

The 'Fundamentals' Right to Education in India



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Researched and written by

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ISBN 81-8291-042-0

Designed & Published by


BOOKS *for* CHANGE
Dedicated to Development

139, Richmond Road
Bangalore – 560 025
Phone: 080-25580346, 25321747
Mobile: 94483171732
e-mail: marketing@booksforchange.net
website: www.booksforchange.net

BfC Production Team: Shoba Ramachandran, Rajeevan, Gokul and Shailaja

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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 the minimum of 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 Judge 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 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 is 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 anyway 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 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 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 to prioritise 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 study states that there is a strong justification for Centrally-led legislation that underlies the new Constitutional amendment to make education free and compulsory which will ensure a degree of uniformity in 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

Committee	– Committee on Economic, Social and Cultural Rights
ComRC	– Committee on the Rights of the Child
CRC	– Convention on the Rights of the Child
DPEP	– District Primary Education Programme
FCE	– Free and compulsory education
ICESCR	– International Covenant on Economic, Social and Cultural Rights
UDHR	– Universal Declaration of Human Rights
UN Special Rapporteur	– UN Special Rapporteur on Right to Education



Introduction

India is a signatory to three key international instruments that guarantee the right to elementary education – Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966 and the Convention on the Rights of the Child, 1989. The Indian State was also proud to join, albeit after 52 years of independence, the host of countries that provide for a constitutional guarantee to free and compulsory education (FCE)¹.

Historically, there has been a demand for a law on FCE in India and there have been several aborted Central-level legislative attempts towards this end. The last of such aborted attempts came in 2005–2006, i.e., the draft prepared by the Central Advisory Board of Education namely the Right to Education Bill, 2005. The chief opposition to this Bill came from private unaided schools that lobbied against a provision in the Bill that required a 25 per cent reservation for poor children in private unaided schools.² The opposition was so virulent that the Bill was modified to drop this provision.³ Subsequently, this altered version was circulated to all the States as a *Model Bill* for them to follow.

The provision for reservation in private unaided schools is certainly laudatory and plays a crucial role in bridging the gap between private and public schools. However, one should also acknowledge that in order to strengthen the campaign against inequitable schooling, the first step is to prioritise and strengthen government schools across the country. The problem of education today is largely attributable to a complete loss of faith in the quality of existing government schools. Therefore, purely with a view to achieving a strategic interim victory in people's struggle for the implementation of the right to FCE, the crisis of public schools and the problem of 'public versus private schools' may have to be temporarily separated. This would ensure that the private schools' lobby does not derail the entire process of legislating. To this end, legislations for FCE should be divided into two stages. First, any legislation for FCE should be limited to addressing issues pertaining to public schools, i.e., government schools. At a later stage, the first law should be supplemented by another that addresses private schools and the problems of inequality created by 'public versus private' schools. Therefore, all issues raised in this study should be first debated and threshed out in the context of public schools in order to build a very strong, clear policy regarding public schools across India. However, it should be noted that these issues are also relevant in the context of private schools (both aided and unaided).

In the context of elementary education, the phrase 'rights-based' is bandied about by policy-makers and civil society alike with very little inquiry into its meaning, content and the implication of using it. What does a rights-based model of elementary education entail? Why is there a demand or need for Central-level legislation for education? Can such a need be justified using the law? How do existing State-level legislations on elementary education fare in a 'rights-based' assessment? This paper explores these issues and presents a



concrete legal case for a Central level skeletal umbrella legislation giving effect to the Constitutional guarantee of FCE.

In exploring the above-mentioned issues, the reader is cautioned that this study does not seek to provide an *exhaustive* rights-based framework. Instead, it is an effort to raise issues for a national debate on a rights-based model of elementary education and does not seek to provide conclusive answers to all the problems faced by the current system of elementary education. While the writers acknowledge that a strong budgetary commitment is important to realise the right to education, the study itself does not examine budgetary allocations required for universalisation of elementary education. It is once again reiterated that this study merely seeks to *identify* some core non-negotiable minimum norms and provisions that form the backbone of a rights-based approach to education. In attempting to discuss these aspects, the paper does not provide a descriptive narrative or critique of all policies and schemes of the Central and State Governments.



En route to a Fundamental Right to Education in India

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

There is disagreement amongst scholars regarding the origin and nature of the education system in ancient India. Some of them hold the view that it is difficult to speak of ancient Indian education with certainty, as our information is based on the documents of 'unequal value and unequal date.'⁴ Nevertheless, it may be stated that education in India has been notorious for not being *socially inclusive*. Till the 19th century, it was largely considered a *privilege* restricted to persons at the higher end of the caste or class system.⁵ History is replete with examples of caste, class and gender-based discrimination in imparting education.⁶ Education was the sole privilege of the priestly castes (Brahmins) primarily because of the religious basis for the content of education, coupled with the elitist medium of instruction that was chosen to impart the knowledge. Admission to *Gurukulas* or *Ashramas* was not open to all. People from lower castes, and so-called 'shudras' (untouchables), in particular, were barred from receiving education.⁷ Buddhism and Jainism overthrew the dominance of classical Vedic education by the end of the eighth century A.D.,⁸ forcing education beyond the confines of hermitages. Thereafter, several learned Brahmins started *Pathshalas* (schools) in important towns where they received patronage. The Muslim rulers of the Indian sub-continent also did not consider education as a function of the State. It was perceived as a branch of religion and therefore entrusted to learned theologians called 'Ulemas'.⁹ Therefore, in ancient and medieval India, education was intertwined with religion. From the location of Gurukulas to excluding sections of the society from accessing education, the system of education was clearly not accessible to all persons.

The discovery of the sea route to India, in 1498, influenced the course of development of education in the Indian sub-continent.¹⁰ Although many scholars have commended the British policy of introducing modern education, it was not a spontaneous benevolent act.¹¹ The progress in education was facilitated with a view to serving their vested interests, i.e., to train Indians as clerks, managers and other subordinate workers to staff their vast politico-administrative machinery. However, education of the 'Indian masses' was largely neglected, and by the beginning of nineteenth century, it was in shambles.¹² For instance, while reporting about the situation of education in Bellary (presently in the State of Karnataka) in the early nineteenth century, 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.*' In



support of this, a missionary notice of 1856 stated that in all other parts of the country 'a school, either government or missionary is as rare as a lighthouse on our coast.... three or four schools existing among three or four million of people.'¹³ The neglect of education by the British was also acknowledged by the Wood's Despatch.¹⁴

In this context, the demand for FCE in India can be traced back to the early stages of the freedom struggle in British India. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy, in general, and in rural India, in particular.¹⁵ In the evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free education for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education.¹⁶ The Commission also recommended that schools should be open to all castes and classes.¹⁷

The first law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education for boys and girls in the age groups of 7–12 years and 7–10 years respectively.¹⁸ The first documented use of the word *right* in the context of elementary education appears in a letter written by Rabindranath Tagore to the *International League for the Rational Education of Children* in 1908.¹⁹ In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Council, albeit unsuccessfully.²⁰ The Legislative Council of Bombay was the first amongst the Provinces to adopt a law on compulsory education.²¹ Gradually, other Provinces followed suit as control over elementary education was transferred to Indian Ministers under the Government of India Act, 1919.²² 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.²³

In 1937, at the All India National Conference on Education held at Wardha, 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 constant excuse of lack of resources. The plan was to not only educate children through vocational training/manual training by choosing a particular handicraft, but also to simultaneously use the income generated from the sale of such handicrafts to partly finance basic education.²⁴ Furthermore, education was supposed to be in the mother tongue of the pupils with *Hindustani* as a compulsory subject.²⁵ Two other interesting features of the Wardha Scheme are as follows: First, within the 'basic education course', there were two divisions, the 'lower basic' or 'primary' corresponded to classes I–V. The 'upper basic' or 'post-primary' corresponded to classes VI–VII.²⁶ The division between primary and post-primary was created with a view to giving pupils the option of shifting to another form of education if they so desired after the first five years of 'basic education'.²⁷ Second, a minimum wage for teachers was stipulated under the Wardha Scheme. Based on these ideas, the Wardha Scheme of Education was formulated for rural areas. 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 (6–14 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 that the citizens of India should have a *right* to education, let alone a *fundamental right*.²⁸ The Constitution Assembly Debates reveal that an amendment was moved to alter the draft Article relating to FCE,



by removing the term *entitled* to ensure that it was merely a non-justiciable policy directive in the Constitution.²⁹ See the amendment moved by Pandit Lakshmi Kanta Maitra, *Constitution Assembly Debates, Volume 7*, 23 November 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: ‘Therefore FCE made its way into the Constitution as a directive principle of State Policy under the former Article 45,³⁰ whereby States were required to ensure that FCE was provided to *all* children till the age of fourteen’.

Demand for a fundamental right to education

The period spanning between 1950 to the judgement in *Unnikrishnan’s Case* in 1993 saw several legal developments. The Indian Education Commission (Kothari Commission) 1964–1968, reviewed the status of education in India and made recommendations. Most important amongst these is its recommendation of a *common school system*³¹ with a view to eliminating inequality in access to education. Immediately thereafter, the National Policy on Education, 1968 was formed. The 1968 Policy was the first official document evidencing the Indian Government’s commitment towards elementary education. The Policy dealt with issues of equalisation of educational opportunity and required the common school system to be adopted in order to promote social cohesion. However, it was not supported by legal tools that could enforce such policy mandates. Interestingly, it even required that special schools should provide a proportion of free-studentships to prevent social segregation in schools.

A second round of studies was conducted by the Ministry of Education in conjunction with the National Institute of Educational Planning and Administration, and this process contributed to the formation of the National Policy on Education, 1986. This policy, while re-affirming the goal of universalisation of elementary education, did not recognise the ‘right to education’. The 1986 Policy is also severely criticised for having introduced non-formal education in India.

The 1986 Policy was reviewed by the Acharya Ramamurti Committee in 1990, and this review process contributed to the revised National Policy on Education of 1992. The Acharya Ramamurti Committee recommended that the right to education should be included as a fundamental right in Part III of the Constitution. However, this recommendation was not implemented immediately.

A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in *Mohini Jain v State of Karnataka*,³² 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*.³³ 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 21³⁴... (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 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development’.



In the meanwhile, major policy level changes were made under the dictates of the IMF-World Bank Structural Adjustment Programme and the World Bank-funded District Primary Education Programme (DPEP) was introduced in 1994. Under DPEP, the national commitment towards FCE up to 14 years was reduced and primary education for the first five years was introduced. Further, the concept of multi-grade teaching³⁵ and para-teachers was also introduced.

While policy level changes had diluted the quality of FCE, the *Unnikrishnan Judgement* empowered people with a legal claim to FCE. Several public interest litigation petitions were filed in different High Courts to enforce the *Unnikrishnan Judgement* and acquire admission into schools. This created tremendous pressure on the Parliament and thereafter a proposal for a Constitutional amendment to include the right to education as a fundamental right was made in 1996. Accordingly, the Constitution (Eighty-Third) Amendment Bill was introduced in the Rajya Sabha in July 1997. The 83rd Amendment proposed that Article 21-A be introduced (fundamental right to education for 6–14 years), former Article 45 be deleted (the then existing directive principle on FCE) and Article 51-A(k) (fundamental duty on parents) be introduced. Between 1997 and 2001, due to change in Governments, the political will that was required to bring about the amendment was absent. In November 2001 however, 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. This Bill was passed in 2002 as the 86th Constitutional Amendment Act.

Currently, under Article 21-A of the Constitution, every child between the ages of 6–14 has a fundamental right to education, which the State shall provide '*in such manner as the State may, by law, determine*'. Early childhood care and education (for children in the age group of 0–6 years) is provided for as a directive principle of State Policy under Article 45 of the Constitution.



Determining the Content of Law

Coercive and non-coercive rules within a rights framework

It is evident that there is a fundamental right to FCE in India. However, apart from a mere mention of the age group for which such a right is guaranteed, Article 21-A does not throw any light on its *content*. The *content* of the right is left to be *regulated* by law. In order to implement the fundamental right to education through a *rights-based model* of legislation, one needs to determine the features of such a model. However, before examining the elements of a rights-based model of legislation, it may be apt to briefly discuss Amartya Sen's caveat with respect to legislating for the implementation of 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 of the content of the concerned human right. Legislations may also give rise to policy inaction on the ground that specific legal rules have been complied with.³⁶ 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 also be supplemented by other non-coercive rules for effective implementation of the human right.

This caveat needs to be taken into account during legislative processes and adequate safeguards need to be built into the law. 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 *progressive* changes are made to both from time to time.³⁷ In addition to such periodic review of policies, there should also be an institutionalised periodic review of the *implementation* of not only the policy but also the law. Furthermore, the quality of elementary education also depends on the quality of teaching staff, non-teaching staff, sensitivity and awareness of administrative staff in the various government departments. Therefore, training and developing the capacities of such personnel is a critical component of elementary education.

In particular, this caveat assumes great importance in the context of education in India because the fundamental right to education as enshrined in the Constitution is limited to the age group of 6–14 years. This not only excludes early childhood care and education 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 early childhood care and



education.³⁸ 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.

In its General Comment No. 13, the Committee on Economic, Social and Cultural Rights (the Committee) has tried to clarify and expand on the meaning of the phrase 'primary education'. The Committee has stated that primary education is that which caters to the 'basic learning needs of the children'. See Para 15, 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, 8 December 1999, available at, www.un.org, visited on November 13, 2005; herein after cited as GC No. 13.

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 early childhood care and education, then the State should draw up concrete schemes (non-coercive rules) to ensure that early childhood care and education is provided. Currently, in India, the *Integrated Child Development Scheme* provides for early childhood care and education. However, the nature of pre-school education, the quality of the services, as well as its linkage with formal school education need to be examined in great detail.

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. Broadly, it may be stated that such an approach *includes* four essential elements.

- It should evaluate claims of rights-holders and corresponding obligations of duty bearers.³⁹ In the context of education, there exists a relationship between the (State – child), (child – parent), (State – parent) and (State – community – child/parent).⁴⁰ The law should be very clear on how each of these relationships will be regulated.

The nature of the legally enforceable claim that a child would have against the State (officials, teachers, managerial staff and so on) should be outlined unambiguously, i.e., the *minimum entitlements* should clearly be specified in law. Minimum entitlements may be broadly categorised into *quantitative* and *qualitative* entitlements. There is no fixed and clear demarcation between quantitative and qualitative entitlements and the two categories may be said to be over-lapping. Entitlements such as period of compulsory education, meaning of free education and whether it entails freedom from payment of money, number of schools, distance from residence, quantification of education facilities, number of teachers, infrastructure requirements for school, minimum content of education, curriculum, pedagogy, guarantee against violence and exploitation in schools, and guarantee of safe school environment should be legally guaranteed as enforceable minimum norms.⁴¹

- 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.⁴² Capacity-building of rights-holders involves two fundamental elements
 - ◆ Being aware of the right
 - ◆ Creating an *enabling environment* to access such a right.



Therefore, awareness and dissemination of information to the public regarding their rights is an inherent part of a rights-model of elementary education. Capacity 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.

- There should be room for monitoring and evaluating outcomes and processes using human rights principles and standards.⁴³ For example, in the context of elementary education, the three non-negotiable principles that need to be adhered to are the principles of non-discrimination, equality⁴⁴ and child participation. These principles should also be used in evaluating the performance of the State in implementing the right to FCE. Further, 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.⁴⁵ In locating accountability, the duty-bearers should be clearly identified. A special grievance redressal mechanism should be in place 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 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.
- A rights-based model should incorporate the recommendations of international human rights bodies to inform each step of the process.⁴⁶ For example, under international law, the right to basic education also includes the right to early childhood care and education.

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.⁴⁷

- *The duty to respect* implies the duty to refrain from interference and the duty to ensure that measures that prevent access are not introduced by the State. This would necessitate the creation of an *enabling framework* of law that removes barriers (atleast those that can be identified) to education.⁴⁸ For example, in the context of school education, demand of documentary proof of residence, birth certificate and so on, which operate as huge barriers against admission into schools should be eliminated/mitigated.
- *The duty to protect* requires the State to ensure that the State/enterprises/individuals do not deprive children of their right. For example, the dereservation of plots reserved for government schools would be an act of depriving right to education. Similarly, engaging children as labour would deprive them of their right to remain in full-time regular schools.
- *The duty of the State to facilitate and fulfill human rights* implies that the State should pro-actively engage to facilitate and provide for the implementation of FCE. It is the duty of the State 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, States have the 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 also distinguishes the traditional truancy model of legislation from a rights-based model. Compulsory education laws have traditionally revolved around monitoring of attendance and penalty for truants/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.⁴⁹ The policing model of education and crime is theoretically opposed to a rights-approach because it is not *enabling*. It is premised on a fundamentally flawed assumption about human behaviour 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 the need for an additional source of income or additional help for household chores. Under the truancy model, a parent who does not send her child to school is automatically denounced as an *unwilling* parent who does not appreciate the benefits of formal school education. This *unwilling* parent is penalised under the truancy model. This policing model does very little to *change* the underlying causes of truancy.⁵⁰ In complete contrast to this, in a rights-based model, the State should take measures to strengthen the access right of the child by creating an environment which is 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, it has been shown that where crèches are provided at the worksite, the attendance of girl children dramatically improved. Such examples prove that policing attendance is a completely futile method of enforcing attendance. 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.

Equality and non-discrimination in school education

In addition to being enabling, the law should also guarantee *equality and non-discrimination* in education. The first component of equality is *equality of resources* and the problem of economically generated inequalities in education. In education, economic inequality leads to inequality in access, participation and outcomes in education.⁵¹ 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.⁵² 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 section and failures in another. Tackling such inequality is a very complicated process and requires intervention that may fall outside the purview of education *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*'. 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 documented and made public in order to facilitate public scrutiny and challenge, if required.

Another facet of equality in education to be addressed is the equality of respect and recognition in education, i.e., 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.⁵³ 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 may be said to operate 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, 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 may also need to acknowledge and provide for methods of participatory education planning at the Centre and State levels.

From this section, we conclude that in a rights-model of legislation for elementary education, all the facets of equality should be included and methods of facilitating such equality should be made part of the legal entitlements of a child.

Quantitative minimum entitlements

Entitlements, as mentioned before, may be divided into two categories – quantitative and qualitative. It should be noted that this categorisation is not intended to be in the nature of water-tight compartments.

One important aspect of *quantitative* entitlements is the concept of 'free' education. The meaning of 'free' in the international context is at variance with the manner in which 'free' is conceptualised in the Indian context. While the Committee is against direct costs such as imposition of fees, donations, capitation fees, etc., there seems to be some ambiguity with respect to 'indirect costs'. The Committee has laid down that indirect costs, though generally not permissible, may be allowed on a case-to-case basis.⁵⁴

There is no uniform international State practice on this issue. While assessing a demand that text books 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.⁵⁵ Textbooks are reportedly provided free of charge in Austria, Bulgaria, Denmark, Finland, Germany, Iceland, Italy, Japan, Sri Lanka and Sweden.⁵⁶ In some others, like Nepal and Russia, subsidies are provided for text books. Loan arrangements are also made in countries like Armenia where textbooks are reportedly loaned to pupils against payment of an annual fee and/or the parents have to contribute to the cost of textbooks.⁵⁷

The UN Special Rapporteur has recommended that 'free' would imply that all direct and indirect costs of education should be the responsibility of the Government. A similar approach is taken by the Committee on the Rights of the Child. The meaning of the term 'free' may also be inferred from the Observations of the Committee on the Rights of the Child (ComRC). For example, in its 27th Session, the ComRC 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.*'⁵⁸



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 a 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 all 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 the bare minimum requirements at home which would facilitate learning after school hours. The concept of free education must take into account such factors as well.

Other important aspects of minimum *quantitative* entitlements are related to minimum schooling years, infrastructure requirements, number of schooling hours, ratio of students to teacher, qualification of teachers, number of neighbourhood schools and so on. 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 after imposing an outer limit on the number of years in a bridge course and the options available to the child after the completion of the bridge course.

Qualitative minimum entitlements

Under the category of *qualitative* entitlements, one of the most complex aspects is the *curriculum* of education. In this context, it is apt to mention that the UN Special Rapporteur has stated that the right to education in international human rights law includes not only the right to '*human rights in education*' but also includes the '*right to human rights education*.'⁵⁹

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.⁶⁰ Therefore, any law on FCE should clarify the following aspects of compulsion:

- Compulsion of attendance and consequences of non-attendance
- Compulsion in curriculum.

Compulsory attendance within a rights-based framework

Compulsory attendance backed by punitive measures is the central attribute of the truancy model of legislation. As mentioned before, in contradistinction to the truancy model, a rights approach should *necessarily* be *enabling*. This implies that 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 Right to Education Bill, 2005 goes against the basic tenor of a rights-approach to education. The imposition of punitive measures is a classic illustration of Amartya Sen's argument that in the overzealous attempt to create a law enforcing a human right, the human right itself may be detrimentally affected.⁶¹ In their zeal to ensure school attendance, officials restrict their activity to strict enforcement of the law and refuse to address policy issues that fall outside the purview of law. The entire State machinery is more concerned with policing attendance rather than creating environments which are conducive to compulsory education 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. The truancy model coupled with the exceptions to compulsion is a method of *negating* 'social accountability.'⁶² A study of Statelaws reveals that the clause on exceptions to compulsion is often used as a method of completely negating State's accountability. For example, several State laws make 'absence of a neighbourhood school' an exception to compulsion.⁶³ Instead of imposing a *duty* on the State to *provide* neighbourhood schools, the benevolent State *exempts* parents from penalty where there are no neighbourhood schools. Such an approach is completely opposed to a rights-based model. In a rights-approach, a neighbourhood school would arguably be a minimum quantitative entitlement which is justiciable.

Compulsory education vs. freedom of religion

On the issue of compulsion and legal exceptions, one needs to examine the conflict between compulsory education and right to freedom of religion. At the very 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.⁶⁴ 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. This would imply that the fundamental right to freedom of religion [Article 25] is subject to the fundamental right to FCE [Article 21-A].

Three types of conflicts may arise between education and religion:

- Direct conflict where parents may want to provide purely religious education to their children. For example, where a child is inducted into the monastic order of a particular religion at the age of six and thereafter is being given religious instruction; the obvious question is whether such a practice should be exempted as a religious/cultural right or whether it may be viewed as violation of a child's fundamental right to primary education. In cases of such direct conflict, it may be argued that since Article 25 of the Constitution, is *subject to* Article 21-A, no parent would be in a position to choose religious education to the exclusion of free and compulsory formal secular education.
- Conflict, which has plagued many countries in recent times, revolves around the limits of religious expression in schools. For example, bans on wearing hijabs, schools displaying pictures of gods and goddesses of a particular faith, prayers conducted in a particular faith and so on. In such cases, there may be conflicts between a student's right to education, right to religion and the secular nature of the State especially in public schools.
- Conflict occurs where religious beliefs are opposed to the *curriculum* of education in government schools. The following case illustrates the need for clarity on the right to content of education, as part of the guarantee to FCE. 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*.⁶⁵ 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.⁶⁶ The State had introduced compulsory sex education in State primary schools as part of the curriculum. This change in the curriculum was introduced by a Bill passed by the Parliament. There were guidelines and safeguards against a) showing pornography, b) teachers giving sex education to pupils when they were alone, c) giving information on methods of sexual intercourse and d) 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 the 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.”¹⁶⁷ 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 parental’ 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 the above-mentioned Article 2.

The Danish Case assumes importance in the Indian context because there have been several controversies regarding curriculum in schools in the context of religion. For instance, the saffronisation of education by the Bharatiya Janata Party and Indian government’s policy of ‘modernisation of Madrasas (religious schools of Muslims)’⁶⁸ pose serious questions of curricular entitlements and safeguards. While these two examples raise several complex questions regarding curriculum, it also has a common thread – that of a right to secular education of all children, irrespective of their religion.

The saffronisation of education combines content regulation with the need for social accountability of the Government. A combination of a positive and a negative right to curriculum may adequately guard against problems such as saffronisation. Every child should have a right to a core non-negotiable content in education that is coupled with a duty of the State to refrain from arbitrarily interfering with such content. In defining the core minimum content of curriculum, it is advisable to prescribe the non-negotiable minimum in terms of competencies that need to be achieved at the end of each grade. The advantage of defining the core minimum in terms of competencies is that it gives States and teachers the freedom to contextualise learning within a specific local setting by creating localised syllabus. As regards the negative right, given the nature and increasing evidence of polarisation based on religion in India, it may be stated that right to education should at least include certain safeguards against propaganda-driven curriculum or syllabus. Therefore, guarding against arbitrary alteration or revision of existing curriculum would necessitate the creation of a systematic process and procedures for developing and revising syllabus at all levels – Centre, State, District and so on. Therefore, the negative right is procedural right against arbitrary State intervention, whereas the positive right is a substantive right to minimum competencies.

The case of madrasas raises the crucial question of balancing the interests of religious minority institutions and the right of the child to secular education. Madrasas are largely autonomous and therefore decide upon their curriculum, hours of study, duration of study and so on.⁶⁹ The Central Government’s policy of *modernising* madrasas⁷⁰ by introducing subjects such as mathematics and science has been criticised as being violative of not only Madrasas’ autonomy but also doing injustice to children’s right to secular education and free and compulsory full-time formal education. Without getting into the merits and demerits of modernising madrasas, it may be argued that while minority groups have the right to manage their own educational institutions, the same cannot be considered as having fulfilled the requirement of Article 21-A unless

- Certain core minimum in terms of competencies is adhered to
- There are procedural safeguards against arbitrary alteration of syllabus.



Compulsion and medium of instruction

Another controversial issue in the Indian context would be medium of instruction and right to education. 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. This issue has been examined by the European Court of Human Rights in the *Belgian Linguistic Case*.⁷¹ 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.⁷² The Court further held that non-provision of education in a particular language of instruction does not amount to discrimination based on language.⁷³

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, the latter may be a genuine barrier to school education. For example, in Manipur, several Naga children are being educated in a language and curriculum that is completely alien to them. As a result of this, the Naga underground movement has issued threats to the Manipuri schools demanding that the Naga population in these schools be taught in a manner that is acceptable to the Nagas. This is illustrative of the fact that in order to make elementary education an effective right, the law should necessarily address the language issue in such a manner that it *enables* all children to attend schools.

Role of the community within a rights framework

The law would also need to lay down the kind of relationship the State should create with respect to ‘State–communities–children’ in the context of education. For example, how would the law respond to employers who engage children in labour; how would the law respond to the government’s slum demolition drives which completely ruin a school-going child’s ability to attend schools? These two examples are classic cases of third party intervention that hinders a child’s right to education. The State’s duty to *protect* the right would imply that the State should *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. Using such creative legal tools, the law could create avenues for legal claims to be made by children viz-a-viz such imperfect obligations.

Therefore, this section has attempted to identify some factors that form the backbone of a ‘rights-based’ approach to elementary education. It has also provided a brief insight into some very controversial issues that need to be debated and discussed in order to arrive at a rights-based model of elementary 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 outlined above, the model of legislation becomes crucial. For example, how can a child in Sikkim and a child in Kerala be guaranteed this core non-negotiable minimum right 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. *Prima facie*, there exists a 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 the existing State-level laws on elementary education.

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 even pay lip service to the concept of compulsory elementary education.

All the State laws penalise poor parents for their children's poor attendance in schools and are in no way *enabling*. Many of them even criminalise non-attendance and make the *offence* punishable with a fine. Clearly these laws are based on the truancy model of education. In addition, most of the State 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 [emphasis provided by authors]*",⁷⁴ 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 West Bengal Primary Education Act, 1973; the Bombay Primary Education Act, 1947; the Tamil Nadu Compulsory Primary Education Act, 1994; the Karnataka Education Act, 1983; the Rajasthan Primary Education Act, 1964; Delhi Primary Education Act, 1960; the Kerala Education Act, 1958; the Assam Elementary Education Act, 1974; Sikkim Primary Education Act, 2000; Punjab Primary Education Act, 1960; and the Andhra Pradesh Education Act 1982 fall under this category. Surprisingly,



even post – Article 21-A, most states continue to maintain on paper that compulsory education for all children is merely *permissive*, and this is clearly unconstitutional. The extent of State inaction is evidenced by the very fact that even after four years of the Constitutional amendment in 2002, they continue to be governed by obsolete laws which are clearly violative of the Constitutional mandate.

Out of the remaining laws that we analysed, the Jammu and Kashmir School Education Act, 2002; the Himachal Pradesh Compulsory Primary Education Act, 1997; and the Madhya Pradesh Jan Shiksha Adhiniyam, 2002 make primary education compulsory. However, out of these three, the Himachal Pradesh Act again seems to directly contravene the mandate of the Constitution as it defines a child as a person between the age of 6 and 11.

This leaves us with the Jammu and Kashmir law and the Madhya Pradesh law. Apart from defining a child as aged between 6 and 14, the Jammu and Kashmir law does not specify any other details or minimum entitlements. It does not affirm any principle of human rights law. It fails to provide for a grievance redressal mechanism or monitoring method.

The Madhya Pradesh law makes compulsory education mandatory for all children from the age of 6–14 years. It also refers to the principle of non-discrimination. 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. Arguably, this too would directly violate the constitutional mandate of free education for all children between the age of six and fourteen.

Therefore, the current position regarding State laws on compulsory education is that none of them has been amended to bring it in line with the basic guarantees provided by the Constitution. In addition, all of them fall squarely within the truancy model of legislation.

This analysis clearly demonstrates:

- There is no uniformity amongst State level laws
- None of the State laws uses a rights-based approach to elementary education.

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

Education transferred from state List to concurrent list

Having clearly demonstrated that the State laws lack uniformity and are also clearly violative of the Constitutional mandate, the question that needs to be examined is how can we ensure *uniformity* in the enforcement of standards in elementary education? In order to answer this, it is important to briefly look into the legislative powers that are vested with the Centre and State with respect to elementary education.

The Constitution, which is based on the principle of federalism, adopts a three-fold distribution of legislative powers. Different subjects for legislation find mention in one of the 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,⁷⁵ both the Parliament and the State Legislatures have the power to legislate over entries in the Concurrent List.⁷⁶ The three identified rationales⁷⁷ underlining the placement of certain entries in the Concurrent List are:

- To secure uniformity in the main principles of law
- To guide and encourage local efforts



- To provide remedies for *mischief* arising in the local sphere, but extending, or liable to extend beyond the boundaries of a single province.⁷⁸

Education, which was originally in the State List, was subsequently transferred to the Concurrent List by means of a Constitutional amendment in 1976. 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.”⁷⁹ 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 advocated for Central control over elementary education in order to build a strong uniform cohesive policy on education:⁸⁰

“...I feel that my proposal for education throughout the country should be controlled from the Centre will have to 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, fissionary, 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 the Centre’s intervention in the field of elementary education.

Countering the defeat of the constitutional amendment of 1976

Having emphasised upon the *purpose* of this amendment, a question arises as to the legal tools that are available to the Centre for standard-setting, through which basic norms on FCE can be enforced in States. 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(2) of the Constitution, i.e., in the event that the States enact a law, the provisions of the State law should not conflict with those of the Central law on the same subject. Where there is no Central law on a particular subject



in the Concurrent List, the State Legislature is competent to legislate in that field.⁸¹ Till date there has been no Central law on elementary education. Jammu and Kashmir, Meghalaya, Madhya Pradesh, Andhra Pradesh, Punjab, Sikkim, Delhi, Rajasthan, Kerala, Tamil Nadu, Karnataka, Bihar, Himachal Pradesh and West Bengal have enacted laws on the subject of elementary education within their respective States.

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.⁸² The latest effort in 2005–2006, as mentioned earlier, has been abandoned by the Centre and the Centre has instead passed the buck on to the States. However, the Centre has been magnanimous enough to circulate the 2005 Bill as a Model Bill 2006 for States to emulate (see Annexure for Model Bill). It is important to decry this development as a complete eye-wash and legislative fraudulence since this Model Right to Education Bill *has no legal value* whatsoever. The Model Bill is not only unenforceable but also does not affect the legality of the existing State laws. The farce of terming the Right to Education Bill, 2005 as a Model Bill is evidenced by the fact that even after it was circulated amongst all the States; the Minister for Education from Maharashtra stated that ration cards of parents of out-of-school children would be cancelled.⁸³ This is despite the fact that the so-called *Model Bill* clearly envisages only one punitive measure for compelling attendance, which is mandatory community service by parents.

In complete contrast to the unenforceable ‘model’ Bill, legally enforceable model rules 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) if 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 also important because under the Constitution, after the 73rd and 74th Amendment, the Panchayat Raj Institution and the urban local self-government bodies have also been given importance in the context of education.

The Central core minimum standards should be such that it enables need-based localised interventions. For example, Karnataka has taken the progressive measure of developing 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. In order to supplement the skeletal legislation, the Central Act may provide for the enactment of Model Rules that have statutory force, which would be binding on States in the event of State inaction with respect to delegated legislation. In enacting such a skeletal legislation, the limitations of the law should be kept in mind and change should be progressively brought about. The law should also make provisions for institutionalising its periodic review with a view to facilitating progressive changes that address its own lacunae.

From the above discussion, it is amply clear that in order to ensure that there is a uniform standard for elementary education across all States, the Centre should direct its efforts at enacting a skeletal umbrella legislation which follows the rights-based approach described earlier.



Conclusion

Before enacting a skeletal legislation supplemented by statutory Model Rules, the Centre should undertake a detailed evaluation of all existing educational policies and schemes using the rights-based approach. There is an urgent need to consolidate the experiences of providing elementary 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 also be determined only after the policy itself is evaluated and updated. The following aspects provide some guidelines to define the non-negotiable minimum matrix of rights, which may be used to analyse the existing policies and developing institutional framework for implementation:

- Identifying minimum quantitative entitlements
- Identifying minimum qualitative entitlements
- Respecting non-negotiable principles to implement the entitlements like non-discrimination, equality and child participation
- Provision for capacity building of the right-holders as well as the duty-bearers.
- 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
- Fixing social accountability on 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.

A clear rights-based policy should then be translated into a skeletal Central legislation, which is supplemented by Model Statutory Rules that will operate in the absence of State Rules. This 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 S Singh, 'Right to Education Only on Paper', *The Statesman*, October 22, 2006.
3. 'Private Schools in India Wriggle Out of 25% Seats for the Poor', *The Economic Times*, August 8, 2006.
4. T N Siqueira, *The Education of India* (Bombay: Oxford University Press, 1952) at 3.
5. J P Naik, *Equality, Quality and Quantity, The Elusive Triangle in Indian Education* (New Delhi: Allied Publisher, 1975) at 1–2.
6. See B C Rai, *History of Indian Education* (Lucknow: Prakashan Kendra, 1977) at 39, 51–54, 59 for examples of such discrimination.
7. K Motwani, *Manu Dharma Sastra* (Madras: Ganesh and Co., 1958) at 3.
8. R Thaper, *A History of India*, Volume I (Middlesex: Penguin Books, 1966) at 63–68, 153–161.
9. S M Edwardes and H L O Garrett, *Mughal Rule in India* (New Delhi: Asia Publication Services, 1979) at 221.
10. S Nurullah and J P Naik, *A History of Education in India* (Bombay: Macmillan, 1943) at xi; herein after cited as Nurullah and Naik.
11. S N Mukerji, *History of Education in India: Modern Period* (Baroda: Acharya Book Depot, 1966) at 16.
12. Nurullah and Naik, *supra* note 10, at 42.
13. B B Misra, *The Indian Middle Classes* (New Delhi: Oxford University Press, 1961) at 160.
14. K G Siayidian et.al., *Compulsory Education In India* (Delhi: Universal Book and Stationery Co., 1966) at 19; herein after cited as Siayidian.
15. Siayidian, *ibid* at 26–40; S S Diksit, *Nationalism and Indian Education* (Jullunder: Sterling Publications, 1966) at 136–150; M K Srikantaiah, *Problems and Prospects of Rural Education – A Sociological Study* (unpublished PhD thesis, on file with Bangalore University, Bangalore, 1987) at 4–48.
16. 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 heretofore."
17. *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."
18. 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.
19. *Id.*
20. Literacy Committee Report, 1993, *supra* note 18.
21. Literacy Committee Report, *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.
22. Literacy Committee Report, *supra* note 18. See also Weiner, *id.*
23. S P Mookerjee, 'Education in British India', 233 *Annals of the American Academy of Political and Social Science* 30 (1944) at 32.
24. 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, <http://ca.geocities.com/jill.sandwell@rogers.com/shoreditch/pages/gandhi.pdf>, visited on July 28, 2006.



25. First Wardha Committee Report, *id.*
26. B G Kher et al., *Report of the Wardha Education Committee of the Central Advisory Board of Education, 1939*, available at <http://www.education.nic.in/cd50years/g/52/5T/525T0101.htm>, visited on July 28, 2006.
27. First Wardha Committee Report, *supra note* 24.
28. See for instance the views of Sir S Radhakrishnan, *Constitutional Assembly Debates, Volume 1*, 11 December 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, *Constitution Assembly Debates, Volume 7*, 23 November 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 articles 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): "*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. 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/anil_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. AIR 1992 SC 1858.
33. (1993) 1 SCC 645.
34. Article 21 states as follows: 'No person shall be deprived of his life or personal liberty, except according to procedure established by law'.
35. 'Multi-grade' teaching refers to a system of teaching students of different ages, grades and abilities in the same group. For example, a single teacher teaching students of grades 1 and 2 in the same class. Multi-grade teaching is different from 'multi-age-within-grade' teaching i.e. where there are wide variations within age in the same grade.
36. 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.
37. 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.



38. The right to education has been recognized 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.

In its General Comment No. 13, the Committee on Economic, Social and Cultural Rights [the Committee] has tried to clarify and expand on the meaning of the phrase 'primary education'. The Committee has stated that primary education is that which caters to the 'basic learning needs of the children'. See Para 15, 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, 8 December 1999, available at, www.un.org, visited on November 13, 2005; herein after cited as GC No. 13.

'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 Committee on Economic, Social and Cultural Rights 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.

39. *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; hereinafter cited as U N Understanding, as cited in 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), available at http://www.nyuhr.org/docs/WPS_NYU_CHRGJ_Narula_Final.pdf.
40. See K Halvorsen, 'Notes on the Realization 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 Sen, *supra* note 36 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.
- 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*.
41. 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 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.
42. U N Understanding, *supra* note 39.
43. See Narula, *supra* note 39 at 8 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'.
44. Halvorsen, *supra* note 40 at 342.
45. 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.
46. U N Understanding, *supra* note 39.
47. 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). See also Committee on Economic, Social and Cultural Rights, The Nature of State Parties Obligations, General Comment No. 3, E/1991/23., 14 December 1990, available at, www.un.org, visited on November 13, 2005.
48. Halvorsen, *supra* note 40 at 360–61.
49. 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.



50. *Tyack and Berkowitz, Ibid* at 34, 42.
51. 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).
52. See K Lynch, 'Solidarity Labour: Its Nature and Marginalization', 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.*
53. Lynch and Baker (2005), *ibid* at 147.
54. Para 7, Committee on Economic, Social and Cultural Rights, *Plans of Action for Primary Education*, General Comment No. 11, E/C.12/1999/4, 10 May 1999, available at www.un.org, visited on November 13, 2005.
55. 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.
56. 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 www.un.org, visited on November 13, 2005.
57. *Id.*
58. Para 209, Committee on the Rights of the Child, *Report of the Twenty-Seventh Session*, CRC/C/108, 23 July 2001, available at <http://www.unicef.org/crc>, visited on November 13, 2005. [herein after cited as CRC 27th Report]
59. Para 9, *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.
60. There are several cases which have been dealt with by the US Supreme Court, which are beyond the scope of this paper.
61. See Sen, *supra* note 36.
62. 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.
63. 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.
64. 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."
65. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Application no. 5095/71; 5920/72; 5926/72, judgment dated 7 December 1976, available at <http://www.echr.org> [herein after cited as *Pedersen Case*].
66. Article 76 of the Danish Constitution as cited in para 15, *Pedersen Case, id.*
67. Article 2 of Protocol No. 1 to the European Convention on Human Rights as cited in para 49, *Pedersen Case, id.*
68. For more information on Madrasas, see *infra* note 76.
69. See A U Khan et al. 'To Kill the Mocking Bird: Madrasah System in India: Past, Present and Future', at 17, available at <http://www.indiachinacentre.org/bazaarchintan/pdfs/madrasas.pdf>, visited on October 30, 2006, herein after cited as Khan; S Jinghran, 'Madrasa Modernization Programme: An Assessment', *Economic and Political Weekly*, December 31, 2005.
70. See Policy introduced by the Ministry of Human Resource Development, Government of India in 1994.
71. *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, judgment dated 23 July 1968, available at <http://www.echr.org> [herein after cited as *Belgian Linguistic Case*].
72. Para 6, *Belgian Linguistic Case, ibid* at p. 29.
73. Para 9, *Belgian Linguistic Case, ibid* at p. 30.
74. Weiner, *supra* note 21 at 101.
75. 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.



76. *Id.*
77. 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 Pub, 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”.*
78. See P M Bakshi, ‘A Background Paper Concurrent Powers of Legislation under List III of the Constitution’, available at lawmin.nic.in/ncrwc/finalreport/v2b3-3.htm, visited on July 28, 2006.
79. 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.
80. See the views expressed by Mr Frank Anthony, *Constitution 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.
81. *State of Karnataka v. M Madappa*, (1996) 9 SCC 284.
82. 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).
83. ‘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.



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 This is despite the fact that the so-called <i>Model Bill</i> clearly envisages only one punitive measure for compelling attendance, which is 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
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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



