FUNDAMENTALS RIGHT TO EDUCATION IN INDIA

Dr. Anil Kumar

Fundamentals Right to Education in India

Fundamentals Right to Education in India

Dr. Anil Kumar (Associate Professor)
M.Ed., Ph.D. (Education), M.A. (Political Science),
NET (Education), Faculty of Education, Tantia University, Sri Ganganagar

ACADEMIC
UNIVERSITY PRESS

Fundamentals Right to Education in India

Dr. Anil Kumar

ACADEMIC
UNIVERSITY PRESS

4378/4-B, Murarilal Street, Ansari Road, Daryaganj, New Delhi-110002.
Ph. No: +91-11-23281685, 41043100, Fax: +91-11-23270680
E-mail: academicuniversitypress@gmail.com

Year of Publication 2024-25

ISBN : 978-93-6284-215-2

Printed and bound by: Global Printing Services, Delhi
10 9 8 7 6 5 4 3 2 1

Contents

Preface

The fundamental right to education in India represents a pivotal commitment towards providing equitable access to quality education for all children. Enshrined in Article 21-A of the Indian Constitution, this right was further fortified by the enactment of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. This legislative milestone mandates free and compulsory education for all children aged 6 to 14, setting the stage for a transformative shift in the educational landscape of the country.

The historical trajectory of the right to education in India reflects the nation's progressive aspirations towards social justice and inclusive development. It underscores the recognition that education is not just a privilege but a fundamental entitlement essential for individual empowerment and societal progress.

The legal framework surrounding the right to education in India outlines the obligations of the state in ensuring the provision of free and quality education to all children. This framework encompasses various provisions related to infrastructure development, teacher recruitment, curriculum implementation, and monitoring mechanisms aimed at ensuring compliance with the RTE Act.

Despite significant strides in expanding access to education, India grapples with numerous challenges in effectively realizing the right to education for all. Inadequate infrastructure, teacher shortages, low learning outcomes, and socio-economic disparities pose formidable obstacles to achieving universal education.

Moreover, the effective implementation of the RTE Act faces hurdles due to resource constraints, administrative bottlenecks, and varying levels of commitment at the state and local levels. These challenges highlight the need for concerted efforts and targeted interventions to address systemic shortcomings and ensure

the effective delivery of education services. However, amidst these challenges lie opportunities for innovation, reform, and collective action. Initiatives aimed at improving teacher training, enhancing infrastructure facilities, promoting inclusive education practices, and leveraging technology for educational purposes hold promise for advancing the right to education agenda in India.

Ultimately, the fundamental right to education in India stands as a beacon of hope and opportunity, reflecting the nation's commitment to nurturing the potential of every child and building a brighter future for generations to come. Through sustained efforts and collective resolve, India endeavors to uphold this fundamental right as a cornerstone of social development and national progress.

Exploring the legal and social dimensions, this book sheds light on the fundamental right to education in India and its implications for policy and practice.

–Author

1

Introduction

As with all other obligations under the Directive Principles of State Policy, article 45, which stipulates that 'the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years', is also on a best endeavour basis. Ten years after the commencement of the Constitution *i.e.*, in 1960, the State was nowhere near achieving the goal articulated in Article 45.

In spite of the impressive progress made during the last decade or so, even now, this goal continues to elude the nation, notwithstanding judicial pronouncements in its favour. In the Mohini Jain Vs the State of Karnataka case of 1992 and in the Unnikrishnan Vs the State of Andhra Pradesh case in 1993, the Supreme Court's verdict was that the right to education was a derived fundamental right flowing from the citizens' fundamental right to life; the Supreme Court has also given a number of other verdicts widening the scope of the right to life to include not just animal existence but also right to livelihood; and its interpretation of Article 19 asserts that the freedom of speech and expression is difficult to be exercised without education. These judicial interpretations have been in tune with the International Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

India is a party to both of these instruments. It took the Central Government five years after the Supreme Court's verdict expanding Article 21 to include right to education as a fundamental right, to introduce a Bill in the Rajya Sabha for amending Article 21. This Bill (the 83rd Constitutional Amendment Bill)

was introduced in the Rajya Sabha by the United Front Government in 1997, but remained struck up there until four years later, the National Democratic Alliance Government decided to revive it as the 93rd Constitutional Amendment Bill. The Lok Sabha passed this Bill towards the end of 2001 and the Rajya Sabha in early May 2002. Thus right to education has now become a fundamental right. Now every citizen is vested with the right to approach the Apex Court to get compliance with this right enforced, in case the State fails to provide the necessary infrastructure, facilities and services.

The main provision of this Amendment is to insert an Article 21-A in the Constitution of India which stipulates that "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine". Article 45 of the Constitution has been amended to read "the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years".

