education is that which caters to the “basic learning needs of the children.” “Basic learning needs” has been defined in Article 1 of the World Declaration on Education For All as: “essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning”. It not only refers to formal education, but also encompasses early childhood education. See *Final Report of the World Conference on Education for All: Meeting Basic Learning Needs*, Jomtien, Thailand, 5–9 March 1990, Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for the World Conference on Education for All, New York, 1990. The CESCR has also endorsed the view that “primary education” is only a component of “basic education” It has also stated that technical and vocational education [TVE] is not limited to any particular level of education and that it forms an “integral element” of all levels of education.

58. Please note that analysis of the implementation of the Integrated Child Development Scheme is beyond the scope of this paper.
59. *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (United Nations, May 2003), available at http://www.crin.org/docs/resources/publications/hrbap/HR_common_understanding.doc, visited on December 10, 2006; herein after cited as U N Understanding. The States re-affirmed the principle of interdependence and inter-connectedness of human rights.
60. *Id.*
61. See CESCR General Comment No. 3, *supra* note 51 at para 10. The CESCR has observed as follows: “...that the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.” The concept of ‘minimum essential level of each right’ corresponds to the idea of ‘minimum entitlements’.
62. See K Halvorsen, “Notes on the Realisation of the Human Right to Education”, 12(3) *Human Rights Quarterly* 341 (1990) at 349; herein after cited as Halvorsen. The author discusses the importance of the relationship between the State and the parent. See also P Alston and N Bhuta, “Human Rights and Public Goods: Education as a Fundamental Right in India”, Working Paper No. 6, Centre for Human Rights and Global Justice, October 2005, at 31; herein after cited as *Alston and Bhuta*. See Sen, *supra* note 49 at 2921, where he discusses the concept of perfect and imperfect obligations; a perfect obligation is one where the demand for the right is fairly evident. For example, the child’s demand to be educated by the State/parent is a demand that arises out of a perfect obligation. On the contrary an imperfect obligation is one that imposes a general duty on anyone who would be in a position to help. For example, a demand for community participation in the education system would be the consequence of an indirect obligation of the community towards the child.
63. See *infra*, section 3.2.3 on Minimum Entitlements in the Context of Acceptability and Adaptability.
64. See *infra*, section 3.2.3 on Minimum Entitlements in the Context of Acceptability and Adaptability. Sachar’s Committee recommendation of right to ‘community resource centres’ is an example of a minimum entitlement that takes into account the facilities conducive to schooling, which are available in a child’s *home*.
65. See CESCR General Comment No. 13, *supra* note 57. See also, Special Rapporteur’s Preliminary Report, 1999, *supra* note 6. The framework adopted by the Special Rapporteur in her report dated January 13, 1999 also finds mention in the said General Comment dated December 8, 1999.
66. *Ibid* at 15–23.
67. *Ibid* at 18. It is beyond the scope of this paper to examine the model of financing that the State should adopt. See for example, CESCR General Comment No. 13, *supra* note 57 at para 6. The CESCR has identified some elements that contribute towards making a school functional – buildings, sanitation facilities, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, library, computer facility and so on.
68. *Progress Report of the Special Rapporteur on the Right to Education*, Commission on Human Rights, 2000, 56th Session, E/CN.4/2000/6, available at www.un.org, visited on November 13, 2005, at 16; herein after cited as Special Rapporteur’s Progress Report, 1999.
69. Special Rapporteur’s Preliminary Report, 1999, *supra* note 6 at 6.
70. *Ibid* at 23. See also, CESCR General Comment No. 13, *supra* note 57 at para 6. See *infra*, section 3.2.3 on Minimum Entitlements for more details.
71. *Ibid* at 23–4. See *infra*, section 3.2.3 on Minimum Entitlements for more details.
72. See *infra*, section 3.2.1 on Core Principles in a Rights-Based Model for more details.
73. U N Understanding, *supra* note 59.



74. *Id.*
75. See “Human Rights and Human Development”, *Human Development Report, 2000*, at 21, available at hdr.undp.org/reports/global/2000/en/, visited on August 21, 2006.
76. See Rule 17, Karnataka Grama Panchayat’s (School Development and Monitoring Committees [SDMC]) (Model) Bye-Laws, 2006 dated June 14, 2006 (Notification No. 734, Part IV A, Karnataka State Gazetteer and Notification No ED.122PBS 2004, Education Secretariat).
77. See S Narula, “The Right to Food: Holding Global Actors Accountable under International Law”, Working Paper No. 7, Centre for Human Rights and Global Justice (2006), at 8, available at http://www.nyuhr.org/docs/WPS_NYU_CHRGJ_Narula_Final.pdf, where the author argues that “a rights based approach attempts to provide ...by obligating governments to ensure the fulfillment of socio-economic rights without discrimination.”
78. See *infra* section 3.2.1 on Core Principles in a Rights-based Model for more details.
79. U N ECOSOC, Sub-Committee on Prevention of Discrimination & Protection of Minorities, “The New International Economic Order and the Promotion of Human Rights: Report on the Right to Adequate Food as a Human Right”, U N Doc. E/CN.4/Sub.2/1987/23 (July 7, 1987) (submitted by Asbjørn Eide).
80. *Id.*
81. See Committee on Economic, Social and Cultural Rights, General Comment No. 12, E/C.12/1999/5., 12 May 1999, at para 15, available at <http://www.unhchr.ch>, visited on November 13, 2005; herein after cited as CESCR General Comment No. 12. The Committee has outlined the said framework in the context of right to food and the same may be adopted in the context of education.
82. *Id.*
83. *Id.*
84. Halvorsen, *supra* note 62 at 360-61.
85. D Tyack and M Berkowitz, “The Man Nobody Liked: Toward a Social History of the Truant Officer, 1840–1940” 29(1) *American Quarterly* 31 (1977) at 38; herein after cited as Tyack and Berkowitz.
86. *Ibid* at 34, 42.
87. U N Understanding, *supra* note 59. See *infra* section 3.2.1 on Core Principles in a Rights-Based Model of Education for more details.
88. See *Vishaka v. State of Rajasthan*, MANU/SC/0786/1997, where the Supreme Court held as follows: “Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.” Article 21 has been interpreted in light of the CRC in the case of *Parents Forum for Meaningful Education and Anr. v. Union of India and Anr.*, AIR 2001 Delhi 212. The Delhi High Court read the provisions of the CRC into Article 21 and held that imposition of corporal punishment violates Article 21.
89. Article 2, Convention on the Rights of the Child, 1989.
90. T Hammarberg, “A School for Children with Rights”, *Innocenti Lectures, Italy, October 23, 1997*, available at <http://www.unicef-icdc.org>, visited on November 13, 2006.
91. K Lynch and J Baker, “Equality in Education, An Equality of Condition Perspective”, 3(2) *Theory and Research in Education* 131 (2005) at 135, herein after cited as Lynch and Baker (2005).
92. See K Lynch, “Solidarity Labour: Its Nature and Marginalisation”, 37 *Sociological Review* 1 (1989); K Lynch and L Lodge, “Essays on School”, in *Equality in Education* (K Lynch ed., Dublin: Gill and Macmillan, 1999) at 215–59; M Lyons et al., *Inside Classrooms: The Teaching and Learning of Mathematics in Social Context* (Dublin: IPA, 2003) as cited in Lynch and Baker (2005), *id.*
93. Lynch and Baker (2005), *id.*
94. *Ibid* at 147.
95. Special Rapporteur’s Preliminary Report, *supra* note 6.
96. Article 15(4): “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”
97. *Social, Economic and Educational Status of the Muslim Community in India, A Report*, Prime Minister’s High Level Committee under the Chairmanship of Justice Rajendra Sachar, Cabinet Secretariat, Government of India, November 2006, at 76; herein after cited as Sachar Committee Report.
98. *Id.*
99. *Ibid* at 17–8.



100. Special Rapporteur's Preliminary Report, 1999, *supra* note 6 at 19. 101 Committee on Economic, Social and Cultural Rights, *Plans of Action for Primary Education*, General Comment No. 11, E/C.12/1999/4, May 10, 1999, at para 7, available at, <http://www.ohchr.org/english/bodies/cescr/>, visited on November 13, 2005.
102. Committee on the Rights of the Child, *Report of the Twenty-Seventh Session*, CRC/C/108, 23 July 2001, at para 209, available at <http://www.unicef.org/crc/>, visited on November 13, 2005; herein after cited as CRC 27th Report. See also Committee on the Rights of the Child, *Guidelines for Periodic Reports*, CRC/C/58, November 20, 1996, at para 20, available at <http://www.unhchr.ch>, visited on November 13, 2005. One of the items on which Countries have to record their responses is as follows: "...the measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector..."
103. Constitutional Court of the Czech Republic, judgement US 25/94 of 13 June 1995, as cited in See *Annual Report of Special Rapporteur on the Right to Education*, Commission on Human Rights, 2001, 57th Session, E/CN.4/2001/42., available at www.un.org, visited on November 13, 2005.
104. Note 48, *Annual Report of Special Rapporteur on the Right to Education*, Commission on Human Rights, 2000, 56th Session, E/CN.4/2000/6., available at <http://www.un.org>, visited on November 13, 2005.
105. *Id.*
106. Sachar Committee Report, *supra* note 97 at 244. The Sachar Committee recommended that the State should set up Community Resource Centres for Muslim children in order to help them to study after school hours. The Committee noted this in the context of urban settlements where children live in one-room accommodation and therefore require a separate study atmosphere.
107. In the Indian context, it may be argued that Art. 21 of the Constitution, which guarantees right to life is also applicable within the school set-up and therefore, the State-run schools should provide for a safe environment. See fn. 84 for more details. See also R. Aviel, "Compulsory Education and Substantive Due Process: Asserting Student Rights to a Safe and Healthy School Facility", 10 *Lewis & Clark L. Rev.* 201 (2006), where the author draws analogies between schools and other State-run institutions such as prisons, mental hospitals etc stating that when in school, the child is effectively in the custody of the State and therefore, has the right to safe and healthy environment.
108. There are several cases which have been dealt with by the US Supreme Court, which are beyond the scope of this paper.
109. NAC Recommendation on Right to Education, February 24, 2006, available at <http://nac.nic.in/concept%20papers/educationFeb18.pdf>, visited on December 10, 2006.
110. See Sen, *supra* note 49.
111. See "Human Rights and Human Development", *Human Development Report, 2000*, at 21, available at hdr.undp.org/reports/global/2000/en/, visited on August 21, 2006, where social accountability is identified as being part of a rights-based model.
112. The Sikkim, Karnataka, Assam, Rajasthan, West Bengal, MP and Delhi Acts provide this a ground for exemption from penalty. The Kerala Act does not have this ground as a ground for exemption. The J&K Act merely states that the Government may prescribe the grounds for exemption.
113. Article 26(3), UDHR, Article 13(3) ICESCR. See also Article 18(3) of the International Covenant on Civil and Political Rights, 1966. It states as follows: "3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."
114. Article 25 of the Constitution reads as follows: "25. Freedom of conscience and free profession, practice and propagation of religion. – (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."
115. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Application no. 5095/71; 5920/72; 5926/72, judgement dated 7 December 1976, available at <http://www.echr.org> [herein after cited as *Pedersen Case*].
116. *Ibid* at para 15..
117. Article 2 of Protocol No. 1 to the European Convention on Human Rights as cited in *Pedersen Case*, *ibid* at para 49.
118. See for example, "Sex Education in Curriculum Stuns Kerala", *Asian Age*, February 13, 2007, where there was a controversy regarding sex education in schools; See also, "Break the Silence on Sex Education", *Indian Express*, March 17, 2007.
119. See for example, "Experts See TextBooks Promoting Half-truths", *The Hindu*, February 14, 2007, where several experts including a member of the National Knowledge Commission objected to textbooks being provided to children in Rajasthan on the ground that they promoted hatred and prejudices against Dalits and



minorities; See also "Saffronisation of education assailed", *The Hindu*, July 22, 2001 available at <http://www.hinduonnet.com/2001/07/22/stories/0222000v.htm>, visited on December 10, 2005; "Irfan Habib Criticizes Failure to Reverse 'Saffronisation'", *The Hindu*, July 14, 2004, available at <http://www.hindu.com/2004/07/14/stories/2004071403391300.htm>, visited on December 10, 2005, for some details regarding the controversy around 'saffronisation' of textbooks.

120. Special Rapporteur's Preliminary Report, 1999, *supra* note 6 at 24.
121. *Ibid* at 64.
122. *Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium*, Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, judgement dated 23 July 1968, available at <http://www.echr.org> [herein after cited as *Belgian Linguistic Case*].
123. *Ibid* at p. 29, para 6.
124. *Ibid* at p. 30, para 9.
125. See for example, "No Kannada Medium or Teacher in Govt School", *Deccan Herald*, February 9, 2007.
126. National Knowledge Commission, *Report to the Nation 2006* (New Delhi: National Knowledge Commission, Government of India, 2006) at 38.
127. For more on these justifications see *Supra*, section 3.2.3 on Minimum Entitlements in the Context of Acceptability and Adaptability.
128. Section 4(2), MP Jan Shiksha Adhiniyam, 2002.
129. Section 9, J&K School Education Act, 2002; Section 7, HP Compulsory Primary Education Act, 1997; sections 7 and 8, TN Compulsory Elementary Education Act, 1994; Section 28, Kerala Education Act, 1958; Section 9 read with section 13, Punjab Primary Education Act, 1960; Section 13 read with section 17, Sikkim Primary Education Act, 2000; Section 13 read with section 18, Delhi Primary Education Act, 1960; Section 17 read with section 135, Karnataka Education Act, 1983; Section 12 read with section 96, AP Education Act, 1982; Section 13 read with section 18, Rajasthan Primary Education Act, 1964; Section 88–89, West Bengal Primary Education Act, 1973.
130. Weiner, *supra* note 24 at 101.
131. Section 2(b), HP Compulsory Education Act, 1997.
132. Section 3(3) read with section 4(1), MP Jan Shiksha Adhiniyam, 2002.
133. Section 3(2), MP Jan Shiksha Adhiniyam, 2002.
134. Section 6(2), MP Jan Shiksha Adhiniyam, 2002.
135. Section 2(d) of the J&K School Education Act, 2002.
136. Art. 246 of the Constitution. The Parliament has power to legislate over subjects under certain circumstances. This aspect is not relevant for the purposes of this paper.
137. *Id.*
138. See Para 51, *Joint Committee on Indian Constitutional Reforms* (1934) at 30-31, as cited in quoted in Mr Justice E S Venkataramiah and P M Bakshi, *Indian Federalism – A Comparative Study* (Bangalore: B V Nagarathna Publications, 1992) at 85. "Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a central or to a Provincial legislature and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the central legislature should also have a legislative jurisdiction enable it, in some cases to secure uniformity in the main principles of law throughout the country, in others, to guide and encourage provincial effort and in others, again, to provide remedies for mischief arising in the provincial sphere, but extending, or liable to extend beyond the boundaries of a single province".
139. See P M Bakshi, "A Background Paper Concurrent Powers of Legislation under List III of the Constitution", available at lawmin.nic.in/ncrcw/finalreport/v2b3-3.htm, visited on July 28, 2006.
140. Constitution (Forty – Second) Amendment Act, 1976.
141. See para 3.13, *National Policy on Education of 1986 (As Modified in 1992)*, Department of Education, Ministry of Human Resource Development, Government of India, 1998, available at <http://www.education.nic.in/NatPol.asp>, visited on January 14, 2006.
142. See the views expressed by Mr Frank Anthony, *Constituent Assembly Debates*, Volume 7, Part 2-A, 5th November 1948, available at <http://parliamentofindia.nic.in/ls/debates/vol7p2a.htm>, visited on July 28, 2006.
143. *State of Karnataka v. M Madappa*, (1996) 9 SCC 284.
144. There have been 5 draft Central Bills thus far: a) Free and Compulsory Education for Children Bill, 1998 (draft circulated as part of the 165th Report of the Law Commission of India on Free and Compulsory Education for Children) b) Free and Compulsory Education Bill, 1999 c) The Free and Compulsory Education



for Children Bill, 2003 (two drafts – June 2003 and December 2003), d) The Free and Compulsory Education Bill, 2004 (final Bill of the NDA Government) and e) The Right to Education Bill, 2005 (Bill drafted by the CABE Committee).

145. "Send Your Kids to School or Lose Your Ration Card", *Mumbai Mirror*, September 1, 2006, available at <http://www.mumbaimirror.com>, visited on September 5, 2006.
146. Article 243G read with item 17, Eleventh Schedule of the Constitution. Education including primary and secondary schools falls within the responsibility of Panchayats. See also Article 243W read with Twelfth Schedule of the Constitution.
147. Special Rapporteur's Preliminary Report, 1999, *supra* note 6 at 5–8.
148. See para 15.6, *Sixty-Third Report on the Constitution (Eighty – Third) Amendment Bill, 1997*, Department – Related Parliamentary Standing Committee on Human Resource Development, Parliament of India, November 1997 (New Delhi: Rajya Sabha Secretariat, 1997). The Standing Committee recommends as follows: "After a thorough discussion in this matter, the Committee feels that the Centre should not leave everything to the states. The Centre could make one simple legislation with some skeletal framework which may also indicate the Central share in the financial burden. The details can be formulated by the respective states according to their requirements. The Central Government may, therefore, consider working out the necessary legislation."



Table 1: Countries which guarantee right to education in their constitution

[Extracted from Annual Report of Special Rapporteur on the Right to Education, Commission on Human Rights, 2001, 57th Session, E/CN.4/2001/42., available at www.un.org]

<p>Full Constitutional Guarantee</p>	<p>Albania, Algeria, Argentina, Australia, Austria Azerbaijan, Barbados, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Columbia, Congo, Costa Rica, Croatia, Cuba, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Haiti, Honduras, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Madagascar, Malta, Mauritius, Mexico, Netherlands, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Korea, Moldova, Romania, Russia, Rwanda, Saudi Arabia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, UAE, UK, Uruguay, Venezuela, Former Yugoslavia.</p>
<p>Partial Constitutional Guarantee</p>	<p>Bangladesh, Belarus, Benin, Bhutan, Cameroon, Comoros, Guinea, Iran, Iraq, Israel, Micronesia, Maldives, Monaco, Mongolia, Myanmar, Namibia, Nepal, Nigeria, Pakistan, Sierra Leone, Sudan Togo, Uganda, Tanzania, Uzbekistan, Zimbabwe.</p>
<p>Constitutional Guarantee only for citizens/residents</p>	<p>Armenia, Bahrain, Cambodia, Chad, Cyprus, Czech Republic, Korea, Dominican Republic, El Salvador, Equatorial Guinea, Greece, Grenada, Guatemala, Guyana, Hungary, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libyan Arab Jamahiriya, Luxembourg, Malawi, Mali, Morocco, New Zealand, Nicaragua, Philippines, Qatar, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, Syrian Arab Republic, Turkey, Turkmenistan, Vietnam, Yemen.</p>
<p>No Constitutional Guarantee</p>	<p>Angola, Antigua and Barbuda, Bahamas, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Central African, Republic, Côte d'Ivoire, Djibouti, Dominica, Eritrea, Ethiopia, Fiji, Gabon, Indonesia, Jamaica, Kenya, Kiribati, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malaysia, Marshall Islands, Mauritania, Mozambique, Nauru, Niger, Oman, Papua New Guinea, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Singapore, Solomon Islands, Swaziland, Tonga, Tuvalu, United States of America, Vanuatu, Zambia</p>



Table 2: Number of years of compulsory education

[Extracted from the UNESCO, World Education Report, 1998 at 132-135, modified by the author to include India in the list of countries that guarantees eight years of compulsory education after the constitutional amendment of 2002]

Duration (Years)	Countries
12	Bahrain, Barbados, Belgium, Brunei Darussalam, Germany, Saint Kitts and Nevis
11	Antigua and Barbuda, Azerbaijan, Grenada, Israel, Kazakhstan, Malaysia, Moldova, Netherlands, New Zealand, Sri Lanka, Suriname, UK
10	Australia, Bahamas, Belize, Canada, Congo, Cook Islands, Dominica, France, Gabon, Guyana, Hungary, Jordan, Kyrgyzstan, Malta, Monaco, Namibia, South Africa, Spain, Saint Lucia, Venezuela, USA
9	Algeria, Armenia, Austria, Belarus, China, Comoros, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, Georgia, Ghana, Greece, Ireland, Japan, Kiribati, Korea, Latvia, Liberia, Libya, Lithuania, Luxembourg, Mali, Norway, Portugal, Russian Federation, Seychelles, Slovakia, Sweden, Switzerland, Tajikistan, Tunisia, Tuvalu, Yemen
8	Albania, Angola, Bolivia, Brazil, Bulgaria, Chad, Chile, Croatia, Egypt, former Yugoslav Republic of Macedonia, Iceland, Italy, Kenya, Kuwait, Malawi, Mongolia, Niger, Poland, Romania, Samoa, San Marino, Slovenia, Somalia, Sudan, Tonga, Ukraine, Yugoslavia and India
7	Argentina, Eritrea, Lesotho, Mauritius, Mozambique, Rwanda, Swaziland, Tanzania, Trinidad and Tobago
6	Afghanistan, Benin, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Ecuador, Ethiopia, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Indonesia, Iraq, Jamaica, Mauritania, Mexico, Morocco, Nicaragua, Nigeria, Panama, Paraguay, Peru, Philippines, Senegal, Syria, Thailand, Togo, United Arab Emirates, Uruguay, Vanuatu
5	Bangladesh, Colombia, Equatorial Guinea, Iran, Laos, Madagascar, Myanmar, Nepal, Turkey, Viet Nam, Zimbabwe
4	Sao Tome and Principe
3	Zambia Interestingly, the so-called Model Bill clearly envisages only one punitive measure for compelling attendance, namely, mandatory community service by parents.



Model right to education bill 2006

Chapter	Section	Title
		Preamble
I		Preliminary
	1. 2.	Short title, extent and commencement Definitions
II		Child's right to free and compulsory education of equitable quality
	3. 4.	Child's right to free and compulsory education of equitable quality Right of transition till completion of elementary education
III		Responsibility of the state
	5. 6. 7. 8. 9. 10. 11. 12.	General responsibility of the state Responsibility of the state towards the non-enrolled child Provision of facilities for pre-school education Provision of facilities to young persons to complete elementary education Responsibility of the appropriate government Responsibility of the appropriate government to augment Teacher training capacity wherever necessary Responsibility of local authorities Planning for provision of free and compulsory education
IV		Schools and teachers
	13. 14. 15. 16. 17. 18. 19. 20. 21. 22.	Responsibility of schools to provide free & compulsory education Prohibition of screening procedures and capitation fees Admission to schools to be generally done at the Commencement of the academic year but not to be denied at other times Registration of schools Norms and standards for a school Prohibition of deployment of teachers for non-educational purpose Prohibition of private tuition by teachers School management committees Teachers' of state schools to be a school-based cadre Teacher vacancies in state schools/fully aided schools not to exceed 10% of total strength



	23.	Qualification of teachers and terms and conditions of service
	24.	Duties of teachers
	25.	Accountability of teachers employed in state school/fully aided schools
	26.	Redressal of teachers' grievances
V		Miscellaneous
	27.	Redressal of grievances regarding non-implementation of school-related provisions of this act
	28.	State level regulatory authority
	29.	Entry age for elementary education and procedure for computing age of a child
	30.	Responsibility of the parent/guardian
	31.	Certification of completion of elementary education
	32.	Prohibition of physical punishment
	33.	Teacher training and innovation
	34.	Penalty for contravention of sections 14 and 16
	35.	Power of appropriate government and local authorities to issue general directions
	36.	Power to remove difficulties
	37.	Protection of action taken in good faith
	38.	Act to be in addition to and not in derogation of certain other laws
	39.	Power of appropriate government to make rules

Model right to education bill 2006

*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, the 86th 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, in such manner as the State may, by law, determine;

And whereas the above Act also provides under Article 45 that the State shall endeavour to provide early childhood care and education for all children until they complete 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 recognised that the objectives of democracy, social justice, and equality can be achieved only through the provision of elementary education of equitable quality to all; and

And whereas it is also imperative to improve the present delivery system of elementary education by, *inter alia*, greater decentralisation of its management, and making it sensitive to the needs of children, especially of those belonging to disadvantaged groups.

Be it enacted in the fifty-seventh 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 Bill, 2006.
- 2) It shall extend to the whole of the State of _____.
- 3) It shall come into effect from such date as the State Government, may by notification in the official Gazette, appoint.

2. Definitions

- 1) In this Act, unless the context otherwise requires:
 - a) **“Academic Year”**
means a period of one year (including vacations), notified as an academic year by an appropriate government, or by a local authority or a school management committee empowered by such government in this behalf, for the transaction of the course of study prescribed for any grade of the elementary stage.
 - b) **“age-appropriate grade”, in relation to a child,**
means the grade in which the child should currently be studying if she was enrolled in Grade I around the time she completed six years of age, and had thereafter participated in elementary education continuously.

Explanation: Age-appropriate grade for children suffering from mental retardation or mental illness shall be determined keeping in view their mental development also, and not on the basis of their biological age alone.
 - c) **“Aided school”**
means a school, which receives aid from a government or from a local authority, or both, to meet the whole or part of its recurring expenses.
 - d) **“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.

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

- e) **“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.
- f) **“Child”**
means a person who is not less than six years and not more than fourteen years of age.



- g) **“Competent Authority”**
means an authority designated by the Appropriate Government as a competent authority for the purposes of this Act.
- h) **“Competent Academic Authority”**
means an authority designated by the Appropriate Government as a competent academic authority for the purposes of this Act.
- i) **“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].
- j) **“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 is enrolled 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.
- k) **“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.
- l) **“Disadvantaged Group”**
means scheduled castes, scheduled tribes, other socially and educationally backward classes, 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.
- m) **“Elementary Education”**
means education at the elementary stage in a school.
- n) **“Elementary Stage”**
means the stage of school education corresponding to Grades I to VIII as per courses of study prescribed by a competent academic authority.
- o) **“Equitable Quality” in relation to Elementary Education**
means providing all children opportunities of access to, participation in, and completion of elementary education in accordance with the provisions of this Act.
- p) **“Free Education”**
means freedom for the child and her parent/guardian from liability to:
- i) Pay any fee or charges to the school where the child/ ward is studying, or to an examining body or any other external body providing any service through the school, and
 - ii) Incur such other expenses, as may be prescribed, which are likely to prevent the child from participating in and completing elementary education;

Provided that if textbooks and any other teaching learning material are supplied free to a non-disabled child under this clause, they shall be supplied free to a disabled child in such modified form as would meet her learning needs.

- q) **“First Generation Learner”**
means a child, neither of whose parents has completed elementary education.



- r) **“Fully-aided School”**
means a school, which receives grants from a government or local authority to meet its full recurring expenses, or such part, being not less than 90%, of the recurring expenses as may be prescribed.
- s) **“Grade”, in relation to the elementary stage,**
means any of its eight annual sub-stages.
- t) **“Guardian”, in relation to a Child**
means his natural guardian or any other person or institution 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.
- u) **“Juvenile in Conflict with Law”**
means a person who has not completed eighteenth year of age and is alleged to have committed an offence.
- v) **“Local area”, in relation to a Local Authority,**
means the area comprised within the territorial jurisdiction of the authority.
- w) **“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.

- x) **“Migrant Family”**
means a family that does not reside at any one location for at least such minimum number of days in a calendar year as may be prescribed.
- y) **“Minor Punishment”, in relation to a teacher,**
means any punishment other than dismissal or removal from service or reduction in rank.
- z) **“Neighbourhood”**
means such areas around the residence of a child as may be prescribed for whole or part of the elementary stage.
- aa) **“Neighbourhood School”, in relation to a Child,**
means any school located within the neighbourhood of the residence of the child.
- bb) **“Non-educational purpose”**
means any purpose not connected with elementary education, or with children’s access to, or participation in such education.
- cc) **“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.
- dd) **“Parent”**
means the father or the mother of a child and includes an adoptive father or mother.
- ee) **“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 throughout the elementary stage.



- ff) **“Pre-primary Section”, in Relation to a School**
means an establishment, which meets the educational needs, with or without other services, of children before the elementary stage of education, either as a part of a school or as an independent entity collaborating with it.
- gg) **“Prescribed”**
means prescribed by rules made under this Act.
- hh) **“Pre-School”**
means a facility provided by a school to meet the educational needs of children at least between the ages of 3 and 6 years.
- ii) **“Registered”, in relation to a School**
means registered by an appropriately empowered authority, or an appropriate government, or by an authority empowered by such government, in accordance with a law, rules, or executive instructions governing recognition of schools.
- jj) **“School”**
means an institution or part of an institution, which imparts education at the elementary stage or any part of such stage, and is recognised as a School by a competent authority.
- kk) **“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 an elementary school or its pre-primary section.
- ll) **“Specified Category”, in relation to State Schools**
means the State schools known at the commencement of this Act as *Kendriya Vidyalayas*, *Navodaya Vidyalayas*, and *Sainik Schools*, and such other categories of State schools having a distinct character as may be specified by notification by the appropriate Government, for the purposes of this Act.
- mm) **“State School “**
means a school run by an appropriate government or a local authority.
- nn) **“Teacher”**
means a person who teaches full time in a school and includes the head teacher of such school.
- oo) **“Unaided School”**
means a school which is neither a state school nor an aided school
- pp) **“Ward”, in relation to a Child,**
means a child who is under the guardianship of someone other than a parent.
- qq) **“Weaker Section”, in relation to a 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 notified by the appropriate government in this behalf from time to time.
- rr) **“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 or young person, 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, subject to the provisions of this Act, to:
 - i) Be admitted to a neighbourhood school in accordance with the provisions of Section 13, and
 - ii) Be provided free and compulsory education in such school, in the manner provided in this Act

Provided that a child who, due to her severe or profound disability, or disadvantage, or nature of occupation of her parents cannot be provided elementary education in a neighbourhood school, shall have the right to be provided education in an appropriate alternative environment as may be prescribed.

Provided further that a child with disability shall, in accordance with the provisions of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, be entitled to the right outlined in sub-clause (1) till she attains the age of eighteen years.

(Explanation: For the purposes of this Section, neighbourhood shall be determined in relation to the residence of the child on the basis of proof of residence provided in such manner as may be prescribed, including but not limited to, ration card or voters identification card of the parent/guardian.)

- 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 subclause (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 as may be prescribed.
- 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 subclause (1), have the right to be provided special programmes within the neighbourhood school to enable her to join the age appropriate grade as early as possible, within such period from commencement of this Act as may be prescribed.
- 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 suitable conditions, as may be decided by the appropriate government, to enable her participation.

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, subject to the provisions of Section 14, 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 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 that the first charge on its revenues, next only to law and order, shall be that of matters related to free and compulsory elementary education;
- 2) To ensure the availability of a neighbourhood school for every child within such period from commencement of this Act as may be prescribed;

Provided that in case of non-availability of a neighbourhood school, the State shall make such alternate arrangements for the education of affected children as may be required.

- 3) To ensure that every child is provided free education in the school mentioned in sub-section (2);

Provided that Parents/guardians who choose to admit their children to the non-free quota in a school 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 taking corrective steps wherever necessary, so that every child completes elementary education, and to make information in this regard available in the public domain, including on an on-line basis; and,
- 5) To ensure that children in schools receive education (a) of equitable quality, and (b) conforming to values enshrined in the Constitution.

6. Responsibility of the state towards the non-enrolled child

The appropriate government shall take necessary steps to ensure that:

- 1) All non-enrolled children who are in the 7–9 years' age group at the commencement of this Act, are enrolled in a neighbourhood school within such period from commencement of this Act as may be prescribed.
- 2) All non-enrolled children who are in the 9–14 years' age group at the commencement of this Act are enrolled in special programmes in a neighbourhood school, if available, and failing that, in another school to enable them to be admitted to an age appropriate grade in a neighbourhood school as early as possible, and within such period from commencement of this Act as may be prescribed.

7. Provision of facilities for pre-school education

The appropriate government shall endeavour to provide facilities for pre-school education in State and fully-aided schools for children between the ages of 3 and 6 years, if such facilities are not already being provided, through Integrated Child Development Services (ICDS) or other government programmes, in proximity to such schools.

8. 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.

9. Responsibility of the appropriate government

- 1) Responsibilities in connection with provision of free and compulsory education shall be those of the appropriate Government.
- 2) Without prejudice to the generality of sub-section (1), the appropriate government shall ensure:
 - i) Provision of financial assistance to Local Authorities for implementation of this act in accordance with such formula regarding sharing of costs of such implementation, as the appropriate government may determine from time to time.



- ii) Carrying out of an exercise every year to determine the requirement of schools, facilities and their appropriate locations for the implementation of this Act.
 - iii) Establishment of additional schools as required and making them functional.
 - iv) Deployment of teachers in schools in accordance with the provisions of this Act.
 - v) Provision of a building, teaching aids and learning material of the prescribed specifications in accordance with the Schedule to every State school and fully aided school.
 - vi) Timely provision of “elements of free entitlement” as prescribed under section 2(1) (p), to eligible children.
 - vii) Creation of adequate facilities for training of teachers and other personnel to meet the human resource requirement for the implementation of this Act.
 - viii) Prescription and periodic revision by the Competent Academic Authority of the curriculum for elementary education and courses of study for each grade thereof.
-
- ix) Without prejudice to the provisions of Section 32, evaluation of processes and measurement of learning outcomes for each child in such manner as may be prescribed, to ensure the achievement of such learning outcomes as may be determined in advance.
 - x) Development and maintenance of a comprehensive database to facilitate implementation of this Act.
 - xi) 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.
 - xii) Provision of technical resource support 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.
 - xiii) Taking such other steps as the State Government may, by Order, specify.

10. Responsibility of the appropriate government to augment teacher training capacity wherever necessary

Every appropriate Government shall, within such period from commencement of this Act as may be specified, assess the State's requirement of professionally trained teachers as prescribed under this Act, vis-à-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 further period from commencement of this Act as may be specified.

11. Responsibility of local authorities

- 1) Subject to the responsibility of the appropriate Government as laid down in Section 9, the Local Authority shall, if empowered by a law enacted in pursuance of Article 243G or Article 243W of the Constitution, 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 belonging to each disadvantaged group, and to weaker sections, 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 prescribed infrastructure, teachers and supporting facilities for free and compulsory education in all schools in its area imparting elementary education,
 - v) Ensure sustained education of out of school children and children of migrant families through special steps, including bridge courses, remedial teaching, and such other interventions 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 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 20 shall prepare School Development Plan to cater to the needs of the children residing in its neighbourhood in respect of their education of equitable quality, in such manner as may be prescribed.
- 2) School Development Plans, referred to in sub-section (1), shall be the basis for preparation of plans for provision of free and compulsory education for every local area, block, district, and metropolitan area, in such manner as may be prescribed.
- 3) Every appropriate Government shall prepare plans for provision of free and compulsory education in the State/UT and the country, taking into consideration the Plans referred to in sub-section (2) above.
- 4) The plans referred to in sub-section (3) shall be taken into consideration while preparing the annual demands for grants for elementary education presented by the appropriate Government to the respective Legislatures.
- 5) The plans referred to in sub-section (3) shall also form the basis for monitoring the implementation of this Act.

Chapter IV

Schools and teachers

13. Responsibility of schools to provide free and compulsory education

- 1) Schools shall provide free and compulsory elementary education to children entitled under Section 3 to the extent and in the manner specified below:
 - i) State schools, except schools of specified categories, and fully aided schools – to all admitted children.
 - ii) Aided schools, other than fully aided schools – to at least such proportion of their admitted children as its annual recurring aid bears to its annual recurring expenses.

Provided that if a school is already under obligation, at the commencement of this Act, to either the Central Government or an appropriate government or any authority/agency representing or acting on their behalf to provide free education to a specified number of children as a consequence of having received land/building/equipment/other facilities either free of cost or at subsidised rates, such school continue to discharge such obligation notwithstanding the provisions of this Act.

- 2) It shall be the duty of every school to supply to the appropriate government or to an authority designated by such government, such information as the appropriate government may direct to be furnished 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. Admission to schools to be generally done at the commencement of the academic year but not to be denied at other times

Children shall be admitted to schools as far as possible at the commencement of the academic year, or within such period thereof as may be prescribed:

Provided that a child entitled to be admitted to a neighbourhood school under Section 3 (1), read with Section 13 of this Act, shall not be denied admission to such a school at any time of the



academic year; Provided further that a child admitted under the preceding proviso within four months of the commencement of the academic year shall be enabled to complete the class to which she has been admitted along with the batch of students admitted at the beginning of the session. A child admitted later in the academic year, who has not come on transfer from another school, shall complete the class with the next batch of students, unless the school is of the opinion that the child has made sufficient progress in the remaining part of the academic year to merit promotion to the next class along with the regular batch of students.

16. Registration of schools

- 1) All schools, other than State schools, recognised at the commencement of this Act, and all State schools, whether established before or after the commencement of this Act, shall be deemed to be registered schools for the purposes of this Act.
- 2) No institution, other than State schools, which is intended to be run as a School, shall be established or run after the commencement of this Act, except after registering from a Competent Authority, in such manner as may be prescribed.
- 3) Every appropriate government shall, within such period from commencement of the Act, as may be prescribed, notify rules governing registration of Schools other than State schools
- 4) Every application for registration shall be made in such form, in such manner and to such competent authority as may be prescribed, and the competent authority shall finally dispose of the application by an Order within a period not exceeding three months from the date of its receipt.

Provided that in the event of rejection of an application, the Order shall state reasons for its rejection.

17. Norms and standards for a school

- 1) No State school shall be established, and no other school shall be registered, by any competent authority, after the commencement of this Act, unless such school fulfils such norms as may be prescribed.
- 2) All schools, which are deemed to have been registered at the commencement of this Act under sub-section (1) of Section 16, but did not fulfill the norms prescribed thereunder at such commencement, shall do so within a period as may be prescribed, therefrom.

18. Prohibition of deployment of teachers for non-educational purpose

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

19. 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.

20. School management committees

- 1) A School Management Committee (SMC) shall be constituted for every State school and aided school, with such representation of parents, teachers, the community and representatives of the local authority, as may be prescribed.
- 2) Composition of the School Management Committee shall be so prescribed that:
 - i) At least three-fourths of its members are parents, or where both parents are not alive/guardians of children studying in the school, with proportionate representation among them of scheduled castes, scheduled tribes and other socially and educationally backward classes;
 - ii) The remaining members are drawn from other stakeholder sections of the community including representatives of the local authority, teachers, and persons/bodies working for education.



- 3) The SMC shall perform the following functions, namely:
 - i) Monitor and oversee the working of the school, and plan and facilitate its development;
 - ii) Manage the assets of the school;
 - iii) Ensure that teachers of the school diligently perform the duties prescribed for them under Section 24;
 - iv) Disburse salary to teachers from the grants received for the purpose from the appropriate government/local authority, and to deduct payment of salary for the period of unauthorised absence, if any, in such manner as decided by the SMC;
 - v) Utilise other grants received from the appropriate government, local authority or any other source for the upkeep and development of the school, in accordance with the terms of such grant and the rules made in that behalf; and,
 - vi) Such other functions as may be prescribed by or under this Act.
- 4) All funds received by a School Management Committee for the discharge of its functions under this Act, shall be kept in a separate account, and shall be Utilised in such manner as may be prescribed.
- 5) Accounts of money received and expended by the SMC shall be maintained and audited in such manner as may be prescribed.

21. Teachers of state schools to be a school-based cadre

- 1) After the commencement of this Act, teachers in State schools, except in State schools of specified categories, shall be appointed for a specific school by such local authority or SMC as may be notified by the appropriate government, and shall not be transferred therefrom;
- 2) Recruitment of teachers shall be carried out in accordance with transparent, merit-based criteria, and information thereof shall be made available in the public domain.
- 3) All teachers already serving at the commencement of this Act, in State schools, except in State schools of specified categories, shall be permanently assigned to a specific State school in accordance with such procedure and within such period from the commencement of this Act as may be prescribed, and shall then not be transferred from the school so assigned.

Provided that after assignment as in sub-section (3), the salaries of such teachers shall then be disbursed by the SMC in accordance with clause (iv) of sub-section (4) of section 20.

22. Teacher Vacancies in State Schools and 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 and fully-aided school, to ensure 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 shall ensure that, in schools run by them, teachers and their sanctioned posts are deployed in accordance with norms specified in the Schedule, and are not over-deployed in urban areas at the cost of rural areas.
- 3) Deputation or temporary deployment of teachers to schools other than those to which they have been appointed shall be prohibited.

Provided that in fully-aided or aided schools, the employee-employer relationship shall exist between the teacher and the management of such schools, and not with the appropriate government/local authority.

23. Qualifications of teachers and terms and conditions of service

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

Provided that persons not possessing qualifications required under sub-section (1) may be appointed as teachers only if suitable candidates with these qualifications are not available.



Provided further that in the event of appointment of such persons as teachers, the appropriate government shall ensure that they shall acquire the requisite qualifications prescribed under the NCTE Act within such period from their appointment as may be prescribed.

- 2) Teachers serving at the commencement of this Act who do not possess qualifications prescribed by the NCTE shall be enabled by their employer, to acquire the equivalent of such qualifications within such period from the commencement of this Act, as may be notified by the appropriate government.

Provided that the fees payable by a teacher for acquiring such qualifications under the foregoing sub-sections, and such other expenses connected therewith, as the appropriate government may notify, shall be borne by the employer.

- 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.

24. Duties of teachers

- 1) It shall be the duty of every teacher to:
 - i) Regularly attend school for its full duration,
 - ii) Transact and complete the curriculum in accordance with the values enshrined in the Constitution, and in a child-friendly and child-centered manner,
 - iii) Transact the curriculum in accordance with the time schedule, decided by the school, subject to general guidelines of the Competent Academic Authority,
 - iv) 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 20,
 - v) Regularly assess the learning level of each child, and to provide supplementary instruction needed by the child,
 - vi) 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, and
 - vii) Perform such other functions as the appropriate government or the appointing authority may specify, consistent with the provisions of Section 18.
- 2) Default by a teacher in the performance of a duty stipulated in sub-section (1) shall amount to professional misconduct, and such teacher shall be liable to be punished in accordance with the provisions of Section 25 of this Act and/or the disciplinary rules applicable.

25. Accountability of teachers employed in state schools and fully-aided schools

- 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 and fully-aided schools:
 - 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 SMC shall, where it is not itself the appointing authority for teachers serving in school(s) falling within its jurisdiction, furnish periodic assessment reports regarding performance of duties stipulated in Section 24 by such teachers, to the concerned Appointing Authority, in such manner as may be prescribed;
 - iii) Unless the State legislature has by law otherwise provided, power to impose minor punishment on a teacher in a State School, who was appointed by an authority higher than, or different from the authority mentioned in column (3) of the following table, shall



vest in the Local Authority specified in column (3), and having jurisdiction over the rural/urban/metropolitan area in which the school is situated:

Competent authority for imposition of minor penalty

Sr NO.	Category of teacher	Competent authority
1	2	3
a	For teachers in rural areas	Panchayat of the intermediate or village level or SMC, as the appropriate govt. may notify
b	For teachers in Government schools in urban areas.	The municipality or SMC, as the appropriate govt. may notify
c	For teachers in government schools in metropolitan areas	Such authority or SMC, as appropriate govt. may notify

- 2) When an SMC considers a matter in exercise of its powers under sub clause (iii) of sub-section (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.

26. Redressal of teachers' grievances

It shall be the duty of the SMC/Local Authority to redress teachers' grievances to the extent they fall within its purview, and/ or to forward them to the appropriate authority for obtaining redressal of such grievances as do not fall within its purview.

Chapter V

Miscellaneous

27. Redressal of grievances regarding non-implementation of school-related provisions of this act

- 1) Anyone who has a grievance that provisions of Sections 11, 13–19, 24 and of this Act, to the extent that they relate to establishment, provisioning, management of schools and conduct of activities therein, are not being complied with, may submit a written representation in that behalf to, as the case may be, the Local Authority or the School Management Committee concerned, which shall take appropriate action on it and inform the applicant within a period as prescribed not exceeding ninety days from the date of receipt of the representation.
- 2) If the person preferring the representation under sub-section (1) above is not satisfied with the action taken thereon by the Local Authority or SMC as the case may be, he may submit a representation in that behalf to such other authority as may be prescribed, which shall take appropriate action thereon and inform the applicant within a period as prescribed not exceeding ninety days from the date of receipt of the representation.

28. State-level regulatory authority

- 1) The Appropriate Government may, by notification in the Official Gazette, appoint a State-level Regulatory Authority for inquiring into grievances which remain unredressed even after taking recourse to the remedies provided in Section 27. The composition of the Authority shall be such as the Appropriate Government may notify in its official Gazette.
- 2) On receipt of a representation under sub-section (1), the Regulatory Authority may either itself inquire into the matter, or may refer it for inquiry to such officer of the Appropriate Government or concerned local authority as may be prescribed.



- 3) For the purposes of the inquiry referred to in sub-section (2), the Regulatory Authority or, as the case may be, the officer to whom it refers the matter for inquiry, shall have the powers to record oral evidence of such persons, inspect such premises, and examine such documents, as it thinks fit, in order to ascertain whether the provisions of this Act or rules made thereunder have been complied with.
- 4) Every school and other institution imparting elementary education, and every employer shall afford the Authority/officer referred to in sub-section (3), all reasonable facilities for entering into and inspecting premises, examining documents and recording statements of persons, connected with the subject matter of the inquiry.
- 5) Every officer of the Regulatory Authority or of the Appropriate Government/local authority to whom a matter is referred for inquiry under sub-section (2) shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860)
- 6) If after inquiry as above, the Regulatory Authority is satisfied that provisions of this Act are not being complied with, it may, in its discretion, direct the government, local authority or private management running a school to take such corrective action, and within such period, as it may deem fit, or direct that prosecution be launched against the offender(s) under Section 34 of this Act.

29. Entry age for elementary education and procedure for computing age of a child

- 1) A child shall be admitted to Grade 1 only if she has attained the age of five years and ten months before the beginning of the academic year.
- 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 admitting authority shall determine the child's age after making an enquiry in such manner as may be prescribed.

30. Responsibility of the parent/guardian

- 1) 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.
- 2) If a parent/guardian persistently defaults in discharge of his responsibility under sub-clause (1) above, the SMC may direct such parent/guardian to perform compulsory community service by way of child care in the school, in such manner as may be prescribed.

31. Certification of completion of elementary education

- 1) No child shall be required to appear at a public examination during the elementary stage except, if at all, at the completion of such stage.
- 2) Every child who completes elementary education shall be awarded a certificate to that effect by the examining body holding public examination in terms of sub-section (1) above, or, in case no public examination is so held, by the school where she completes it.

Provided that nothing in this Section shall prevent schools from carrying out standardised assessments of learning levels of children to enable corrective action, at such regular intervals as may be prescribed by the appropriate government.

32. 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 Section 25 of this Act and/or the disciplinary rules applicable.



33. Teacher training and innovation

The appropriate Government in respect of teachers in State schools and fully-aided schools shall take all necessary steps to ensure suitable in-service training and regular academic support to, including through the use of information & communication technology (ICT). In particular, all teachers shall be provided opportunities for peer interaction and encouraged to engage in innovation.

34. Penalty for contravention of sections 14 and 16

- 1) If a school contravenes the provisions of Section 14 by charging capitation fee, its management shall be liable to fine which may extend to ten times the capitation fee charged or collected.
- 2) If a school contravenes the provisions of Section 14 by conducting any screening procedure for admission of children, its management shall be liable to fine which may extend to Twenty Five Thousand Rupees for the first contravention, and Fifty Thousand Rupees for subsequent contraventions.
- 3) If a person contravenes the provisions of sub-section (2) of Section 16, he shall be punishable with fine which may extend to Rupees One lakh, and in case of continuing contravention, to a fine of Rupees Ten Thousand for each day during which such contravention continues.
- 4) No Court shall take cognisance of an offence under this Act, except on a complaint made by a person authorised by the Appropriate Government in this behalf.

35. Power of appropriate government and local authorities to issue general directions

- 1) An Appropriate Government may issue guidelines and give general directions to Local Authorities and School Management Committees regarding implementation of this Act.
- 2) A Local Authority may issue guidelines and give general directions to School Management Committees regarding implementation of this Act.

36. Power to remove difficulties

- 1) If any difficulty arises in giving effect to the provisions of this Act, the State 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 sub-section after the expiry of two years from the commencement of this Act.
- 2) Every Order made under sub-section (1) shall be laid, as soon as may be after it is made, before the appropriate Legislature.

37. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the appropriate government, a local authority, a School Management Committee, or any person acting under the direction of such government/Commission/authority/Committee, in respect of anything which is in good faith done, or intended to be done, in pursuance of this Act, or any rules or any order made thereunder.

38. 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].

39. Power of appropriate government to make rules

- 1) The appropriate Government may, by notification, make rules, within such period from the commencement of this Act as may be prescribed, for carrying out the provisions of this Act.
- 2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:



- a) Notification of disadvantaged groups under clause (1) of sub-section (1) of section 2.
- b) Courses of study for the elementary stage under clause (n) of sub-section (1) of section 2.
- c) Expenses under sub-clause (ii) of clause (p) of sub-section (1) of section 2.
- d) Notification of number of days in the calendar year in relation to migrant families under clause (x) of sub-section (1) of section 2.
- e) Notification of neighbourhood in relation to a child under clause (z) of sub-section (1) of section 2.
- f) Notification of the appropriate alternative environment in which elementary education shall be imparted to a child with severe and profound disability under sub-section (1) of section 3
- g) Specification of acceptable proof of residence for determination of neighborhood under sub-section (1) of section 3.
- h) Specification of the period from commencement of this Act within which a non-enrolled child would be admitted to an age appropriate grade under sub-section (2) of section 3.
- i) Specification of the period from commencement of this Act within which a non-enrolled child would be enabled, through special programmes, to join an age appropriate grade under sub-section (3) of section 3.
- j) Specification of the period from commencement of this Act within which the availability of a neighbourhood school shall be ensured under sub-section (2) of section 5.
- k) Specification of the period from commencement of this Act within which non-enrolled children in the age group of 7–9 years shall be enrolled under sub-section (1) of section 6.
- l) Specification of the period from commencement of this Act within which non-enrolled children in the age group of 9–14 years shall be enrolled under sub-section (2) of section 6.
- m) Norms for building, teacher aids and learning materials under clause (v) of sub-section (2) of section 9.
- n) Identification and notification of elements of free entitlement under clause (vi) of sub-section (2) of section 9.
- o) prescription and revision of curriculum under clause (viii) of sub-section (2) of section 9.
- p) The form and manner in which processes shall be evaluated and learning outcomes measured under clause (ix) of sub-section (2) of section 9.
- q) The form and manner in which record of children shall be maintained by local authorities under clause (i) of sub-section (1) of section 11.
- r) Determination of authorities at various levels to perform the functions of the local authority until these are devolved by law under sub-section (2) of section 11.
- s) Form and manner in which School Development Plans shall be prepared by School Management Committees (SMCs) under sub-section (1) of section 12.
- t) The form and manner in which plans for free and compulsory education shall be prepared for every local area, block, district, and metropolitan area under sub-section (2) of section 12.
- u) Specification of the period from commencement of the academic year within which children may be admitted to schools under section 15.
- v) Specification of the period from commencement of this Act within which the appropriate government shall notify rules governing registration of schools other than State schools under sub-section (3) of section 16.
- w) The form and manner in which application for registration of schools shall be preferred under sub-section (4) of section 16.
- x) Prescription of norms and standards to be fulfilled by State and registered schools under sub-section (1) of section 17.



- y) Specification of the period from commencement of this Act within which all schools shall fulfill prescribed norms under sub-section (2) of section 17.
 - z) Determining representation of sections of the community under clause (i) of sub-section (2) of section 20.
 - aa) Functions of SMCs under clause (i) of sub-section (4) of section 20.
 - bb) Manner of utilisation of funds received by SMCs for discharge of their functions under sub-section (5) of section 20.
 - cc) Form and manner in which accounts of funds received by SMCs for discharge of their function shall be maintained and audited under sub-section (6) of section 20.
 - dd) Rules of procedure governing assignment of teachers to specific schools under sub-section (3) of section 21.
 - ee) Specification of the period from their appointment within which teachers not possessing qualifications under the NCTE Act shall acquire them under sub-section (1) of section 23.
 - ff) Specification of the period from commencement of this Act within which serving teachers who do not possess qualifications under the NCTE Act shall acquire them under sub-section (2) of section 23.
 - gg) The form and manner in which progress of children shall be reported to their parents/ guardians and to the SMC under clause (vi) of sub-section (1) of section 24.
 - hh) Nature and duration of leave and the manner in which it may be granted to teachers under clause (i) of sub-section (1) of section 25.
 - ii) Payment of salary to teachers, and withholding of it for period of unauthorised absence, if any, under clause (iv) of sub-section (4) of section 20.
 - jj) The form and manner in which the periodic assessment reports of the performance of teachers shall be provided to the appointing authority under clause (ii) of sub-section 1 of section 25.
 - kk) Notification of authority competent to impose minor punishment on teachers in government schools in metropolitan areas under clause (iii) of sub-section (1) of section 25.
 - ll) Specification of the period within which the local authority or SMC shall take action upon receipt of written presentation under sub-section (1) of section 27.
 - mm) Authority to whom an applicant may represent and specification of the period within which such authority shall take action upon receipt of written representation under sub-section (2) of section 27.
 - nn) Officer of an appropriate government or local authority to whom the State-level Regulatory authority may refer representations for inquiry under sub-section (2) of section 28.
 - oo) The manner in which the age of a child may be computed or determined under sub-section (2) of section 29.
 - pp) Manner in which defaulting parent/ guardian may perform compulsory community service by way of child care in the school under sub-section (2) of section 30.
 - qq) Specification of the intervals at which schools may carry out standardised assessments of learning levels of children under section 31.
- 3) Every rule notified by an appropriate government under this Section shall be laid, as soon as may be after it is notified, before the appropriate Legislature



The '*Fundamentals*' of the Fundamental Right to Education in India

- What has the Indian State done in order to give effect to the Fundamental Right to Education as enshrined in Article 21A?
- Why is the Central Government dragging its feet and refusing to proactively introduce a paradigm shift in the State Education Laws?
- Is there any way of averting the catastrophic problem of having children continue to be left out of schools?
- There is no short cut except to make the Government schools function.

The 'Fundamentals' of the Fundamental Right to Education in India is an indepth research which attempts to skilfully argue and address the above mentioned questions. It is an essential advocacy tool to prioritise education as an essential and fundamental right as well as provide analysis on what a 'rights-based' model of education should involve.

This publication is a MUST READ and will be extremely effective in raising awareness about India's legislative process towards ensuring that the right of free and compulsory education is not denied and in sustaining the momentum to mobilise the Indian government and other stakeholders to keep their promise to achieve Education for All by 2015.

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