

# Right to Education Bill: A Long Story of Criminal Neglect

Manas Joardar

Enactment of the right to education for all children as a fundamental one, is still on tenterhooks. Nobody knows whether something different is going to happen during the fifteenth Loksabha. Whatever might have been the compulsions, the provision of “endeavour” placed under Art.45 within the Directive Principles “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”, was an incentive enough for the successive governments of all hues at Delhi, to hang fire the responsibility *ad infinitum*.

## IN A SHAMBLES

Estimates put India’s literacy rate in 2006 at 66% (78% male, 55% female), leaving over 350 million people illiterate. No other country of the world can boast of such a huge number!

Information available from the National University of Educational Planning and Administration (NUEPA), an organization under the aegis of the central government, depicts a dismal education data of Indian Children of the relevant age group (*Table 1*).

NUEPA computed, for all the States and Union Territories, the status of education system and computed the indicator—Educational Developmental Index (EDI) based on four broad parameters—access, infrastructure, teacher related indicators and outcomes. The EDI values, computed on an overall 23 parameters collected from as many as 1.25 million schools spread over 624 districts across the entire country, are abysmally low for most of the states/UTs (*Table 2*). No wonder, West Bengal has been placed among the bottom few.

In context of the role of teachers, one may recall what Amartya Sen observed : “The teachers’ unions, which have a very positive role to play in protecting the interests of teachers and have played that part well in the past, are often turning into an influence that reinforces the neglect of the interests of children from desperately underprivileged families. There is evidence of hardening of class barriers that separate the newly affluent teachers from the impoverished rural poor.” This neglect, needless to say, is not confined within the teaching community alone. It is total and systemic.

## Callous Indifference

The section of the society that has been known, over the years, to have put forth much attention to the education of their wards, started bidding adieu to the government managed primary education system. This, in turn, helped accelerate the deterioration of the mainstream structure. Private players entered into the business in a big way, much to the satisfaction of the protagonists of open market economy. Two distinctly parallel systems emerged. Success of the costly private primary system lies, in general, more in gloss than in glory though, the rulers have been relieved of significant pressure from the powerful section of the society. Underprivileged section has, as always, been suffering the most.

The Kothari Education Commission (1964-66) suggested, much after the lapse of the 10-year period envisaged in the Constitution, to provide good quality education—freely and compulsorily—to all children up to class V by 1975-76 and up to class VII by 1985-86. In the National Policy of Education (1986) and subsequent Programme of Action, implementation of compulsory education for all children up to 14 years of age within 1995 was committed. The Ramamurti Committee (1992) for review of the NPE ('86) suggested amendment of the Constitution to make Right to Education a fundamental right. But follow-up action in keeping all these promises and a host of many others was deadly lacking.

This unbridled listlessness faced a jolt of sorts in the Mohini Jain vs State of Karnataka case (1992) in which the Supreme Court observed:

*“The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. Both are supplementary to each other.”*

*“The right to life under Art. 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.”*

*“The fundamental rights ... cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. The right to education is concomitant to the fundamental right enshrined under Part III of the Constitution.”*

In the Mohini Jain case, while asserting the proposition that right to education flows directly from right to life and “is concomitant to the fundamental right”, in the case between J P Unnikrishnan and the State of Andhra Pradesh (1993), the apex court was quite forthright and unequivocal in their proclamation—

**“the right to free education up to the age of 14 years is a fundamental right.”**

This, by rule, has thereafter become the law of the land and is justiciable. The State, with no escape route, is now under legal mandate for providing all necessary facilities for implementation of the verdict and can be dragged to the court of law should there be any lapses.

A bit apprehensive perhaps, the rulers started exhibiting some interest in amending the Constitution ostensibly to offer this directive a more exalted and permanent status. For that, the United Front government at Delhi formed a committee headed by Muhiram Saikia, minister of state for HRD, along with the education ministers of all the States as members, to suggest whether the Constitution should be amended. The committee dispatched a go-ahead signal. HRD minister S R Bommai placed the 83<sup>rd</sup> amendment in the Rajya Sabha on the issue in 1997. The Tapas Majumdar Committee, constituted in 1999 to assess financial implications, forwarded an estimate of Rs 1,36,822 crore over a period of ten years (1998 - 2007). What they at the same time maintained that the amount appeared quite huge though, collection was not that difficult. But no serious effort was forthcoming from quarters concerned.

In December, 2002, more than nine years after the Unnikrishnan case verdict, the 86<sup>th</sup> amendment of the Constitution was brought before the parliament by the NDA government and the judgment was sought to be accommodated in the Constitution. But in the amendments made, State responsibility has been

surreptitiously diluted by a significant extent than what the court judgment stipulated.

Introduction of a new clause (Art.21A) restricts fundamental right to education for children between six and fourteen years only:

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State, by law, determine.”

Pre-primary education before the age of six years has been taken away from the ambit of fundamental right. It has, instead, been placed in Art.45, which after amendment, reads :

*“The State shall endeavour to provide early childhood care and education for all children while they complete the age of six years.”*

In sharing the total responsibility, guardians have also been roped in through introduction of a new clause 51-A(K) :

*“It shall be a fundamental duty of every citizen who is a parent or guardian to provide opportunities for education to his child/ward between the age of six and fourteen years.”*

### **BUSINESS AS USUAL**

For the new Art. 21A to be effective, promulgation of an Act was called for. ‘Free and Compulsory Education for Children Bill, 2003’ was drafted for the purpose. Public opinion was also sought. A modified version ‘Free and Compulsory Education for Children Bill, 2004’ resulted. Rounds of arguments and counter-arguments went on. Meanwhile, in 2004, the NDA was replaced by the UPA Government in Delhi. The UPA Government in their Common Minimum Programme pledged “to raise public spending in education to at least 6% of the GDP with at least half this amount being spent on primary and secondary schools.”

As a show of their special concern over education, the Prime Minister Dr Manmohon Singh, a great scholar himself, constituted, with much fanfare ‘The National Knowledge Commission (NKC)’ in 2005. The NKC—a high-level advisory body to the Prime Minister with the objective of transforming India into a knowledge society, submitted a number of recommendations for improvement of the Indian education system at all levels. Introduction of modern corporate culture has been emphasized. Quite a number of prestigious higher education centres have already come up. But the public spending in education, specially at the elementary level never went close to the committed figure. Nor has there been any remarkable let up in the woes of those attending lower level education centres under government management. The UPA Government prepared, in continuation of the earlier ones, the ‘Right to Education Bill, 2005’. Debate on it went on. The matter was left to a High Level Group for finalization. A model bill came out—Model RTE Bill 2006. Out of an apprehension of countless litigations and also excessive economic commitment, the Model Bill was sent to the provincial governments asking them to legislate the Bill themselves which they readily refused to oblige. The NKC also was not in favour of passing the buck and advised for a central legislation backed by central financial commitment. A new draft—‘The Right of Children to Free Compulsory Education Bill, 2008’—was drafted, but the UPA government failed to pass it during its tenure extended over five years.

## **THE BILL–2008**

The bill provides every child of the age of six to fourteen years the right to free and compulsory education till completion of elementary education in a neighbourhood school, which, if does not already exist, has to be established within three years from commencement of this Act. Children need not pay any kind of “fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.”

On the question of much debated pre-primary education, the Act makes provision for early childhood care and education for children between three and six years but leaves it to the good will of the “appropriate” government which has also to organise compulsory admission, good infrastructure including school building, teaching staff and learning equipment in conformity with the specified norms and to ensure quality elementary education for all.

Prohibition of physical punishment, payment of capitation fee and screening procedure, debarring teachers from private tuition are some of the other important features. But prohibition of holding back of a student in any class may have an adverse effect. Can the teachers be permitted to perform other types of economic activities—is yet another pertinent question.

In privately managed unaided schools and also in special schools like Sainik and *Navodaya* Schools, a minimum of 25 percent of seats would remain reserved during admission in class I for the weaker section residing in the neighbourhood. The government will reimburse the cost. For the rest 75 percent of the students, the principle of neighbourhood schooling and free education stands violated. The rule of formation of school management committees to look after the school affairs, will not apply in these schools. Nor will the restriction of vacant teaching posts exceeding 10 percent operate. All these incentives will promote private investment and commercialization of education. Teachers and quality of teaching are likely to suffer more.

Kothari Education Commission recommended the Common School System (CSS) through neighbourhood schools for providing quality education for all types of schools - government, private and others. This was accepted as a national policy in 1968, 1986 and 1992. The CSS would, the Commission believed, reduce the ‘gulf between the classes and the masses’. They observed :

*“The children of the masses are compelled to receive substandard education ... while the economically privileged parents are able to ‘buy’ good education for their children .... By segregating their children, such privileged parents prevent them from sharing the life and experiences of the children of the poor and coming into contact with the realities of life.”*

Living gracefully in a world of neo-liberal economy, the framers of the Bill and also those supporting it, appear to have ruled out all this egalitarian thought process as out-dated.

Further, if free and compulsory education is made a right of the children which, of course, is the objective, the right should be extended to all children up to 18 years of age, for, both in National Commission for Protection of Child Rights (NCPDR) and in the UN Convention on the Rights of the Child (UNCRC), a child has been defined as a human being below the age of 18 years. The NKC

also, recommended “universal secondary education within a maximum of ten years.”

Idea of transforming India into a knowledge society or making it a global leader in the twenty first century will remain a ludicrous day dream if education for the masses continues to be looked down upon. It has remained neglected in the hands of political establishment for too long. Same has been the fate of many welfare schemes, even after proper legislation, because of lack of political commitment. It is a criminal offence.

Art. 46 of the Constitution commands:

*“the State shall promote with special care the educational and economic interests of the weaker section of the people, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from all forms of exploitation.”*

Some two and a half centuries back John Adams wrote :

*“the preservation of means of knowledge among the lowest ranks is of much importance than all the property of all the rich men in the country.”*  
(Dissertation on the Canon and Feudal Law).

Will the newly elected law makers ‘endeavour’ to make any meaningful difference? □□□

1st May, 2009

**Table 1 : Net Enrolment Ratio (2007-08)**

State/UT	Primary Level	Upper Primary Level		
A & N Island	69.80	55.68		
Andhra Pradesh	78.84	57.50		
Arunachal Pradesh	-	65.93		
Assam	-	63.28		
Bihar	-	37.21		
Chandigarh	69.50	55.08		
Chhattisgarh	-	53.60	Dadra & Nagar Haveli	- 47.02
Daman & Diu	64.41	45.16		
Delhi	77.81	63.99		
Goa	47.87	40.39		
Gujarat	86.31	41.04		
Haryana	64.98	46.71		
Himachal Pradesh	91.78	79.36		
Jammu & Kashmir	79.90	58.67		
Jharkhand	-	45.11		
Karnataka	-	62.71		
Kerala	67.96	66.60		
Lakshadweep	84.93	62.87		
Madhya Pradesh	-	60.48		
Maharashtra	84.92	63.88		
Manipur	-	68.48		
Meghalaya	-	49.03		
Mizoram	-	71.50		
Nagaland	-	60.69		
Orissa	92.69	55.89		
Pondicherry	76.51	68.44		
Punjab	53.02	42.70		
Rajasthan	85.17	50.85		
Sikkim	95.38	35.75		
Tamil Nadu	97.76	88.05		
Tripura	-	73.69		
Uttar Pradesh	-	40.16		
Uttaranchal	90.37	58.26		
West Bengal	84.07	51.12		
<b>All States</b>	<b>95.92</b>	<b>52.55</b>		

Source : Flash Statistics, Elementary Education in India, NUEPA, MHRD

**Table 2 : Educational Development Index**

State/UT	Primary Level (up to V)		(EDI) and Rank (2007-08) Upper Primary Level (Up to VIII)		A & N Island	0.652	16	0.762
	EDI	Rank	EDI	Rank				
		13						
Andhra Pradesh	0.698	12	0.781	9				
Arunachal Pradesh	0.422	34	0.548	32				
Assam	0.461	32	0.568	30				
Bihar	0.389	35	0.424	35				
Chandigarh	0.730	6.	0.795	4				
Chhattisgarh	0.573	24	0.567	31				
Dadra & Nagar Haveli	0.588	23	0.723	18				
Daman & Diu	0.712	10	0.789	7				
Delhi	0.767	2	0.793	5				
Goa	0.677	15	0.754	14				
Gujarat	0.718	8	0.778	11				
Haryana	0.730	7	0.780	10				
Himachal Pradesh	0.642	19	0.747	16				
Jammu & Kashmir	0.648	17	0.708	20				
Jharkhand	0.456	33	0.527	33				
Karnataka	0.699	11	0.787	8				
Kerala	0.741	5	0.842	1				
Lakshadweep	0.756	3	0.821	2				
Madhya Pradesh	0.572	26	0.607	26				
Maharashtra	0.685	13	0.770	12				
Manipur	0.537	29	0.686	21				
Meghalaya	0.527	31	0.586	29				
Mizoram	0.679	14	0.731	17				
Nagaland	0.630	21	0.676	23				
Orissa	0.554	28	0.589	28				
Puducherry	0.799	1	0.816	3				
Punjab	0.712	9	0.751	15				
Rajasthan	0.593	22	0.714	19				
Sikkim	0.693	20	0.672	24				
Tamil Nadu	0.752	4	0.790	6				
Tripura	0.572	25	0.647	25				
Uttar Pradesh	0.568	27	0.603	27				
Uttaranchal	0.643	18	0.677	22				
West Bengal	0.53	30	0.441	34				