Finally, a clause has been added to Article 51-A of the Constitution on Fundamental Duties stating that it shall be the duty of "a parent or guardian to provide opportunities for education to the child or as the case may be, ward between the age of six and fourteen years". The version of the Bill introduced in 1997 had been criticised by experts, civil society organisations and NGOs on the following grounds:-

- It did not cover children up to the age of six in spite of the provision of Article 45 that free and compulsory education shall be provided to "all children until they complete the age of fourteen years". Until a sound foundation is laid by providing necessary facilities and services for the education of children between the age group 0 to 6, the provision of free and compulsory education to children in the age group six to fourteen will suffer from fundamental weaknesses and limitations.
- The term "free" in the Amendment should be defined to include not only free tuition fee but also the provision, free of cost, of one meal, books, notebooks, slates, uniforms, and medical and transport services.
- The addition to Article 51(K) relating to the parents' or guardians' duty is likely to be misabused. Parents and guardians may be penalised for not sending their children to school, which may be due to factors beyond their control. This may relieve the State of its obligation to provide opportunities for education and put the onus on parents.
- The Article should provide for not only free and compulsory education but also quality education.
- The Government should work out the financial implications of the Amendment and indicate how the additional resources are going to be mobilised.

The Bill as passed tries to take care of the criticism regarding the coverage of children in the age group 0-6 by amending Article 45 of the Constitution. But this is not adequate because, not being a part of Fundamental Rights, it is not justicable. Thus free and compulsory education for children in the age group of 0- 6 will remain on a best endeavour basis.

The Government has clarified that even though the Constitutional Amendment makes it a Fundamental Duty of every parent/guardian to send his child/ward to school, there is no provision in it for punishment in case he or she is unable to do so. The Government has indicated that it will try to facilitate the enforcement of this provision not through punishment but by the creation of new school facilities, filling up gaps and improving the quality of education. Moreover, the community will be entrusted with the task of enforcing the right to education and parents and other members of the community will be mobilised for this purpose.

Article 21-A makes it obligatory for the Government to enact a Central legislation to give effect to the Constitutional Amendment. At the time the Amendment Bill was passed, the Government promised that a Central legislation would be introduced spelling out the parameters of what is to be provided by the State for implementing the Amendment. The parameters will include teacher/ pupil ratio, number of rooms, distance of travel from schools, quality of education, *etc.* Moreover, the legislation will also create a mechanism by which a citizen who is aggrieved that the right to education has not been fulfilled, should be able to get relief at district and sub-district levels rather than filing Writ Petitions in the High Courts and the Supreme Court.

This Central legislation was expected to be introduced and adopted by the Parliament at its monsoon session. Unfortunately the monsoon session has ended and the Bill is yet to be introduced. The Government had earlier set up an expert committee to calculate the financial implications of the Amendment. According to its calculation, the financial implication is expected to be ₹9800 crores by way of additional resources every year or 0.5 per cent of GDP for 10 years which is the time frame envisaged by the Government.

The increase in the provision for elementary education in the last budget has not been at all commensurate with this requirement of additional resources. The Government has in the meantime launched a programme called Sarva Shiksha Abhiyan to ensure that every child is provided free elementary education. The abhiyan (campaign) aims at universal enrolment by the year 2003, universal 5 years of primary schooling by 2007, and 8 years of elementary schooling by 2010.

The Sarve Shiksha Abhiyan is being implemented in a Mission mode. The National Mission is headed by the Prime Minister of India and includes representatives of political parties, NGOs, academicians, teachers, *etc.* Similarly, at the State level the State Missions are being headed by the State Chief Ministers. The SSA specifically targets the provision of quality education for all. It also provides for intensive teachers training and academic resource support in the form of Bloc Resource Centres and Cluster Resource Centres, Teachers Grants and School Grants. The Government has calculated that under the SSA, the Government of India will spend about ₹.63000 crores over the next ten years. Another ₹.7000 crores is expected to be spent through the streamlining of various programmes.

The State Governments will provide additional resources amounting to ₹.30, 000 crores as their share of the SSA. An amount of ₹.25000 crores is expected to come from the private sector and ₹.5000 crores from community sources.

EDUCATION RIGHTS IN INDIA: MORE THAN A NECESSITY

It's very rightly said by someone, "Education is a companion which no future can depress, no crime can destroy, no enemy can alienate and no nepotism can enslave". Education is the source to all achievements throughout the journey of one's life. It makes the man know the worth of him. It's the key to drive oneself towards the ultimate. And the harsh truth of the society is that an uneducated person in the contemporary world can't survive, and even if he somehow does, then he will always be surrounded with insults and abuse. He will always be the one amongst those millions who are everyday left bankrupt by the rude and shrewd shopkeepers.

1st April 2010, has become an important landmark in the Indian history, a history which speaks many horrid experiences of helpless children and women, who had no options but to work. The lips of the small but apparently highly aged population, which are consolingly called as children, must have stretched a bit when they have secretly heard of somewhere the words, 'Free and compulsory education, a right now', but the very next moment they must have realized their position that the are roped by the harsh fundamentals of the society. And some of the highest minds must have uttered, "Huh! At last, it could be done…" That is certainly a surprise that the rights of the broods are now, after six decades of our independence, are taken care of. What's being talked about is the seventh fundamental right, Free and compulsory education to 6 to 14 year children, these words were only suggestive in the constitution till this date, but now it has become much more than that.

Their childhood was dissolved in the dreams of their parents and the burden of the family. The days when they were supposed to chariot their sweet thoughts, they were on lands with the axe. They were merely a pair of hands meant to just add sacks of grains in the godowns. And time could not change much the fate of these kids, they are still in the clutches of exploitation. Just try to remember, in how many hotels you went you found them serving you with expressionless faces. A thought must have of course pinged your mind seeing their bony bodies and robotic hands that why don't they feel what they do, why don't they gripe against their treatment? Here is the answer, their tears have dried, their cries now just echo under the legs of their owners and they leave their hopes and dreams in the shore's sand. At such a situation, do you think that the Right to education is going to help them to stand on their legs?

FACTORS PROHIBITING COMPLETE EDUCATION

Big thanks to our HRD minister Mr. Kapil Sibal, who helped to bring these long lost words at least on papers. But it seems that he hasn't been farsighted in

his action. India is the country with largest juvenile population and of course a majority of them constitute uneducated children. Why they have been devoid of education is reasoned by a number of factors, like:-

(1) Lack of co-operation from the parents of bucolic region is one of such factors. Many of them don't even know what education might mean to the future of stakeholders of the national resources and the others who know, fear and feel it to be a curse which will ruin their family, and the very cause behind it is that they hate advancement in posts but surprisingly love money making. And the victim of their peculiar likings is their children which remain deprived of tasting bookish values in the whole life.

(2) Lack of Schooling facilities – This clearly states the problem of lesser number of well maintained schools in the bucolic provinces. The schools are not only roofless but also have not even mats for the children to sit. Furthermore, the absence of teachers also creates a huge problem for them. How could education be possible in this case?

(3) High costs of transportation and other supplies -Many families withdraw their steps of educating their children when they find high expenses for educating their children. Being unable to afford the price, they choose the option of leaving their children uneducated. What will you call it, a circumstantial compulsion or a fault?

Now, the question comes that how many of these problems, just a very few among many, is going to be coped up by the law introduced. May be the 'free' word drags them to co-operate in the process, but what about those who have an inbuilt wrong attitude towards the education. Another setback in the process arises when we realize the divisions among the child population. Yes, about half of them are of girls and about a fourth of them belong to the lower castes. Now who is going to change this outlook? Majority of parents get the girl child aborted even before she opens her eyes, and now should we expect them to send the unfortunate grown ups to school! But as it is inspiringly said by someone that, 'God creates first the solution and then the problem' and therefore, there lies a remedy for every hitch. And for this, the most effective cure for this is 'Active awareness programs'. We need to step into every remote village and acquaint villagers about the nuisance which 'Female foeticides' create in the social living and how lack of education constricts the National Development.

How RTE is Useful?

Of course, this step towards complete education is not followed by only disadvantages. This has also solved many issues related to it, like:-

(1) *Help to Poor Students:-* Now, any student can claim for education with the provision of required facilities, what he needs is a little support of the government and some enthusiastic social workers.

(2) *Expectations from Private Schools:-* The Act also orders the Private educational institutions to reserve 25 per cent seats for children from

the weaker and disadvantaged sections and this ration is always expected to be chock-a-block. Next, all the schools have been asked to admit such students without admission tests and other documental requisites. Also, the schools can't refuse the entry of students with reasons like late or early admission, full seats, *etc.* However this decision is being followed by huge protests.

(3) *Financial Help from Government:-* Furthermore, the Finance Commission has provided a sum of Rs 25,000 crore to the states for implementation of the Act. Mr. Sibal has further announced that the government has full arrangements of the funds required for efficient implementation of the Act.

Role of State Governments and Teachers in RTE

Our respected PM Dr. Manmohan Singh while addressing the Indian populace said that the state governments and the teachers of all schools have a huge role to play to put this act successfully into operation.

(1) He said that the state governments will have to take care that the financial constraints or lack of other supplies doesn't halt the action. States will have to bear all costs what a willing student requires for his education.

(2) They will have to take care that the Private schools follow the norms laid by the government. It's also to be noted that there are strict penalties put down for those schools which will refuse to tag behind them. It includes a *charge of Rs. 100,000 and or for further intensity they might have to pay about Rs. 10,000 per day as a fine.*

The teachers, on the other hand will have to avoid any sort of discrimination in the class rooms which forbids a child to study. It should be seen by them that the children with disabilities are well taken care of with proper provision of transportation and writers, if necessary. Teachers' norms have been separately declared by the government which they are supposed to follow firmly.

Who are against RTE?

There is a big line of complaints to the factors tagged with this act by the government. Especially, the private schools are expressing vast disapproval for the norms laid for them. They (High standard schools) will of course snub to admit those children who are too weak or those who at high age wish admissions in lower classes.

The Kerala education chief Mr. M.A. Baby remarked that the act signaled loss of the state governments. Establishment of large schools in the small vicinities as suggested by the law will call upon huge financial burden on the state which the state will be unable to meet. Over attention to the process will reduce the development process in other grounds. Some noted educationists and universities have also claim that the act has big pits. According to them the act is structurally weak. The 25% reservation also doesn't seem useful to them as they feel it's only synonymous to the fee paid for the admission in the government schools.

NCPCR and Right to Education Act

The National Commission for Protection of Child Rights (NCPCR) has been authorized to examine the RTE (Right to Education Act). There is a special Division inside NCPCR which is supposed to handle this task. NCPCR has declared that a special toll free helpline will be created to tackle complaints on the issue. This really makes this act a democratic one, involving the hands of the lowest of citizens of the vast country.

So, let's pledge to support the little masters to grow into worthy citizens. Let's help them to climb the stairs of success. The pros and cons of the act are unambiguous, and the intelligent Homo sapiens know well how to win over every problem. Mission: Complete Education will be accomplished only when we all join hands with the government. Let's kill child labour, child marriage, shortened and incomplete schooling to death and give birth to a new approach towards education, Complete Education!

MEANING AND IMPORTANCE OF EDUCATION

MEANING

To know the meaning of education we discuss about it's etymological, narrow and broader meaning of education.

- Etymological meaning of education:-The term education is derived from Latin word educere, educare, and educatum which means 'to learn', 'to know', and to 'lead out'. That is education means to lead out internal hidden talent of a child or person.
- Narrow meaning of education:-The education provided under the premises of schools, colleges and universities is the narrow concept of education. The narrow meaning of education limited under the premises of educational institutions. It doesn't include the education outside of four walls of institution. Narrow meaning of education emphasize on bookish knowledge.
- Broader meaning of education:-Opposite of narrow meaning of education is broader meaning of education. That is the education provided under the educational institution's premises is only education is wrong. According to it's concept education is universal, we can gain education from anywhere, anytime. There is no bound of place and time. Education is the long life process. It starts from cradle and ends to the grave.

THE IMPORTANCE OF EDUCATION

Education is very important for an individual's success in life. Education provides pupils teaching skills that prepare them physically, mentally and socially for the world of work in later life. Education is generally seen as the foundation of society which brings economic wealth, social prosperity and political stability.

Higher education helps in maintaining a healthy society which prepares health care professionals, educated health care consumers and maintaining healthy population. Education is major aspect of development of any modern society since if there is a deficit of educated people then society will stops its further progress. Government should pay serious attention to education and support it economically and morally all over the country.

Education is the best investment for the people because well educated people have more opportunities to get a job which gives them satisfaction.

Educated individuals enjoy respect among their colleagues and they can effectively contribute to the development of their country and society by inventing new devices and discoveries. Today's ever growing numbers of people mostly are not satisfied with their basic education and try to get secondary or tertiary education in order to meet the demands of contemporary society. Some of them enter higher educational institutions and some search additional information on the internet. Good People sacrifices their time and money and sometimes even their health to raise educational level because they realize that education is their passport to the future and for tomorrow.

Main purpose of education is to educate individuals within society, to prepare and qualify them for work in economy as well as to integrate people into society and teach them values and morals of society. Role of education is means of socializing individuals and to keep society smoothing and remain stable. Education in society prepares youngsters for adulthood so that they may form the next generation of leaders. It will yield strong families and strong communities. Indeed, parents taking an active role in their child education produce a willingness in children to learn. Education and society provides a forum where teachers and scholars all over the world are able to evaluate problems in education and society from a balanced and comparative social and economic perspective. Education is an important aspect of the work of society and it will raise the countryside issues and promote knowledge and understanding of rural communities. One of the education essential tasks is to enable people to understand themselves. Students must be equipped with knowledge and skills which are needed to participate effectively as member of society and contribute towards the development of shared values and common identity. Education has a vital role to play in assisting students to understand their cultural identity. Education acts as the distribution mechanism of the cultural values such as it more layered the society and participate in society that carries the culture.

Education and society provides a forum where teachers and scholars all over the world are able to evaluate problems in education and society from a balanced and comparative social and economic perspective. Education is an important aspect of the work of society and it will raise the countryside issues and promote knowledge and understanding of rural communities. One of the education essential tasks is to enable people to understand themselves. Students must be equipped with knowledge and skills which are needed to participate effectively as member of society and contribute towards the development of shared values

and common identity. Education has a vital role to play in assisting students to understand their cultural identity. Education acts as the distribution mechanism of the cultural values such as it more layered the society and participate in society that carries the culture. In our culture today, there is a great emphasis on higher education. In a society, more educated you are, better off you are. Every society has specialized individuals that require extended education to fulfill certain main positions.

These persons are normally known as professors, priests, doctors, mechanics or artists. Education has been a higher part of every culture on earth and education is a systemic project. Whole society should care for and support the education patriotism, cause and socialism among the young people. Everyone must do work hard to cultivate moral conduct. Education mainly begins at home; one does not acquire knowledge from a teacher, one can learn and get knowledge from a parent or a family member. In almost all societies, receiving education and attending school is very necessary is one wants to achieve success. Education is the key to move in the world, seek better jobs and ultimately succeed in life. Schools play a vital role in preparing our children and young people for effective participation and responsible citizenship in society. The development of education and educational opportunities is built on creativity tempered by knowledge and wisdom gain through the experience of learning.

Investment in human capital, life long learning and quality education help in the development of society. Teachers are the most important factors for an innovative society because teachers' knowledge and skills not only enhance the quality and efficiency of education, but also improve the prerequisites of research and innovation. Many members of our society are not provided with a safe and secure environment in which children can develop, child abuse, violence against women and interpersonal violence cause a cancer on our society. Society play a key role in the realization of life long learning. The improvement of social education facilities such as libraries and the learning opportunities are implemented by the local governments. Students today are exposed to loads of technology and information at everywhere.

RIGHT TO EDUCATION (RTE) ACT, 2009

The Right of children to Free and Compulsory Education Act came into force from April 1, 2010. This is was a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighbourhood.

Any cost that prevents a child from accessing school will be borne by the State which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test.

Children with disabilities will also be educated in the mainstream schools. The Prime Minister Shri Manmohan Singh has emphasized that it is important for the country that if we nurture our children and young people with the right education, India's future as a strong and prosperous country is secure.

All private schools shall be required to enroll children from weaker sections and disadvantaged communities in their incoming class to the extent of 25% of their enrolment, by simple random selection. No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State at the rate of average per learner costs in the government schools (unless the per learner costs in the private school are lower).

All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. All private schools will have to apply for recognition, failing which they will be penalized to the tune of Rs 1 lakh and if they still continue to function will be liable to pay Rs 10,000 per day as fine. Norms and standards of teacher qualification and training are also being laid down by an Academic Authority. Teachers in all schools will have to subscribe to these norms within 5 years.

The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of this historic Right. A special Division within NCPCR will undertake this huge and important task in the coming months and years. A special toll free helpline to register complaints will be set up by NCPCR for this purpose. NCPCR welcomes the formal notification of this Act and looks forward to playing an active role in ensuring its successful implementation.

NCPCR also invites all civil society groups, students, teachers, administrators, artists, writers, government personnel, legislators, members of the judiciary and all other stakeholders to join hands and work together to build a movement to ensure that every child of this country is in school and enabled to get at least 8 years of quality education.

BENEFITS OF RIGHT TO EDUCATION ACT, 2009

RTE has been a part of the directive principles of the State Policy under Article 45 of the Constitution, which is part of Chapter 4 of the Constitution. And rights in Chapter 4 are not enforceable. For the first time in the history of India we have made this right enforceable by putting it in Chapter 3 of the Constitution as Article 21. This entitles children to have the right to education enforced as a fundamental right.

2

The Demand for Free and Compulsory Education in the Constitution Era

There is disagreement amongst scholars regarding the origin and nature of the education system in ancient India. Some of them hold the view that it is difficult to speak of ancient Indian education with certainty, as our information is based on the documents of 'unequal value and unequal date.' Nevertheless, it may be stated that education in India has been notorious for not being socially inclusive. Till the 19th century, it was largely considered a privilege restricted to persons at the higher end of the caste or class system. History is replete with examples of caste, class and gender-based discrimination in imparting education. Education was the sole privilege of the priestly castes primarily because of the religious basis for the content of education, coupled with the elitist medium of instruction that was chose to impart the knowledge. Admission to Gurukulas or Ashramas was not open to all. People from lower castes, and so-called 'shudras', in particular, were barred from receiving education. Buddhism and Jainism overthrew the dominance of classical Vedic education by the end of the eighth century A.D, forcing education beyond the confines of hermitages. Thereafter, several learned Brahmins started Pathasalas in important towns where they received patronage.

The Muslim rulers of the Indian sub-continent also did not consider education as a function of the State. It was perceived as a branch of religion and therefore entrusted to learned theologians called 'Ulemas'. Therefore, in ancient and medieval India, education was intertwined with religion. From the location of Gurukulas to excluding sections of the society from accessing education, the

system of education was clearly not accessible to all persons. The discovery of the sea route to India, in 1498, influenced the course of development of education in the Indian sub-continent. Although many scholars have commended the British policy of introducing modern education, it was not a spontaneous benevolent act.

The progress in education was facilitated with a view to serving their vested interests, *i.e.,* to train Indians as clerks, managers and other subordinate workers to staff their vast politico administrative machinery. However, education of the 'Indian masses' was largely neglected, and by the beginning of nineteenth century, it was in shambles. For instance, while reporting about the situation of education in Bellary (presently in the State of Karnataka) in the early nineteenth century, Campbell, the then District Collector observed that 'it cannot have escaped the government that of nearly a million of souls in this district, not 7000 are now at school … In many villages where formerly there were schools, there are now none.'

In support of this, a missionary notice of 1856 stated that in all other parts of the country 'a school, either government or missionary is as rare as a lighthouse on our coast…. three or four schools existing among three or four million of people.' The neglect of education by the British was also acknowledged by the Wood's Despatch. In this context, the demand for FCE in India can be traced back to the early stages of the freedom struggle in British India. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy, in general, and in rural India, in particular. In the evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free education for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education. The Commission also recommended that schools should be open to all castes and classes.

The first law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education for boys and girls in the age groups of 7–12 years and 7–10 years respectively. The first documented use of the word right in the context of elementary education appears in a letter written by Rabindranath Tagore to the International League for the Rational Education of Children in 1908. In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Council, albeit unsuccessfully.

The Legislative Council of Bombay was the first amongst the Provinces to adopt a law on compulsory education. Gradually, other Provinces followed suit as control over elementary education was transferred to Indian Ministers under the Government of India Act, 1919. However, even though Provincial Legislatures had greater control and autonomy in enacting laws, progress in universalising education was poor due to lack of control over resources. In 1937, at the All India National Conference on Education held at Wardha, Gandhi mooted the idea of self-supporting 'basic education' for a period of seven years

through vocational and manual training. This concept of self-support was floated in order to counter the Government's constant excuse of lack of resources. The plan was to not only educate children through vocational training/manual training by choosing a particular handicraft, but also to simultaneously use the income generated from the sale of such handicrafts to partly finance basic education. Furthermore, education was supposed to be in the mother tongue of the pupils with Hindustani as a compulsory subject.

Two other interesting features of the Wardha Scheme are as follows:First, within the 'basic education course', there were two divisions, the 'lower basic' or 'primary' corresponded to classes I–V. The 'upper basic' or 'post-primary' corresponded to classes VI–VII. The division between primary and postprimary was created with a view to giving pupils the option of shifting to another form of education if they so desired after the first five years of 'basic education'.

Second, a minimum wage for teachers was stipulated under the Wardha Scheme. Based on these ideas, the Wardha Scheme of Education was formulated for rural areas. The next landmark development in the history of FCE in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended FCE for eight years (6–14 years' age group).

Despite the consistent demand for FCE during the freedom struggle, at the time of drafting the Constitution, there was no unanimous view that the citizens of India should have a right to education, let alone a fundamental right. The Constitution Assembly Debates reveal that an amendment was moved to alter the draft Article relating to FCE, by removing the term entitled to ensure that it was merely a non-justiciable policy directive in the Constitution.

DEMAND FOR A FUNDAMENTAL RIGHT TO EDUCATION

The period spanning between 1950 to the judgement in Unnikrishnan's Case in 1993 saw several legal developments. The Indian Education Commission (Kothari Commission) 1964–1968, reviewed the status of education in India and made recommendations. Most important amongst these is its recommendation of a common school system with a view to eliminating inequality in access to education. Immediately thereafter, the National Policy on Education, 1968 was formed. The 1968 Policy was the first official document evidencing the Indian Government's commitment towards elementary education.

The Policy dealt with issues of equalisation of educational opportunity and required the common school system to be adopted in order to promote social cohesion. However, it was not supported by legal tools that could enforce such policy mandates. Interestingly, it even required that special schools should provide a proportion of free-studentships to prevent social segregation in schools. A second round of studies was conducted by the Ministry of Education in conjunction with the National Institute of Educational Planning and Administration, and this process contributed to the formation of the National Policy on Education, 1986. This policy, while re-affirming the goal of

universalisation of elementary education, did not recognise the 'right to education'. The 1986 Policy is also severely criticised for having introduced non-formal education in India.

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

A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in Mohini Jain v State of Karnataka, that "the 'right to education' is concomitant to fundamental rights enshrined under Part III of the Constitution" and that 'every citizen has a right to education under the Constitution'. The Supreme Court subsequently reconsidered the judgement in the case of Unnikrishnan, J P v State of Andhra Pradesh. The Court (majority judgement) held that 'though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21… (and) must be construed in the light of the Directive Principles of the Constitution.

Thus, 'right to education, understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development'. In the meanwhile, major policy level changes were made under the dictates of the IMF-World Bank Structural Adjustment Programme and the World Bank-funded District Primary Education Programme (DPEP) was introduced in 1994. Under DPEP, the national commitment towards FCE up to 14 years was reduced and primary education for the first five years was introduced. Further, the concept of multi-grade teaching and para-teachers was also introduced. While policy level changes had diluted the quality of FCE, the Unnikrishnan Judgement empowered people with a legal claim to FCE. Several public interest litigation petitions were filed in different High Courts to enforce the Unnikrishnan Judgement and acquire admission into schools. This created tremendous pressure on the Parliament and thereafter a proposal for a Constitutional amendment to include the right to education as a fundamental right was made in 1996.

The Constitution (Eighty-Third) Amendment Bill was introduced in the Rajya Sabha in July 1997. The 83rd Amendment proposed that Article 21-A be introduced (fundamental right to education for 6–14 years), former Article 45 be deleted (the then existing directive principle on FCE) and Article 51-A(k) (fundamental duty on parents) be introduced. Between 1997 and 2001, due to change in Governments, the political will that was required to bring about the amendment was absent. In November 2001 however, the Bill was re-numbered as the 93rd Bill and the 83rd Bill was withdrawn.

The 93rd Bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. This

Bill was passed in 2002 as the 86th Constitutional Amendment Act. Currently, under Article 21-A of the Constitution, every child between the ages of 6–14 has a fundamental right to education, which the State shall provide 'in such manner as the State may, by law, determine'. Early childhood care and education (for children in the age group of 0–6 years) is provided for as a directive principle of State Policy under Article 45 of the Constitution.

EDUCATION TRANSFERRED FROM STATE LIST TO CONCURRENT LIST

Having clearly demonstrated that the State laws lack uniformity and are also clearly violative of the Constitutional mandate, the question that needs to be examined is how can we ensure uniformity in the enforcement of standards in elementary education? In order to answer this, it is important to briefly look into the legislative powers that are vested with the Centre and State with respect to elementary education. The Constitution, which is based on the principle of federalism, adopts a three-fold distribution of legislative powers. Different subjects for legislation find mention in one of the three lists, namely the Union List, State List and Concurrent List in the Seventh Schedule to the Constitution. While the Parliament and State Legislatures have exclusive legislative power over entries in the Union List and the State List respectively, both the Parliament and the State Legislatures have the power to legislate over entries in the Concurrent List.

The three identified rationales underlining the placement of certain entries in the Concurrent List are:

1. To secure uniformity in the main principles of law
2. To guide and encourage local efforts
3. To provide remedies for mischief arising in the local sphere, but extending, or liable to extend beyond the boundaries of a single province.

Education, which was originally in the State List, was subsequently transferred to the Concurrent List by means of a Constitutional amendment in 1976. Entry 25 of the Concurrent List reads as follows: "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." The exclusion of entries 63–66 from the Concurrent List is immaterial for the purposes of this document.

DETERMINING THE CONTENT OF LAW

COERCIVE AND NON-COERCIVE RULES WITHIN A RIGHTS FRAMEWORK

It is evident that there is a fundamental right to FCE in India. However, apart from a mere mention of the age group for which such a right is guaranteed, Article

21-A does not throw any light on its content. The content of the right is left to be regulated by law. In order to implement the fundamental right to education through a rights-based model of legislation, one needs to determine the features of such a model. However, before examining the elements of a rights-based model of legislation, it may be apt to briefly discuss Amartya Sen's caveat with respect to legislating for the implementation of a human right.

He points out that legislations, which go a long way towards ensuring enforceability of specific minimum entitlements, may also have the negative effect of giving restrictive or limited interpretations of the content of the concerned human right. Legislations may also give rise to policy inaction on the ground that specific legal rules have been complied with. For example, if a law lays down that the duty of the State is to ensure x, y, z, then the State will restrict its activities to ensuring x, y, z without looking beyond that framework. Therefore, while legislation is certainly a welcome development, it should not be treated as the only vehicle of implementing human rights. The legislation should also be supplemented by other non-coercive rules for effective implementation of the human right. This caveat needs to be taken into account during legislative processes and adequate safeguards need to be built into the law. While there cannot be a fool-proof mechanism of countering negative outcomes of law, the identifiable negative outcomes may be mitigated. For instance, governmental inaction could be countered through institutionalised periodic review of policy as well as law to ensure that progressive changes are made to both from time to time. In addition to such periodic review of policies, there should also be an institutionalised periodic review of the implementation of not only the policy but also the law. Furthermore, the quality of elementary education also depends on the quality of teaching staff, non-teaching staff, sensitivity and awareness of administrative staff in the various government departments Therefore, training and developing the capacities of such personnel is a critical component of elementary education.

In particular, this caveat assumes great importance in the context of education in India because the fundamental right to education as enshrined in the Constitution is limited to the age group of 6–14 years. This not only excludes early childhood care and education but also excludes higher education. Internationally, the human right to education includes the right to education at all stages that are fundamental and basic, including the right to early childhood care and education. The right to education has been recognised in several international instruments, of which the three key international instruments are the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and the Convention on the Rights of the Child (CRC). While some instruments uphold the right to 'elementary education', others use the phrase 'primary education'. Article 26 of UDHR lays down that free education should be provided at least in the 'element ary and fundamental stages' and is compulsory. Article 13 of ICESCR and Article 28 of CRC provide inter alia that 'primary education' shall

be free and compulsory. In its General Comment No. 13, the Committee on Economic, Social and Cultural Rights (the Committee) has tried to clarify and expand on the meaning of the phrase 'primary education'. The Committee has stated that primary education is that which caters to the 'basic learning needs of the children'.

Ideally, any law implementing the fundamental right to education should off-set this exclusion. However, in the event that the law does not provide for a right to early childhood care and education, then the State should draw up concrete schemes (non-coercive rules) to ensure that early childhood care and education is provided. Currently, in India, the Integrated Child Development Scheme provides for early childhood care and education. However, the nature of pre-school education, the quality of the services, as well as its linkage with formal school education need to be examined in great detail.

CONCEPTUALISING A RIGHTS-BASED MODEL

Having discussed the importance of the supplementary role of non-coercive rules, this part will now examine the building blocks of a rights-based model. Broadly, it may be stated that such an approach includes four essential elements.

- It should evaluate claims of rights–holders and corresponding obligations of duty bearers. In the context of education, there exists a relationship between the (State – child), (child – parent), (State – parent) and (State – community – child/parent). The law should be very clear on how each of these relationships will be regulated. The nature of the legally enforceable claim that a child would have against the State (officials, teachers, managerial staff and so on) should be outlined unambiguously, *i.e.,* the minimum entitlements should clearly be specified in law. Minimum entitlements may be broadly categorised into quantitative and qualitative entitlements. There is no fixed and clear demarcation between quantitative and qualitative entitlements and the two categories may be said to be over-lapping. Entitlements such as period of compulsory education, meaning of free education and whether it entails freedom from payment of money, number of schools, distance from residence, quantification of education facilities, number of teachers, infrastructure requirements for school, minimum content of education, curriculum, pedagogy, guarantee against violence and exploitation in schools, and guarantee of safe school environment should be legally guaranteed as enforceable minimum norms.
- A rights-based model should develop capacity-building strategies for not only rightsholders' to claim their rights but also for duty bearers to fulfill their obligations. Capacity building of rights-holders involves two fundamental elements
  - Being aware of the right
  - Creating an enabling environment to access such a right Therefore, awareness and dissemination of information to the public regarding

their rights is an inherent part of a rights-model of elementary education. Capacity of duty bearers through human rights education and requisite professional training (for teaching staff, non-teaching staff, district education officials, officers in the ministry of education and so on) is also part of such a model.

- There should be room for monitoring and evaluating outcomes and processes using human rights principles and standards. For example, in the context of elementary education, the three non-negotiable principles that need to be adhered to are the principles of non-discrimination, equality and child participation. These principles should also be used in evaluating the performance of the State in implementing the right to FCE. Further, the law should clearly lay down methods of locating accountability for failures in the system which can be used as a method of grievance redressal in case of rights violations. In locating accountability, the duty-bearers should be clearly identified. A special grievance redressal mechanism should be in place to expedite disposal of grievances and ensure that children are admitted into schools in the shortest possible time. For example, the Karnataka Grama Panchayat's (School Development and Monitoring Committees [SDMC] Model) Bye-Laws, 2006 has a separate time-bound grievance redressal mechanism for a range of complaints such as employing children as child labour, physical and sexual abuse, sexual harassment, other forms of indignity, negligence, dereliction of duties, misdemeanor and misconduct, mismanagement, misappropriation of funds and so on by teaching, non-teaching staff as well as SDMC members.
- A rights-based model should incorporate the recommendations of international human rights bodies to inform each step of the process. For example, under international law, the right to basic education also includes the right to early childhood care and education. Another useful aide in developing a rights-based model of legislation is Asbjoern Eide's three-level typology of States' duties, which was developed in the context of right to food. This typology is now widely accepted and used as a framework for examining States' human rights obligations generally. Eide, human rights impose a three-fold duty on the State.
- The duty to respect implies the duty to refrain from interference and the duty to ensure that measures that prevent access are not introduced by the State. This would necessitate the creation of an enabling framework of law that removes barriers (atleast those that can be identified) to education. For example, in the context of school education, demand of documentary proof of residence, birth certificate and so on, which operate as huge barriers against admission into schools should be eliminated/mitigated.
- The duty to protect requires the State to ensure that the State/enterprises/individuals do not deprive children of their right. For example, the dereservation of plots reserved for government schools would be an act

of depriving right to education. Similarly, engaging children as labour would deprive them of their right to remain in full-time regular schools.

- The duty of the State to facilitate and fulfill human rights implies that the State should pro-actively engage to facilitate and provide for the implementation of FCE. It is the duty of the State to strengthen people's access to and utilisation of resources. Further, whenever an individual or group is unable to enjoy the right to FCE, for reasons beyond their control, States have the obligation to fulfill (provide) that right directly. This third element is extremely crucial as it creates a positive duty on the State as opposed to a negative duty. It also distinguishes the traditional truancy model of legislation from a rights-based model. Compulsory education laws have traditionally revolved around monitoring of attendance and penalty for truants/parents. