

# Right to Education vs. Right to Education Act

Anil Sadgopal

## **A Brief Overview of Denial – From British Raj to the Modern Indian State**

The debate on Right to Education was initiated in India by Mahatma Jotirao Phule more than 125 years ago when a substantial part of the memorandum presented by him to the Indian Education Commission (i.e. the Hunter Commission) in 1882 dwelt upon how the British government's funding of education tended to benefit "Brahmins and the higher classes" while leaving "the masses wallowing in ignorance and poverty." Mahatma Phule drew attention to the irony that this happens when most of the revenue collected by the British government is generated from the output of the labour of the masses themselves. Things have not fundamentally changed since then. In 1911, when Gopal Krishna Gokhale moved his Free and Compulsory Education Bill in the Imperial Legislative Assembly, he faced stiff resistance. Instead of supporting the Bill, the members representing the privileged classes from Mumbai, Maharajas and other rulers from princely states and the big landlords from feudal areas talked of the conditions in the country not being ripe for such a Bill and that haste should be avoided. The Maharaja of Darbhanga from Bihar collected 11,000 signatures on a Memorandum from princes and landlords expressing concern about what would happen to their farm operations if all children were required to attend the school! At the National Education Conference held at Wardha (Maharashtra) in 1937, Mahatma Gandhi had to use all the moral powers at his command to persuade the Ministers of Education of the newly elected Congress governments of seven provinces to give priority to Basic Education (*Nai Talim*) of seven years and allocate adequate funds for this purpose. The ministers kept on pointing out that there was no money.

During the Constituent Assembly debates, a member contended that the commitment made in the draft Article (later to be known as Article 45) to provide "free and compulsory education" to children *up to 14 years of age* should be limited to *only 11 years of age* as India would not have the necessary resources. The dilution would have been made but for Dr. Babasaheb Ambedkar's clarity of mind that it is at this age of 11 years that a substantial proportion of children

become child labourers. He forcefully argued that the place for children at this age in independent India should be in schools, rather than in farms or factories. The rhetoric of ‘resource crunch’ for education of the masses guided the Constituent Assembly for even a more crucial decision. The report of the Sub-Committee on Fundamental Rights placed the aforementioned provision on education among the list of justifiable Fundamental Rights. The recommendation was considered by the Advisory Committee of the Constituent Assembly (21-22 April 1947) chaired by Sardar Vallabhbhai Patel<sup>1</sup>. The Chairman directed the Advisory Committee to “restrict [ourselves] to the rights which are actually considered necessary ... and not go into detailed description of theoretical rights which are not enforceable at all.” Taking cue from this caution, a member wondered, “Suppose the government has no money?”. Another opined that he would like “deletion of this clause”. Eventually a compromise was worked out. The provision was shifted to the list of Non-Justiciable Fundamental Rights (later to be termed as Directive Principles of State Policy i.e. Part IV of the Constitution). In this decision of the Constituent Assembly, we have a trailer to the mindset of the emerging Indian State which continues to determine the formulation of policies and legislations to date.

Look at this. While reviewing the feasibility of the Draft Right to Education Bill in January 2006, the High-Level Group of Ministers, constituted by the Prime Minister, recorded that the Bill’s “requirement of an additional Rs. 50,000 crores per annum is enormous... there would be need to scale down the norms and time frame proposed...”<sup>2</sup> These considerations led to the Central Government’s decision in June 2006 not to have a central law at all and shift the entire obligation flowing out of the Constitution to the States, thereby negating the requirements of the concurrent status of education!<sup>3</sup> It is another matter that the central government was compelled to reverse its anti-Constitutional stance as a result of the public protests and state government’s refusal to shoulder the entire financial burden. During the same period, however, the Indian State did not hesitate at all to (a) write-off the bank loans of corporate houses as ‘non-performing assets’ amounting to Rs. 45,000 crores<sup>4</sup>; (b) waiving off taxes and providing hidden subsidies to India Inc. which alone would amount to a loss of several thousand crores of rupees per year; (c) subsidizing private schools and colleges through subsidized lands, tax exemptions and training teachers for them at public costs in the name of Public-Private Partnership (PPP)<sup>5</sup>; and (d) allocating almost twice the above amount, though denied for providing Right to Education to 20 crore children in the 6-14 year age group, for a 12-day extravaganza called Commonwealth Games! In this context, it would be worthwhile to quote from the widely acclaimed Tapas Majumdar Committee Report (January 1999):

From being an *incremental* developmental goal in the process of education for all, UEE [Universalisation of Elementary Education] has, in consequence of the [Supreme Court's Unnikrishnan] judgment, now become a *justiciable entitlement* of every Indian child . . . . . entitlements sanctioned by the Constitution cannot be deferred by the State at its convenience . . . . . The State has to make the necessary reallocation of resources, by *superseding* other important claims, if necessary, in a manner that the justiciable entitlement can become a reality. This may call for restructuring of all government spending, forcing the State to cut down even on spending that it would otherwise consider as essential, but which was not covered by any of the Fundamental Rights guaranteed by the Constitution. (italics added)

Clearly, *it is not a matter of paucity of funds at all but a matter of socio-political priorities of the Indian State*. Yet, the State has consistently denied the Fundamental Right to education of the 6-14 year age group children for the past six decades claiming paucity of funds while readily transferring resources for causes in the interests of India Inc., *though none of these causes are covered or protected either by the Fundamental Rights or the Directive Principles of the State Policy*.

### **The Constitutional Vision of Education and Its Denial**

The comprehensive vision of the Constitution relating to education emerges when the Article 45, though placed in Part IV, is viewed in conjunction with other provisions of the Constitution. The Article 45 directed the Indian State to “provide within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years” (the *original* Article 45<sup>6</sup>, Part IV). In Article 46, the State is directed to “promote with special care the educational and economic interests . . . . of the Scheduled Castes and the Scheduled Tribes . . . .” As per Article 39 (f) in Part IV, the State shall “direct its policy towards securing . . . that children are given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

The Article 45 has been interpreted<sup>7</sup> to include (a) early childhood care, balanced nutrition, health support and pre-primary education (kindergarten, nursery) for children below six years of age; and (b) *elementary* (not *primary*) education of eight years (Class I-VIII) for the 6-14 age group children. Although not enforceable as a Fundamental Right<sup>8</sup>, the sense of urgency attached to the fulfillment of Article 45 “*within a period of ten years from the commencement of the Constitution*” was remarkable. This was the only Constitutional provision with a time frame. *The time frame ended in 1960!*

The post-independence history stands witness to the neglect and disdain with which this critical provision has been treated by the State.

Table 1  
**Persistent Violation of Original Article 45**  
*The Shifting Goals of Universal Elementary Education (Class I-VIII)#*

Source Document	Area & Level@ (Only if specified)	Declared Goal(s) (Years)
Constitution of India (1950)	-	1960
Report of the Education Commission (1964-66)	Class VII/ VIII (In urban areas/ advanced states)	1975-76
	Class V Class VII/VIII (Rest of India)	1975-76 1985-86
National Policy on Education (1968)	-	'Early Fulfillment of Article 45?'
National Policy on Education (1986)	Class V	1990
	Class VIII	1995
National Policy on Education (1986) (Modified in 1992)	-	Before 21st Century
DPEP+,* (1993 onwards: various years)	Class IV/V (In 18 States, 280 Districts)	2000/03
Sarva Shiksha Abhiyan (2000), Later incorporated in X FiveYear Plan (2002-07)	-	2010
UNESCO Global Monitoring Report (2002)*	Class IV/V	Not even by 2015!
Sarva Shiksha Abhiyan (Modified in 2007), XI Five-Year Plan (2007-12)	-	None
The Right of Children to Free and Compulsory Education Act, 2009	-	None

#The target year of universal provision of Early Childhood Care & Education (ECCE) and Pre-Primary education is not considered here as this has never been viewed as a goal by the Government.

@If not specified, the goal of UEE implies education up to Class VIII to cover the whole of the country, except in some states/UTs , where still not upgraded, it may end at Class VII.

+World Bank-sponsored District Primary Education Programme (DPEP) of the 1990s.

\*Limited to only Primary Education of four or five years (Class I-IV/V), as required under the World Bank-UN framework in the Jomtien Declaration (1990).

At present, more than half of the 6-14 age group children are denied elementary education of eight years.<sup>9</sup> It is noteworthy that, unable to face this

harsh reality, the government falsely equates the category of “never-enrolled children” with the ambiguous category of “out-of-school children”. The official Sarva Shiksha Abhiyan (SSA) reports on either of these categories do not include the much larger category of those children (the *so-called* ‘drop-outs’) whom the State failed to provide elementary education (i.e. up to Class VIII), as required by the *original* Article 45. The status of such provisions in the case of the Scheduled Castes (SCs) and the Scheduled Tribes (STs), noted in Article 46 for ‘special care’, is much worse. For instance, compared to the ‘drop-out’ rate of 45.9 percent by Class VIII for all categories of students in the year 2006-07, the ‘drop-out’ rates for SCs and STs were reported to be 53.1 percent and 62.5 percent respectively (Statistics of School Education, MHRD, Govt. of India, 2006-07, Statements 15-17). In order to estimate the percentage of “out-of-school children” in any age group, both the categories of “never-enrolled children” and “drop-outs” at the specified educational level (e.g. Class VIII) would have to be added up – a practice consciously not undertaken by the State.

The data on the provision of early childhood care, nutrition, health and pre-primary education for children below six years of age are either too scanty or unreliable to deserve reference. Here, too, the limited role of ICDS through *anganwadis* in providing some nutritional supplement is misperceived as being equivalent to the aforementioned holistic vision emerging out of Article 45 read along with Article 39 (f).

There are *at least* two significant dimensions flowing out of the Constitution that elaborate and enrich the vision of education. First, the Preamble to the Constitution provides the overall framework within which the Article 45 was envisaged. This means that education must be directed to build citizenship for a democratic, socialist, secular, egalitarian and just society. Second, education must be in consonance with Articles 14, 15(1) and 16 of Part III which respectively guarantee equality before law, prohibit the State from discriminating “against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them” and secure equality of opportunity in matters of public employment. Both the Articles 14 and 15(1) have far-reaching implications for formulation of policies and legislation relating to education. By reading Article 45 in conjunction with Articles 14 and 15(1), the Right to Education movement inferred more than ten years ago that the State is duty bound to build a system of education that provides *education of equitable quality* to all children without any discrimination whatsoever!

It follows that elementary education must be provided in such manner *as not to violate other provisions* of the Constitution, especially Fundamental Rights. For instance, educational planning needs to be *consonant with the*

*principles of equality and social justice* enshrined as Fundamental Rights. It would suffice to state here that any programme that provides education of varying quality to different sections of society and denies education of equitable quality is not allowed by the Constitution. The policy discourse on education until the formulation of the National Policy on Education, 1986 (NPE-1986), at least in principle, envisaged the goal of UEE in conjunction with the goal of moving towards *education of equitable quality*. The NPE-1986 is perhaps the first policy document since independence that attempted to de-link Universalisation of Elementary Education (UEE) from the agenda of ensuring schools that are designed to provide equitable quality education for all. It declared that, for almost half of the children in the 6-14 age group who were at the time in the “out-of-school” category, a stream of non-formal education (NFE) of inferior quality shall be instituted instead of sending them to regular schools (NPE-1986, Sections 5.8 to 5.12)<sup>10</sup>. The policy also decided to institute a layer of schools viz. Navodaya Vidyalayas for a handful of children in each district whose quality would be far above that of the best government schools then existing (with the exception of the Central Schools and some other such specific category schools). Another decision of far-reaching impact concerned the appointment of NFE instructors in place of the regular qualified trained well-paid teacher. Such policy decisions constituted the framework of multi-layered school system, rooted in discrimination. This system of parallel layers was to be promoted through the World Bank-IMF’s neo-liberal schemes (like DPEP) of the 1990s and by SSA in the previous decade. NPE-1986 thus marked the beginning of the neo-liberal agenda in school education wherein the violation of the Constitution became a practice, with the Parliament looking the other way!

At this juncture of our discussion, it would be relevant to point out that the ‘The Right of Children to Free and Compulsory Education Act, 2009’ (for convenience, henceforth called the ‘RTE Act’ or simply the ‘Act’) is embedded in the framework of a multi-layered school system and is designed not only to sustain this system but also promote it. It recognizes four distinct categories of schools in Section 2 (n) viz. (i) government or local authority schools; (ii) privately managed but fully or partly government-aided schools; (iii) elite government schools of specific categories such as Central Schools, Navodaya Vidyalayas, Sainik Schools, XI Plan’s 6,000 model schools being set up by the central government and similar schools of the state/UT governments such as Sarvodaya and Pratibha Vikas Vidyalayas (Delhi State), Residential Schools (Andhra Pradesh) and Utkrishta Vidyalayas (Madhya Pradesh); and (iv) private unaided schools. Within each of these four categories, there is going to be a whole range of schools – from (a) those government and private schools that barely fulfill the infrastructural norms

as required by the Schedule in the Act to (b) those schools, again both government and private, which will be reasonably well-endowed (e.g. with Pupil-Teacher Ratios of 1:20 to 1:25 and teachers for fine arts, physical education and computers) and, finally, to (c) those which will arrogantly claim to be ‘over-endowed’ with air-conditioned class rooms, swimming pools, round the clock internet-coverage and International Baccalaureate affiliation! The Act will not only co-exist with this disparity-based multi-layered school system but would also legitimize it in various ways. For instance, this is precisely what the much-hyped provision of at least (or up to) 25 percent reservation for children of “weaker section and disadvantaged group” in the latter three categories of schools along with a provision to reimburse them (Section 12) is designed to do (see Table 3, Question No. 6). In this context, the following three questions can be posed, keeping in view the Constitutional framework:

1. Can there be a Fundamental Right to inferior quality education?
2. Can there be a Fundamental Right to unequal education?
3. Can there be a Fundamental Right to discrimination-based education?

The answer to each of these questions is clearly going to be in the negative. It would be, therefore, only rational to ask how can an Act which violates the basic tenets of the Constitution in more ways than one be allowed by the Parliament. The Parliament, however, has passed this Act without a single dissenting vote, notwithstanding 30 odd amendment motions moved steadfastly by two CPI (M) MPs but duly rejected. The President of India also promptly signed it, ignoring public protests and Memorandums presented to her. Our concern regarding the act of the legislature and executive in contradiction with the Constitution has ramification far beyond the domain of education. In order to both comprehend and grapple with its implications for Indian democracy, we must learn to examine this phenomenon from the standpoint of political economy.

At the time of the commencement of the Constitution, there might have been some validity in the Article 45 being limited to “all children until they complete the age of *fourteen* years”. This limited its scope to education up to Class VIII, while also covering early childhood care, nutrition, health and pre-primary education for those below six years of age. However, the socio-economic conditions have undergone a radical change since then. Under the present conditions, *education until only Class VIII leads a child essentially to nowhere* since the doors to further education and employment open only after Class XII. This implies that Article 45 should have been amended at least a quarter century ago to include “all children until they complete the age of *eighteen* years” so that the State is under obligation to provide equal

opportunity to all children to study up to Class XII. Such an amendment had also become mandatory as per the international covenants like the Convention on the Rights of the Child to which India became a signatory in 1992 wherein “a child means every human being below the age of 18 years.” More importantly, the lack of this amendment makes a mockery of the Fundamental Right to social justice under Article 16 since essentially no public employment or appointment worth the name is available without a Class XII certificate. This also constitutes the minimum eligibility for pursuing even vocational courses (including para-medical, computer and IT-related courses) and those offered by polytechnics, apart from the higher and technical education programmes. It means that the benefits of reservations have been limited since independence to a small section (not more than 10 percent) of SCs, STs and OBCs who have had the opportunity to cross the barrier of Class XII. The exclusion of the majority of poor Muslims from higher education and public employment also needs to be understood in this context as their social status is broadly equivalent to SCs/OBCs (see Sachar Committee Report, 2007).

#### **The Question of Mother Tongue and Multi-linguality**

The misconceived language education policy that we follow has a serious impact on the attainment of the Fundamental Right under Article 19 (a) i.e., the Fundamental Right to freedom of speech and expression. Since early 1970s, the language education discourse has been both dominated and distorted by the increasing demand for “English Medium” schools or sections within a school. While the official policies and conditions that led to the demand may be debatable, it is conceded today that all children must have *equal opportunity* to acquire a reasonable proficiency in English, as part of their broader Right to learn other subjects as well. The question we need to address, however, is with regard to the policy framework that is required to achieve the objective. The knee-jerk policy response assumes that learning of ‘good’ English is best achieved through English medium schools, starting from nursery or kindergarten stage upwards to higher education. Apart from being an entirely unfounded assumption, it fails to take into account the socio-cultural background of the child and how it would affect her capacity to learn through the *medium* of a language (to be distinguished from language as a *subject*), such as English, alien to her cultural ambience. This policy discourse also ignores the global research that reinforces the powerful pedagogic role played by the mother tongue as part of multi-linguality (this may include English too) of the majority of the children in plural societies like ours in acquiring subject knowledge as well as learning languages other than one’s mother tongue.<sup>11</sup> Basically, the policy makers have failed to come

to terms with the fact that the most effective way to learn any language (including English) is through the medium of child's mother tongue as a component of her multi-lingual ambience. The consequence of this misconception and lack of a sound policy is the widespread phenomenon of a rapid attrition of the capacity to articulate one's thoughts or ideas. The vast majority of the Indian children grow up in the prevailing multi-layered school system without acquiring the capacity to learn and articulate in either the state language or English and, in the process, losing the capacity to do so in one's mother tongue as well. Apart from violation of Article 19(a), this policy failure has far reaching implications for the survival of India as a democracy as well as a nation that creates, transacts and applies knowledge for social development and public welfare in a society with rich cultural diversity.

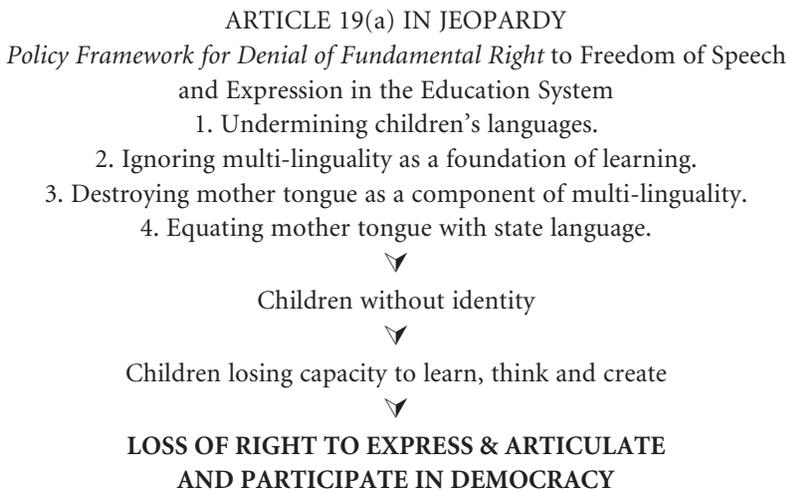


Figure 1

It is in this background that we need to evaluate the implications of the ambiguity introduced in the RTE Act, 2009, as reflected in the provision on the required curricular framework [Section 29 (2) (f)]. It reluctantly promises “*medium of instruction shall, as far as practicable, be in child's mother tongue*”. The law seems to be unaware of the history of denial of mother tongue as a medium of education in India's school system since independence. This has been partly due to confusing the state language as the mother tongue and partly due to the hegemonic practice of imposing the

Three-Language Formula (NPE-1986, Section 8.7). This is certainly not the place to enter into this complex subject, but it should suffice to state that even when Hindi or the state language is the medium of education, its viability hardly lasts beyond the elementary stage in an environment where there is no policy commitment to make higher knowledge available through the languages of the Eighth Schedule of the Constitution.

No wonder that, during the debate on the RTE Bill in the Lok Sabha on 4 August 2009, the Member of Parliament from the Bodo area of Assam intervened in vain, not once or twice but repeatedly, seeking from the Hon'ble Minister of HRD Kapil Sibal an explanation of how the Bill under discussion would undo the injustice due to continued denial of Bodo medium in the schools in the Bodo area<sup>12</sup>. The pathos in his shrieks, "The Bodo medium of education is now dying... it is a question of the entire Bodo people... Bodo Language has been included in the Eighth Schedule of the Constitution..." apparently could make no impact on the Minister. While making his concluding remarks to the debate, all what the Minister could do was to apparently mumble, "I can never – even if I try – please him." Although the Minister insisted that the Bill is fully consistent with the Constitution, it probably did not occur to the judicial luminary that the Constitution has an Article 350A which makes it obligatory for the State to "*provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups...*" This is precisely what the Member of Parliament from the Bodo area was trying passionately to tell the Parliament that the Section 29 (2) (f) of the RTE Bill relating to the issue of mother tongue medium is consistent with neither the Article 350A nor with the Fundamental Right inherent in Article 19 (a). How can then this be viewed as a Bill designed to provide a Fundamental Right to education? On 4 August 2009, the Minister, while concluding the debate in the Parliament, preferred not to answer such an uncomfortable question since his priority on the day was to move the motion for adopting the unjust Bill as part of his much-hyped 100-day agenda!

#### **Historic 'Harmonious Construction' by the Supreme Court**

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

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

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

“...The directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.... there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III.... there is no difficulty in putting a harmonious construction that advances the object of the Constitution.”

“...The right to education flows directly from right to life...”

Hence, the Supreme Court declared that *Article 45 has acquired the status of a Fundamental Right*. The years that followed have seen how the Indian State allowed the neo-liberal policies to dilute and distort the notion of Fundamental Right emerging from the Unnikrishnan Judgment. We shall shortly examine the deleterious impact of these policies on access to schools and the quality of school education provided therein.

The Unnikrishnan Judgment went a step further. It ruled that the Right to Education continues to exist under Article 41 (Part IV) *even beyond the age of 14 years* but is limited by the State’s “economic capacity and [stage of] development”. The Constitution is clearly directing the State to envisage the entire sector of education – from kindergarten to higher and professional education in a holistic manner. Any policy to *limit, distort or fragment* this vision of education amounts to a violation of the Constitution of India which represents people’s aspirations from the freedom struggle against imperialism!

### **From Unnikrishnan Judgment (1993) to 86th Constitutional Amendment (2002)**

The above historic declaration by the Supreme Court in 1993 made India’s ruling class evidently uncomfortable. The central government undertook a series of exercises in the following years designed to extricate itself of the implication of the judgment. The Saikia Committee Report (1997) and the 83rd Constitutional Amendment Bill (August 1997) along with the report of the HRD Ministry-related Parliamentary Committee (November 1997) provide evidence of the clever ways being conceived in order to dilute and distort the concept of the Fundamental Right to education. However, there was public criticism of these attempts.

Intellectuals, activists and grassroots organizations presented memoranda of their concerns to the Parliamentary Committee and organized public debates engaging leadership of major political parties (e.g. Convention on ‘Education as a Fundamental Right’ organized by the Central Institute of Education, Delhi University, December 1997)<sup>13</sup>. Sensing this resistance to the neo-liberal assault on the Fundamental Right to education, the entire matter was put in cold storage for the next four years.

In November 2001, the 86th Constitutional Amendment Bill was presented to the Lok Sabha. This Bill, like its predecessor 83rd Amendment Bill, too, was flawed<sup>14</sup>. It was misconceived insofar it (a) *excluded* almost 17 crore children up to six years of age from the provision of Fundamental Right to *free* early childhood care and pre-primary education; (b) *restricted* the Fundamental Right of even the 6-14 year age group by placing a conditionality in the form of the phrase “*as the State may, by law, determine*” in Article 21A; this gave the State the instrumentality to arbitrarily restrict, dilute and distort the Fundamental Right given through Article 21A; (c) shifted the Constitutional obligation towards free and compulsory education from the State to the parents/guardians by making it their Fundamental Duty under Article 51A (k) to “*provide opportunities for education*” to their children in the 6-14 age group; and (d) *reduced*, as per the Financial Memorandum attached to the amendment Bill, the State’s financial commitment by almost 30 percent of what was estimated by the Tapas Majumdar Committee in 1999; this was achieved through dilution of norms.<sup>15</sup>

There was widespread public criticism of the anti-people character of the above Bill. A rally of 40,000 people, drawn from different parts of the country, at Delhi’s Ramlila Grounds held on the day the Bill was discussed in the Lok Sabha (28 November 2001) demanded radical amendments in the Bill. Several Lok Sabha MPs, cutting across party lines, also criticized the Bill. In public mind, it was becoming clear that the hidden agenda of the Bill was not to accord the status of Fundamental Right to elementary education but to snatch away the comprehensive right that the children up to 14 years of age had gained through the Unnikrishnan Judgment. Ignoring the public outcry, however, a consensus was arrived at among all the political parties of varying ideological backgrounds and the Bill was passed in both Houses of the Parliament without even a single dissenting vote. The aforesaid four flaws in the 86th Constitutional Amendment Act (2002) have since provided the basis for legitimizing the lacunae of the Sarva Shiksha Abhiyan (SSA, 2000) and later of the consequent RTE Act 2009 framed under the Article 21A.

It is noteworthy that the new Article 21A introduced through the 86th Amendment is the only Fundamental Right that has been given *conditionally*. As pointed out above, this Right will be given to the children “*as the State*

may, by law, determine.” None of the other Fundamental Rights is tied to such a pre-condition. The restrictions that are placed on some of the other Fundamental Rights [e.g. on Article 19(1)] are not comparable in so far those are not organically made a part of the Fundamental Right and thus leave adequate space for the State to decide whether to apply them or not. This difference was noted by none other than Kapil Sibal himself when participating in the debate in May 2002 on the 86th Amendment Bill as a Rajya Sabha Member, then sitting in the Opposition. He declared that this conditionality in Article 21A shall reduce a Fundamental Right to an ordinary statutory right! However, when piloting the RTE Bill as the Minister of HRD in the Rajya Sabha in July 2009 he would talk of his inability to include the children below six years of age in the Bill and guarantee them pre-primary education, citing the restrictions placed on him by the same Article 21A which he had criticized seven years earlier. He, of course, would not tell the Parliament that the limitations of Article 21A in no way prevented the government from giving additional guarantees!

Why did it become necessary for the ruling class to incorporate the aforementioned conditionality in Article 21A and then dither for the next seven years – from the regimes of NDA to UPA-I to UPA-II? In order to answer this question, we must examine the major policy shift that has taken place as a result of the adoption of the so-called economic reforms and the neo-liberal agenda being pushed under globalization.

### **World Bank-UN Framework of Education: Examining its Premises**

In March 1990, India signed the ‘*World Declaration on Education For All*’ and ‘*Framework For Action To Meet Basic Learning Needs*’ adopted at the ‘World Conference on Education for All: Meeting Basic Learning Needs’, held at Jomtien, Thailand under the joint sponsorship of three UN agencies (UNDP, UNESCO & UNICEF) and the World Bank. The twin documents together known as the Jomtien Declaration have since become the chief strategic instrument of the neo-liberal forces in school education. It laid the foundation for the World Bank intervention by advocating international aid for *primary* (not *elementary*) education in the developing countries, making it ‘*unnecessary*’ for them to mobilize resources by re-prioritising national economies. The call for external financing of primary education was part of the IMF-World Bank’s Structural Adjustment Programme (SAP) and Social Safety Net. The Social Safety Net Adjustment Credit, however, turned out to be a minimal compensation against the substantial withdrawal of state funding under SAP (see Tables 1a,b in the author’s essay cited in Endnote 15). A detailed critique of the Jomtien Declaration is separately available.<sup>16</sup>

The pre-condition of SAP meant, among other things, that the Indian

government was *obliged to steadily reduce its expenditure on the social sector*, particularly health and education. This was a rather enigmatic pre-condition in a country where the vast majority of the people did not have access to quality health or education. In education, it made even less sense as it was imposed by those powerful capitalist economies, led by the USA, who were *apparently* advocating the much-proclaimed ‘Education For All’ (EFA) programme along with the move towards the so-called ‘Knowledge Economy’. One can’t, therefore, avoid asking the question: *What was the hidden agenda?*

The central thesis of the Jomtien Declaration in the Indian context was five-fold, viz.,

- First, the State *must ‘progressively’ abdicate* its Constitutional obligation towards education of the masses in general and *school-based* elementary education (Class I-VIII) in particular, become dependent on external aid even for primary education (Class I-V) and work in partnership<sup>17</sup> with NGOs, religious bodies and corporate houses<sup>18</sup>;
- Second, the people *neither have a human right* as enshrined in the UN Charter *nor a Fundamental Right* to receiving *free* pre-primary and elementary education (from kindergarten to Class VIII) of *equitable* quality as implied either by the Constitution under Supreme Court’s Unnikrishnan Judgment (1993) or even the much diluted 86th Constitutional Amendment (2002);<sup>19</sup>
- Third, education is not aimed at building a conscious citizenship for a democratic, socialistic, egalitarian and secular society; instead, it is *synonymous with literacy-numeracy and life skills* (mostly confined to sexual behaviour) required for social manipulation, mind control and regimentation for advancing the market economy;
- Fourth, the school system may comprise parallel layers of inferior quality education for various sections of society, thereby becoming a *multi-layered school system*; this conception will directly amount to denial of quality education to the under-privileged masses lacking capacity to pay<sup>20</sup>; and
- Fifth, *education is a commodity* that can be traded in the global market and offered for WTO negotiations.

The Jomtien Declaration dominated policy formulation and educational planning in several developing countries throughout the 1990s. A decade later, the Dakar Framework (2000) further elaborated and reinforced the basic premises of the Jomtien Declaration. The Indian government kowtowed to continue the neo-liberal agenda. As the World Bank-sponsored

District Primary Education Programme (DPEP), started in India in 1993, was about to end within the next 3-4 years, this implied that *the Indian government was ready to carry forward the DPEP package, along with its lacunae and failures, into the then emerging Sarva Shiksha Abhiyan (SSA)*, thereby ensuring that the neo-liberal framework will continue to determine the future policies.

Here is a comparative presentation of India's Constitution and the Jomtien Declaration with regard to the goals, concept and scope of education under the two frameworks. (see Table 2)

At the September 2000 Millennium Summit, the IMF-World Bank, along with the Organization for Economic Co-operation and Development (OECD) and the UN agencies, devised a set of eight Millennium Development Goals (MDGs). In line with the Jomtien-Dakar Framework, one of the eight goals directly relating to education reiterates the agenda of "achiev[ing] universal primary education." The comparison between the Constitution and the Jomtien Declaration presented here equally applies to the MDGs, if not even more. Yet, the Indian government has circumscribed educational planning and financial allocations within the highly diluted norms set by the MDGs, as indicated below:

"....it is imperative to give good quality elementary education to all children in the age group of 6 to 14 years. Policies and programmes in this direction are also necessary for honouring the *country's commitment to the 'Millennium Development Goals' and 'Education For All'...* for increasing public expenditure on education to 6 per cent of GDP and for universalizing elementary education at the national level. (emphasis added)"<sup>21</sup>

What is worse is the stance of the internationally funded and high profile NGOs who are eager to *substitute the EFA-MDG framework in place of the conceptually far more powerful founding document of the Indian Republic!*

### **Structural Adjustment: The Hidden Agenda of Privatisation**

What the country needed in 1991, when the New Economic Policy was announced, was a firm resolve to first rapidly fill up the *cumulative gap* resulting from continued underinvestment since the Kothari Commission (1966) and then maintain the investment level of 6 percent of GDP. To be sure, this was just about beginning to take place, as is evident by the steady rise in educational expenditure as percentage of GDP soon after the 1986 policy, as a result of the public pressure (see Fig. 2 below). Yet, what the World Bank persuaded the Indian State to do in the 1990s was precisely the opposite. The long-awaited *agenda of systemic transformation* in education in the 1986 policy, though only partial and hesitant, *was given up after 1991 and*

<p>Table 2</p> <p><b>A Comparison of the Constitution of India with the World Bank-UN’s Jomtien Declaration With Regard to Education As Fundamental Right</b></p>	
CONSTITUTION OF INDIA(1950)	World Bank - UN JOMTIEN DECLARATION(1990)
<i>Elementary Education</i> of 8 years guaranteed.	<i>Basic Education</i> limited to <i>Primary Education</i> of 5 or less years.
<i>Children up to 14 years of age</i> have a <i>Fundamental Right</i> to education, including those below six years of age; the Right continues to exist under Article 41 <i>even beyond the age of 14 years</i> but is limited by the State’s “economic capacity . . .” (Supreme Court’s Unnikrishnan Judgment, 1993). All sectors of education – kindergarten to higher/professional – envisioned <i>holistically</i> .	Only a <i>symbolic reference</i> to Fundamental Right in the Preamble and that, too, limited to 6-11 year age group children; early childhood care and pre-primary education included in the scope of Basic Education, though not as a universal entitlement – a <i>myopic and fragmented</i> vision.
Guarantee of <i>free</i> education.	No reference to <i>free</i> education.
Education aimed at building <i>citizenship for a democratic, socialist, egalitarian, just and secular society</i> .	The definition of Education as “basic learning needs” allows its reduction to <i>literacy-numeracy, life skills and behaviourism</i> .
The State is obliged to ensure <i>reprioritisation of internal resources</i> in order to provide for education.	State’s obligation substituted by <i>external assistance and partnership</i> with NGOs, religious bodies and the corporate capital.
<i>Equality</i> in and through education in all its dimensions.	Equality normally limited to “ <i>opportunity to achieve and maintain an acceptable level of learning</i> .”
Guarantee of education of <i>equitable</i> quality – a Common School System based on Neighbourhood Schools implied.	No such guarantee – allowing space for a multi-layered school system of inferior parallel layers.

replaced by a set of un-researched, untested and arbitrary schemes or projects assisted and sponsored by the World Bank, UN agencies and a host of other international agencies. The undeclared but operative strategy in such schemes and projects was to let the vast government education system (from schools to universities) starve of funds and, consequently, deteriorate in quality. As the school quality would decline, resulting in low learning levels, the parents, even the poor among them, would begin to withdraw their children from the system. A sense of exclusion from the socio-economic and political space would prevail.

When the children are either ‘pushed out’ of the schools or decide to ‘walk-out’ protest against the poor quality and irrelevance of education (no child

ever drops out, the official or World Bank claims notwithstanding!), two possibilities would emerge. First, low fee-charging unaided private schools (recognized or unrecognized) would mushroom to meet the new demand. Second, the government would have an *alibi* for closing down its own schools. The consequent low enrolment in government schools would be claimed as the ground for declaring them 'unviable'. The school campuses could then be converted into commercial ventures such as the fee-charging elite private schools or the shopping malls, especially in urban areas, as is the emerging phenomenon all over the country. Yet, closure of government schools would be unabashedly termed "rationalization" of the school system in the official reports<sup>22</sup>.

Let us summarise the hidden agenda of privatisation. The World Bank-UN strategy essentially comprised three sub-strategies, viz.,

- i) convert the school system into a multi-layered system with several inferior quality parallel layers;
- ii) dilute norms and standards in the government schools pertaining to infrastructure and other such essentials of quality education (see endnote 15); and
- iii) close government schools under the pretext of 'rationalization'.

### **Impact of World Bank's Policies on the Education System**

The following *retrogressive* policy changes relating to the entire education system (including secondary and higher and technical/professional education) under the influence of the World Bank-UN intervention may be listed:

#### **A. General and Conceptual Impact**

- i) The goal of education excludes building a democratic, egalitarian, just, secular and enlightened society. Instead, education has become an instrument for only improving productivity, promoting consumerism and establishing market control over knowledge and the public mind such that every human being becomes a 'useful' resource for the global capital.<sup>23</sup>
- ii) Knowledge is not a heritage of humankind meant for optimizing human welfare but a saleable commodity for profit, subjugation and hegemony in the hands of the capitalist class.
- iii) Educational development is not guided by the framework of either Universal Human Rights or Fundamental Rights under the Indian Constitution but by the global market framework.
- iv) Democratic structures of policy formulation and decision-making are either being by-passed or dismantled altogether.<sup>24</sup>

- v) The State is steadily abdicating its Constitutional obligation towards education and letting market become the unregulated “service provider” of education from pre-primary to higher and technical/professional levels.
- vi) Schools, colleges and universities are becoming “service providers” and students their “consumers”. In this “Provider-Consumer” relationship, every student must eventually pay “user charges” which implies payment of the full cost of the “educational service”.
- vii) In contradiction of the Constitution, education of equitable quality is no more the objective of educational planning. Instead, the quality of education shall be determined by the paying capacity of the student.
- viii) A common space for children from culturally diverse and economically disparate backgrounds to socialize and grow together is no more considered either desirable or feasible. This shift violates the logical foundation of publicly funded free and quality education system that has been the basis of capitalist development of the advanced countries.
- ix) Using the questionable rate of return theory, primary (or elementary) education is juxtaposed against higher education while allocating public funds. This undervalues as well as negates the critical role of higher education in creation and transaction of knowledge, thereby making developing countries dependent on the advanced countries for their ‘knowledge economies’.
- x) In higher education, only those disciplines will be supported through public funding which, at present, do not have any market value. The disciplines which have a market value shall receive no public support whatsoever as the market is expected to promote such disciplines. This implies that profit will determine the character of knowledge.
- xi) Jomtien Declaration’s insistence on developing only “observable and measurable targets” have been used to trivialize the goals of education and distort the curriculum, pedagogy and testing in violation of the spirit of the Constitution. This behaviourist prescription reflected in the MLLs is what has adversely impacted upon DPEP and SSA.
- xii) In the name of social participation, the Jomtien Declaration has provided for the State to ‘devolve’ responsibility to NGOs, private companies and even religious bodies.<sup>25</sup> Keeping in mind the fund-driven nature of NGOs, profit-motivation of corporate houses and rising religious fundamentalism, this stance of the Jomtien Declaration has dangerous implications.

**B. Specific Impact On School Education**

- i) A multi-layered school system is being built-up through a *series of*

*arbitrary and short-lived schemes and projects* instead of building a publicly funded Common School System functioning through Neighbourhood Schools.<sup>26</sup>

- ii) The public expenditure on education as percentage of GDP has been declining steadily since 1990, except for a two-year period from 1999-2001 (Fig. 2). The level of expenditure as percentage of GDP in 2005-06 was as low as it was before the 1986 policy. This decline took place *despite the levying of 2% educational cess<sup>27</sup> by the UPA government and almost one-third of funds for SSA coming from international agencies, including the World Bank.* Clearly, the SAP displaced both the 1986 policy and UPA's National Common Minimum Programme which had resolved to raise educational expenditure to at least 6 percent of GDP.
- iii) In Fig. 2, attention is drawn to the rise of educational expenditure as percentage of GDP during the two-year period of 2006-08 – i.e., roughly from 3.5 percent of GDP to 3.7 percent. This rise is definitely not due to any rise in expenditure on SSA (i.e., elementary education), as from 2007-08 to 2010-11, the central government allocations for SSA *declined in absolute terms* (taking annual inflation into account). Even the 'landmark' RTE Act, 2009 did not lead to any rise in the SSA allocation in absolute terms in 2010-11. The rise noted above during the 2006-08 period, therefore, can be explained on the following three grounds:
  - a) Increasing the number of seats (along with all the contingent facilities including faculty) for the upper castes in professional institutions as a compensatory measure for the reservations provided to OBCs in these institutions (cf. Moily Committee's recommendations);

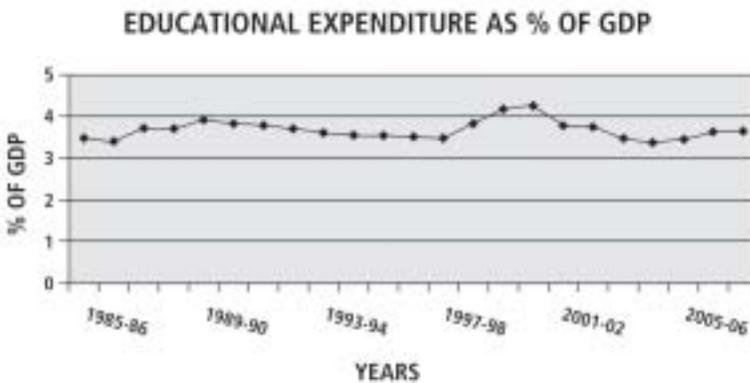


Figure 2

[Source: Analysis of Budgeted Expenditure on Education for Various Years, Ministry of HRD, Govt. of India]

- b) Providing for a set of high profile central universities, IIT, IIMs, IIITs and IISERs for the selected elite to serve the global market while the majority of higher educational institutions shall continue to be in poor shape due to paucity of funds; and
- c) Opening 6,000 model higher secondary schools (2,500 of which shall be in PPP mode) for the selected few at the Block-level (a continuation of the Navodaya Vidyalaya model) without ensuring education of equitable quality for all at the secondary level.

Interestingly, *the aforementioned rise exposes the so-called 'inclusive' agenda of the XI Plan wherein only those will be included whose inclusion will be in the interest of the neo-liberal capital and the global market.*

- iv) Declining public expenditure in school education implies gradual deterioration of infrastructure, poor pupil-teacher ratio, attrition of curriculum, lack of textbooks and teaching aids and also fall in the standards of teacher training institutions. This will predictably result in low learning levels which the World Bank and internationally funded NGOs (see PRATHAM's ASER Report, Mumbai, January 2006) have promptly documented as if they were waiting for the evidence of poorly functioning government schools to appear.<sup>28</sup> This deterioration in the quality of government schools provides the essential groundwork for privatization and commercialization of school education.
- v) In order to promote privatization, the government resists public pressure for legislative action to set minimum norms and standards or for instituting credible systemic reforms in the government schools. This must be the logic behind the central government's considerable delay in passing the law for implementing Fundamental Right to education as required under Supreme Court's Unnikrishnan Judgment (1993) or even the diluted Article 21A of the 86th Amendment. The norms and standards proposed in the Schedule of the RTE Act are a major compromise with the quality of education – not an unsurprising consequence of World Bank's neo-liberal assault.<sup>29</sup>
- vi) The existing school regulation laws are being gradually diluted or withdrawn all together, as also implied in the RTE Act wherein the duties of the State do not include regulation of the fee structure and other aspects of the functioning of private schools.
- vii) In the case of urban government schools, located on land carrying high market value, a policy of Public-Private Partnership is already in place in order to transfer their assets to the private capital, even without waiting for the pretext of deterioration of their quality and consequent fall in enrolment.

- viii) Primary Education of five years or less is increasingly being viewed as the desired end objective for the children of the masses and this should replace Elementary Education of eight years, though guaranteed under the Constitution, to be followed by skill development courses for serving the global market. This is indeed the basis of the latest high profile national mission for skill development designed to make India a *major supplier of skilled but uncritical and subservient "Foot Soldiers" for the global market.*
- ix) Only those children who are either high 'performers' or 'achievers' in competencies needed by the market or those whose families can afford the cost of education shall be allowed to proceed beyond primary education. For the rest, access will be confined to vocational skills so that they can serve the needs of a hierarchically controlled market-driven economy. The XI Plan proposal of setting up 6,000 model schools is precisely in fulfillment of this purpose, so that the high 'performers' or 'achievers' from among the poor could be identified by screening and then honed for the global market.<sup>30</sup>
- x) Parallel layers of education of varying quality shall be the only educational facilities provided to more than half of India's children. SSA, patterned after World Bank's DPEP, is designed to achieve this purpose.
- xi) Public-funded teacher training institutions are being allowed to deteriorate and be replaced by private institutions. Well trained teachers shall be available only for either the elite government schools (e.g., Central Schools) or expensive private schools. Regular trained teachers in government schools shall be replaced by 'para-teachers'. This, too, is the guiding theme of SSA. The successive financial estimates for implementing the the RTE Act are based on this logic, providing for para-teacher salaries.<sup>31</sup>
- xii) Programmes like Bridge Courses and 'Back-to-School Camps', as provided for in SSA, shall be encouraged for the present as sops for the masses, even though they hardly provide access to functioning schools.
- xiii) In the name of 'English-medium' schools, the majority of the children will be deprived of the power to articulate their thoughts in either their mother tongue or English, thereby resulting in lack of subject knowledge, critical thinking, creativity and, therefore, also general democratic consciousness (see Fig. 1 above). Given the inferior quality education, the only option for them will be to acquire some marketable vocational skills and join the hierarchically exploited skilled work-force in the global market.
- xiv) Those who manage to cross the barrier of senior secondary education

will be able to access higher and technical/professional education in private institutions only with bank loans subsidized through public funds. This is yet another camouflaged form of PPP. In order to be able to return the loan following completion of education, these specially selected 'high achievers', too, will be compelled to mechanically contribute to corporate growth without ever being able to reflect upon the contribution they would be making to enhance the capacity of the neo-liberal capital in order to further exploit the global resources. The market objective of having an 'intellectually vibrant, creative and technologically competent' elite segment of society but entirely subservient, regimented and ideologically co-opted could not have been better achieved!

- xv) Parallel institutional structures for financing and managing education are being created *outside* the government such that the State's role may be made superfluous.<sup>32</sup>
- xvi) Using the rhetoric of decentralization and 'community' participation, the legitimate functions of the government are being hurriedly 'devolved' to the Panchayati Raj Institutions and other local bodies without ensuring that (a) the government's obligation for adequate financing of education is fulfilled; (b) the local bodies have the necessary vision, administrative acumen or the legal powers to meet even the minimum challenges; and, more importantly, (c) the caste-ridden, patriarchal and generally retrogressive character of these bodies will not be counter-productive. While resisting legislation to guarantee Fundamental Right to education of equitable quality and to institute a Common School System, the State shall have no hesitation whatsoever to legislate to transfer its Constitutional obligations to the local bodies for which World Bank shall make available both direct and indirect funding. The real agenda behind all this is to dilute the role of the State and to enable the local bodies to *directly* negotiate and sign MoUs with World Bank. An identical process has already begun in several states by paving the way for privatization of natural resources like land, forest and water. The next is the turn of about one million government schools when the local bodies in urban/rural areas shall be persuaded by the World Bank to transfer their assets for privatization.

### The Neo-Liberal Act

The above historical overview and the comprehensive perspective of the neo-liberal economic order impacting upon India's education policies since the early 1980s provides us with an analytical framework for deciphering the ways in which Fundamental Right to education was being increasingly

diluted and distorted, thereby also being steadily negated. We have also seen how the 86th Constitutional Amendment (2002) probably symbolized the first neo-liberal intervention in the Constitution. Its consequent Article 21A, located in Part III, offered an in-built political space through the conditionality viz. “*as the State may, by law, determine*”. It was precisely this conditionality that was used by the NDA government at the centre to prepare three drafts of the required RTE Bill during the period 2003-04. Each of these successive drafts attempted to dilute and distort the State’s obligation and concomitantly offer space to the corporate capital to profit from education more than the previous one. The final draft, reviewed and approved by the state governments, was ready to be placed in the Parliament in early February 2004 when the general elections intervened.

The UPA government was in place by May 2004. Despite its agenda to undo the communalization of curriculum by the NDA government, it was generally ready to go along the predecessor’s economic vision of globalisation. When initially asked by the media on his views on the NDA’s Draft RTE Bill, the new Minister of HRD, Arjun Singh asserted that he did not see any problem in its orientation. However, due to rising public pressure, he eventually relented and initiated a review of the Draft Bill in August 2004. The re-constituted CAGE formed seven committees in October 2004 on various policy issues, one of which to be chaired by the then Minister of State for S&T, Kapil Sibal, had the task of preparing a fresh draft of the RTE Bill. By June 2005, the Draft Bill was ‘finalised’ by the committee, though the process had to go through complex roadblocks and severe fissures of vision, many of which could not be negotiated till the very end. The central issue was related to whether UEE can be concretized without instituting or, at least, moving towards a Common School System based on Neighbourhood Schools (CSS-NS). It is here that this author’s dissent from the Draft RTE Bill precipitated. At the full meeting of CAGE in mid-July 2005, only one out of seven committee reports could not find consensus and this was the Sibal Committee report on the Draft RTE Bill.

It took the UPA government almost three and a half years to be ready with a draft which it found convenient enough for its neo-liberal framework. The draft which was eventually placed in Rajya Sabha in December 2008 was the sixth Draft of the UPA government, including the Model Bill (June 2006) sent to the state/UT governments with a decision to shelve the idea of a central Bill altogether. In the process, each and every word, phrase and sentence was examined, debated and modified or adjusted at the highest echelons of the government which included the empowered High Level Group of Ministers (see Endnote No. 2). There could be various ways of deconstructing the RTE Act, passed by the Parliament on 4 August 2009, with

a view to reveal its hidden agenda. The method we prefer to apply in this paper is presented along with its results in Table 3 below.

The issues selected in Table 3 for analysis are only a sample of the many more such contradictions and lacunae in the Act which attrition the Fundamental Right. In the light of the above analysis, the following three cynical objectives of the State can be identified in this misconceived Act:

Table 3		
A Critical Examination of the RTE Act, 2009: Some Implications When the Act is Fully Implemented		
No.	Frequently Asked Questions	Answers/ Observations
1.	Will the Act guarantee free education to all children?	<p>a) No. Where does the Act say that all children will be provided <i>completely</i> free education? On the contrary, the Act reserves the right to levy charges as long as, in the ‘wisdom’ of the prescribed authority, it shall not “prevent him or her from pursuing and completing the elementary education” [S. 3 (2)]</p> <p>b) Even the above curtailed right shall not be available to all children since S. 8 (a) &amp; 9 (a) have proviso disentitling the children from even this right if they are studying in private schools, aided or unaided.</p>
2.	What is the difference between the Act’s Neighbourhood School and the universally accepted concept of Neighbourhood School?	<p>Although Neighbourhood School is not defined, the Parliament debate and media reports imply that it means providing a school in the ‘neighbourhood of <i>the child</i>’ to be specified by the state governments. This will make it possible for the prescribed authority to <i>assign or deny</i> a school to the child from among the schools of varying quality in the neighbourhood. This is a <i>guarantee for sustaining and promoting discrimination</i>. In contrast, the universal concept is of ‘neighbourhood of <i>the school</i>’ which requires, by law, all families residing in the specified neighbourhood to send their children to the same school, irrespective of their social, economic, religious, cultural or linguistic background or disability. This concept alone can pave the way for moving towards a Common School System providing education of equitable quality. This, however, stands denied by the Act.</p>
3.	Will the Act lead to improvement of infrastructure and other quality-related norms of the schools?	<p>The norms specified in the Schedule are, by and large, within the SSA framework. This implies that the present inferior infrastructural conditions are likely to be maintained and the government will not be required to make any greater investments other than what it was already making for SSA in the XI Plan. For instance,</p>

## Right to Education vs. Right to Education Act

		<p>computations based upon DISE data reveal that, when the Act is fully implemented, almost 67 percent of the primary schools shall continue to be denied a separate teacher/ classroom per class; 75 percent of primary schools shall not have a Head Teacher; more than half of the upper primary schools shall be without a Head Teacher and the same proportion shall be without even a part-time teacher for art, health &amp; physical education and work-based education. None of the schools are guaranteed access to electricity, computers or teachers for computers.</p>
4.	<p>Will the Act guarantee quality education for the disabled children and lead to their integration in regular schools?</p>	<p>In spite of inclusion of the disabled children in the category of 'disadvantaged group' through an amendment as an afterthought, there is hardly any provision in the Schedule of norms and standards, except for barrier-free access in the case of locomotor disability, to ensure that the rest of the disabled children will be able to study in a regular school. This means that budgetary allocations for such special provisions (e.g., books in Braille, teachers for supporting teaching through Braille &amp; sign language and teachers for mentally challenged) are unlikely to be made. Most of the disabled children will continue to be either excluded altogether from the regular schools or remain at a substantial disadvantage; NGOs, religious bodies and corporate sector will continue to be relied upon, as at present, through PPP for running Special Schools as per their convenience which implies continued denial of Fundamental Right to the disabled for education of equitable quality with dignity.</p>
5.	<p>Will the Act raise the status and quality of teachers?</p>	<p>a) This matter has been deliberately left ambiguous and to be prescribed later. Analyzing Section 23 in the perspective of the DPEP and SSA policy framework of the past 20 years shows that the prevailing neo-liberal policy of appointing para-teachers shall continue, unless some state governments act otherwise with unprecedented political will. If the intention was to ensure well-qualified and trained teachers, the Act would have included specific provisions to reverse the present trend. Ironically, the reference to NCTE in the previous Draft has been removed. The budget allocations approved by the Planning Commission also provide for salaries which are in the framework of para-teachers, rather than regular teachers with pay scales.</p> <p>b) More importantly, there is no evidence anywhere that there would be any major programme for over-hauling the quality of the disastrous teacher education system. This leaves the private sector free to provide inferior teacher education with unregulated profits under PPP, while the State continues to abdicate its responsibility to give good teachers to the school system.</p> <p>c) Given this reality, the curricular vision provided in Section 29 (2) would remain essentially unimplementable!</p>

<p>6.</p>	<p>Will the provision of 25 percent reservation in private and specified category schools (e.g., Kendriya/ Navodaya Vidyalayas) for children from weaker sections and disadvantaged groups ensure better education for them?</p>	<p>a) Section 12 is perhaps the most retrogressive provision in the Act. It constitutes incontrovertible evidence that the State has lost the political will to provide public-funded schools of at least equitable quality, if not better, than the private schools.</p> <p>b) The available DISE data show that the private schools today have a capacity for admitting no more than one crore children at the primary stage under this provision, since their total capacity is limited to enroll about four crore children.<sup>33</sup> What is the Act’s vision of ensuring good quality education to 15 crore children out of 19 crore in the 6-14 age group? Evidently, Section 12 is the ‘Kohinoor’ in the Act’s provisions to guarantee quality education. May one, therefore, ask what happens to the 15 crore not covered by Section 12?</p> <p>c) In this background, the 25 percent reservation and the provision of reimbursement to the private schools for the same is nothing but a ‘glorified’ version of the controversial neo-liberal policy of school vouchers, which is a camouflage for transfer of public funds to the NGO/ corporate sector and religious institutions (U.P. government has allocated Rs. 3,300 crores for this purpose!).</p> <p>d) No clue is available about how the children admitted under this provision will meet the exorbitant and arbitrary non-fee costs of the private schools.</p> <p>e) The Act is curiously silent on how the private schools will meet the deficit since the rate of reimbursement by the government will in most cases be inadequate to meet the expenditure incurred by such schools. The Minister of HRD has indicated in public forums that the private schools shall be free to raise fees for the 75% of the fee-paying students and under-pay the teachers since the Act has no provision to regulate fees/ salaries.</p> <p>f) The impact of such policies on the relationship between the two categories of children can be most undesirable. The wonderful claims being made by the protagonists of this provision that it will be a great step forward towards socialization of both the rich and the poor, has no historical basis whatsoever. There are no known ways, pedagogic or socio-psychological, to deal with the inferiority-superiority syndrome that is sure to impact adversely on these schools. Even if there was one, the State has shown so far no political will to anticipate and plan for this complex and sensitive engagement.</p>
<p>7.</p>	<p>Will the Act lead to better regulation of the fees charged by the private schools, thereby lowering the cost of education?</p>	<p>a) As already indicated, the Act does not have any provision under which the authorities can regulate the fee structure (see Section 8 &amp; 9). The Minister of HRD has declared that the private schools shall be free to hike fees and under-pay teachers. Further, he clarified that all existing provisions in the state/UT Acts empowering the respective governments</p>

## Right to Education vs. Right to Education Act

		<p>to regulate fees shall become ‘infructuous’ since, in view of the concurrent status of education, the Central Act shall prevail wherever there is a contradiction.b) The ban in Section 13 on charging of capitation fees is a smokescreen. The definition of capitation fee in Section 2</p> <p>(b) Indeed permits the private schools to charge capitation fee as long as it is included in the fee being notified at the time of admission!</p> <p>(c) These provisions are a clear indication that the cost of education shall increase rapidly in the years to come as a result of the Act, while the state/ UT governments, having lost their present powers, would watch this assault on the Fundamental Right helplessly.</p>
8.	<p>Will the provision for School Management Committees (SMCs) lead to better planning, management and monitoring of schools through community participation?</p>	<p>a) SMCs is just another name for the present Parent-Teacher Associations (PTAs) or equivalent bodies existing in most states/UTs. Section 21 makes it clear that SMCs, like their previous PTA <i>avatar</i>, would not have any real powers to decide or take any action that will make a difference to the functioning of the schools. The power will continue to rest in the hands of the political leadership and bureaucracy.</p> <p>b) Section 22 provides for the SMCs to prepare School Development Plans which shall be the basis of grants from the government. However, this is just a mockery in the name of community participation since the SMCs are allowed to only prepare plans “in such manner as may be prescribed”!</p> <p>c) The private unaided schools and now, through an amendment, the minority schools as well stand exempted from this ‘opportunity’ to have community participation in school management.</p> <p>d) The hype with which the idea of SMCs is being promoted by the governments in collaboration with UN agencies, NCPCR and NGOs all over the country makes it clear that this is a grand political design for <i>co-option</i> of the so-called ‘civil society’ in fulfilling the State’s vision of demolishing the government schools and expediting privatization and commercialization.</p>
9.	<p>Will the Act make available pre-primary education within government schools?</p>	<p>No. Section 11 leaves the decision to “make necessary arrangement for providing free pre-school education” to the state/UT governments, as has been the case since independence. There is no reason to believe that things will or can change after the Act.</p>
10.	<p>Will the Act lead to a better access to secondary education (Class IX-XII)?</p>	<p>No. There is no reference in the Act at all either to secondary education or to the children in the relevant age group of 14-18 years.</p>

11.	Will the Act ensure that there would be no paucity of funds in elementary education?	There is no Financial Memorandum attached to the Act. This implies that there will be no way to compel the government to provide adequate funds i.e., financial implications of the Act are not enforceable/ justiciable?. The government will continue to have the arbitrary powers to make Budgets and dilute or postpone allocations as per its convenience, just as it has been doing for the past 60 years.
12.	With elementary education becoming a Fundamental Right, will the Act be enforceable/ justiciable?	Not really, if you take a careful look at Section 36 & 37. a) In the case of violation of 3 provisions relating to private schools, viz. charging capitation fee and using screening procedure for admissions (Section 13), seeking recognition (Section 18) and fulfilling norms and standards in the Schedule (Section 19), no prosecution is allowed “except with the previous sanction of an officer authorized in this behalf . . . .” (Section 36). The Act is asking us to seek permission from an officer to institute prosecution against him for violating the provisions!b) Section 37 bars any legal proceedings against any authority from local body upwards to the centre in respect of any act “which is in good faith done or intended to be done...”. Here is an example. Suppose the Education Secretary of a state/UT violates Section 25 (Maintenance of Pupil-Teacher Ratio) and Section 26 (teacher vacancy in a school not to exceed 10 percent of the sanctioned strength) by not recruiting/ appointing teachers in the required numbers. A parent files prosecution. The State Secretary will have a legitimate defence by claiming that she/he did not appoint teachers as per requirement because properly trained teachers were not available due to shortage of good quality teacher education institutions. Clearly, she/he did not want to harm the children by appointing bad teachers – <i>act of violation but in good faith!</i> And such quality institutions can’t be established because SSA grants from the centre do not have adequate provisions for them!! And, of course, provision of adequate finances is not enforceable under the Act!!! Such restrictions on enforceability or justiciability mock at the concept of Fundamental Right itself, converting it into an ordinary right under the law. <i>Ingenious use by the State of the conditionality in Article 21A to protect itself, rather than the children’s Fundamental Right to be educated!</i>

*First*, abdicating its Constitutional obligation for providing free and compulsory education of equitable quality;

*Second*, demolishing the government school system, except the schools of specified categories (e.g. Kendriya Vidyalayas, Navodaya Vidyalayas, XI plan’s 6,000 model schools and similar elite schools of the State/UT governments); and

*Third*, increasing the pace of privatization and commercialization of school education.

## Right to Education vs. Right to Education Act

While rejecting the Act outright, we need to build a socio-political movement that would persuade the central government to,

- i) *replace* this retrogressive Act with a new Act drafted in the framework of the Common School System based on Neighborhood Schools (CSS-NS) in consonance with the basic spirit and principles enshrined in the Constitution;
- ii) *review* the 86th Constitutional Amendment Act (2002) with a view to providing a Fundamental Right to free and compulsory education of equitable quality to all children until the age of eighteen years i.e., until class XII;
- iii) *provide* Constitutional guarantee within the Act for adequate funding for the entire school system (this is precisely the implication of a Fundamental Right);
- iv) *include* in the Act a provision to completely ban all forms of privatization and commercialization of education, especially Public Private Partnership (PPP), adoption of schools by private agencies and voucher schools; and
- v) *hold* public hearings in all district headquarters of the country in a democratic and transparent manner in the process of drafting the new Bill.

### Essential Assertions

Let me assert the following core principles of policy necessary for reconstruction of the education system:

- (a) It is a fallacy that the government school system can be improved without establishing a fully public-funded CSS-NS that is governed in a decentralized, democratic and participative mode;
- (b) *CSS-NS is meaningless unless children from various sections of society study and socialize together in Neighbourhood Schools while also ensuring diversity and providing adequate space for experimentation, innovation and charting new paths;*
- (c) *No curricular reforms are possible in a multi-layered school system; CSS-NS provides the necessary pre-condition for curricular reforms; and*
- (d) *CSS-NS can't be established as long as the State continues to promote privatization and commercialization of school education through PPP which includes school vouchers, subsidized long-term loans to students and the corporate sector/NGOs alike, income tax exemptions and hidden subsidies or otherwise.*

### What is To Be Done?

The protagonists of the RTE Act have become emboldened since it was

put in force on 1 April, 2010. They are now confusing the public mind by repeating the rhetoric of “after waiting for 60 years, we have now gotten the Fundamental Right to education” or “something is better than nothing” (*Kuchh Nahin Se kuchh to achha!*). The central problem with this thinking lies in being entirely (and, I believe, also deliberately) *a-historical* as it ignores the major changes in political economy during the past 25 years and the shift in character of the Indian State to becoming a neo-liberal State.

Such a fragmented, incremental and purportedly ‘inclusive’ stance has been pushed since independence and has collapsed. How many more decades would you like to continue to practice this self-defeating approach in education that has gotten us in the mess we are in today? Can you not see that “my friend, the answer is blowing in the wind!” (the famous folk singer Bob Dylan, challenging the American capitalist value system, said this in the 1960s). And the answer is three-fold:

- a) Resist the diversionary politics of the RTE Act (the same ‘lollipop’ politics can now be seen in the draft Right to Food Bill) that will entangle you in a myriad detail during its implementation (like in MNREGA) while the goal of universal education of equitable quality will continue to be elusive.
- b) Focus on building a vision of systemic transformation of the education system for ensuring entirely free education of equitable quality from “KG to PG” that will also question and challenge the socio-political character of knowledge, linked to global market and corporate capital, in our curriculum and pedagogy.
- c) Engage the masses in creating a genuine people’s movement for compelling the State to replace its so-called ‘*Inclusive*’ schemes and projects with a reconstructive agenda embedded in ‘*Equality* combined with Social Justice’.

### **An Alternative Vision of School Education**

The only known option for the people is to struggle for establishing a *fully publicly funded Common School System based on Neighbourhood Schools (CSS-NS)*.<sup>34</sup> Such a system exists in various forms in several of the advanced economies of the world, including the G-8 countries. However, while envisioning such a system, we have to be careful that the Indian version is not a poor carbon copy of what exists in the advanced economies. For this, one has to ensure that *it is conceived in consonance with the socio-economic, cultural and historical conditions of each geo-cultural region of the country*, while sharing a broadly common vision of education rooted in the Constitution.

The CSS-NS implies a heterogeneous classroom representing the

diversity (along with disparity) prevailing in the neighbourhood. Only then, all sections of society, including the most powerful, will have a vested interest in improving the government school system. The neighbourhood school needs to be envisioned as *a common public space where children of diverse backgrounds can study and socialize together*. It is a pre-condition in a society like ours for *forging a sense of common citizenship*. Therefore, the CSS-NS has the potential of becoming a powerful means of promoting solidarity in the working class, cutting across caste, religious and language divides, for undertaking democratic struggles for social transformation.

### Concluding Remarks

There is adequate ground for contending that the Fundamental Right to education can be gained only through a publicly funded Common School System based on Neighbourhood Schools as envisaged above. Resisting commoditization of education and its tradable knowledge is integral to the agenda for moving towards this goal. Further, changes in school education are envisaged organically as part of changes in the entire education system, including higher and professional. In this sense, the struggle for building the Common School System is simultaneously a struggle for epistemic and social transformation as well. To be sure, this struggle is also a part of the growing movement in the country against appropriation of our natural resources and sources of livelihoods under imperialist globalization and for redeeming India's democracy, sovereignty and role of productive labour and knowledge in creating an egalitarian and just society.

**Anil Sadgopal** is at the Shiksha Adhikar Manch, Bhopal & All India Forum for Right to Education

### Notes

- 1 Juneja, Nalini (1998), *Seminar*, No. 464, April 1998.
- 2 Dr. C. Rangarajan, the then Chairman, Prime Minister's Economic Advisory Council, as recorded in the Minutes of the meeting of the High-Level Group of Ministers (HLGoM) held on January 4, 2006 (cf. Para 4). The HLGoM, constituted by the Prime Minister to examine the feasibility of the Draft Right to Education Bill, 2005, comprised Arjun Singh, Minister of HRD (Chairman); P. Chidambaram, Finance Minister; Montek Singh Ahluwalia, Dy. Chairman, Planning Commission; and C. Rangarajan, Chairman, Prime Minister's Economic Advisory Council.
- 3 Sadgopal, Anil (2006), 'Centre's Move Places Education at Risk', *The Hindu*, September 26, 2006.

- 4 Reserve Bank of India's Reports on Non-Performing Assets.
- 5 As per a confidential report of the Ministry of HRD, acquired by the author, the revenue loss to the centre as a result of tax exemptions alone to the educational institutions amounted to about Rs. 4,000 crores in 2004-05. This was cited by the author in the debate on the Draft Right to Education Bill held at the CABE meeting on July 14, 2005. The Minister of HRD (Arjun Singh) chairing the meeting did not contradict.
- 6 Although amended through the 86th Constitutional Amendment (December 2002), the *original* Article 45 was valid until as recently as 1 April, 2010 when the aforesaid Amendment was notified.
- 7 See Report of the Committee for Review of National Policy on Education -1986 (1990), Govt. of India, Sections 5.1.1 to 5.1.6 and 6.1.1 to 6.1.3 along with the related recommendations.
- 8 The Part IV of the Constitution comprises the Directive Principles of State Policy that are not "enforceable by any court" but are "nevertheless fundamental in the governance of the country" and the State is duty bound to "apply these principles in making laws" (Article 37). In contrast, the Part III comprises Fundamental Rights that are enforceable in the courts. However, underlining the criticality of Part IV, the Supreme Court ruled in its Unnikrishnan Judgment (1993) that whereas *the Part IV provides the goals of the Constitution, the Part III provides the means to achieve these goals.*
- 9 This estimate is arrived at by adding the NSSO-reported (64th Round, 2007-08) percentage of children in the "never-enrolled" category to the percentage of the so-called 'drop-outs' by Class VIII (Statistics of School Education, MHRD, Govt. of India, 2006-07, Statement 15).
- 10 Sadgopal, Anil (2000), *Shiksha Mein Badlaav Ka Sawaal*, Chapter 13 on 'Shiksha Neeti Ka Sankat', Granth Shilpi, New Delhi, pp. 175-189.
- 11 The global research on language education, including research in India, is documented in NCERT's National Focus Group Position Paper on 'Teaching of Indian Languages' (NCERT, New Delhi, November 2006) which also makes profound recommendations on how to incorporate multi-linguality as a guiding principle for a coherent and pedagogically sound language education policy in India.
- 12 See Records of Lok Sabha Debates – Part II, August 4, 2009, pp. 13575, 13579, 13587 and 13589.
- 13 This phase of the Right to Education discourse has been documented in the background paper presented at the 'Convention on Education as a Fundamental Right', organized by the Department of Education, University of Delhi, Delhi, 18 December 1997 (Dr. Man Mohan Singh represented the Congress Party in this Convention along with the senior leaders of other political parties as well, including the BJP, CPI and CPI (M)).
- 14 For detailed analysis, see this author's papers entitled, 'Political Economy of the Ninety-third Amendment Bill', *Mainstream*, 22 December 2001, New Delhi, pp. 43-50; 'C for Commerce', *Tehelka*, 14 June 2008, pp. 44-45.

- 15 Sadgopal, Anil (2009), 'Education Policy and RTE Bill: A Historical Betrayal', *Combat Law*, Vol. 8, Issue 3 & 4, May-August 2009, p. 23, Table 2.
- 16 Sadgopal, Anil (2006), *A Post-Jomtien Reflection on the Education Policy: Dilution, Distortion and Diversion*, in *The Crisis of Elementary Education in India* (ed. Ravi Kumar), Sage Publications, New Delhi, pp. 92-136.
- 17 The agenda of privatization and commercialization of education inherent in this innocuous looking notion of 'partnership' has after the passage of 17 years appeared in India's XI Five Year Plan in the form of 'Public-Private Partnership' (PPP) wherein the Indian State will transfer public funds and other critical resources (e.g. land), apart from legitimacy and credibility, to the private capital for commoditization of education. This is now the central theme of the XI Plan. In a subtle endorsement of PPP, a suggestion has even been made to set up "10 IIT-IIM level national institutes of teacher education" in PPP mode (Krishna Kumar, *Partners in Education?*, *EPW*, 19 January 2008, p. 11). See this author's detailed interview in Hindi entitled, *Sarvajanik-Niji 'Saajhedaari' Ya Loot, Shiksha-Vimarsh*, Jaipur, Rajasthan, January-April 2008, pp. 68-96.
- 18 For instance, the Karnataka state government has constituted a World Bank-assisted body under Wipro's Azim Premji Foundation chairpersonship to advise on policy matters and also invited the same corporate group in 2007 to set up SIEMAT, a formal institutional structure for policy formulation relating to educational governance and teacher training - a move presently stalled due to public protests.
- 19 In contrast, USA provides entirely free education from kindergarten to class XII which includes free textbooks, stationery, teaching aids (including computers), tests, co-curricular activities, games and sports, bus transport and lunch. Several other G-8 countries also provide free education.
- 20 The 'alternative modes of finance' for primary education suggested by the World Bank-UN collective in its Background Paper (Annexure 2, p. 146) on the Jomtien Declaration include private schools and user charges.
- 21 *Economic Survey 2007-08*, Ministry of Finance, Government of India, Section 10.25, p. 249.
- 22 In 1999, the District Collector of Indore (Madhya Pradesh) in his report to the state's Chief Minister used the term 'rationalisation' to justify the closure of 30 government schools in the Indore city which were later turned into commercial ventures or police stations. Neither the Collector nor the Chief Minister expressed any concern about where had the children gone who had either entered low fee-charging private schools in the neighbourhood or given up on education altogether!
- 23 In this instrumentalist paradigm, in the case of women, education is primarily expected to lower infant and child mortality rates, reduce fertility rates and improve household nutrition and health (see *Primary Education in India*, World Bank, Allied Publishers Limited, New Delhi, 1997, pp. 30-31, 39).
- 24 The proposal of school vouchers and Public-Private Partnership in education entered the XI Five Year Plan without such recommendation by either the CABE or any of its seven sub-committee reports in July 2005, in spite of the CABE

- being the highest democratic consultative structure (with representation of all state/UT education ministers, central educational authorities, academicians, writers, artists and social activists) for policy advice in education.
- 25 In June 2007, the HRD Ministry engaged the Global E-schools & Communities Initiative (GeSCI), a conglomerate of Ireland, Canada, Sweden, Switzerland and Finland, to prepare the draft ICT policy for schools. In turn, GeSCI roped in the Centre for Science, Development & Media Studies (CSDMS), a Delhi-based NGO which works in collaboration with Microsoft and others corporations (*Outlook*, 24 November 2008).
  - 26 A publicly funded school system, similar to the proposed Common School System, exists in USA and other G-8 countries.
  - 27 The education cess, introduced in 2004-05, is a special cess or surcharge levied at the rate of two percent on all major central taxes viz. income tax, corporation tax, excise duties, customs duties and service tax. The revenue from this cess is meant for elementary education. While the overall budgetary support is the source of funding for most developmental sectors, this is not the case with elementary education which receives substantial resources through this earmarked educational cess. From 2007-08 onwards, one percent additional cess is being levied to raise funds for secondary and higher education as well.
  - 28 None of these reports analyse the systemic issues, documented in this paper, that are responsible for such deterioration of quality, lest the neo-liberal framework is deconstructed. This is also true for the World Bank-sponsored research on teacher absenteeism and James Tooley's study of Shahadara's low fee-charging private schools in Delhi which tend to present privatization as a panacea for educational backwardness.
  - 29 See Sadgopal, Anil, *C for Commerce, Tehelka*, 14 June 2008, pp. 44-45. [http://www.tehelka.com/story\\_main39.asp?filename=cr140608cforcommerce.asp](http://www.tehelka.com/story_main39.asp?filename=cr140608cforcommerce.asp);
  - 30 See Sadgopal, Anil, *The 'Trickle Down' Trick, Tehelka*, 29 September 2007.
  - 31 See Sadgopal, Anil, *Education Bill: Dismantling Rights, The Financial Express*, 9 November 2008.
  - 32 The central government went to the extent of even setting up a private company called Ed.CIL in mid-1990s to manage certain key aspects of the World Bank and other internationally funded programmes in education. Likewise, SSA depends upon a host of ad-hoc schemes introduced by corporate houses, NGOs and religious bodies.
  - 33 NUEPA & Ministry of HRD, Govt. of India (2010), *Elementary Education in India – Progress Towards UEE, Flash Statistics, DISE 2008-09*, pp. 12-13.
  - 34 The concept of CSS-NS is elaborated by this author in 'Common School System: Do we have An Option?', *Janata*, Vol. 63, No. 19, June 01, 2008, pp. 1-5, 30.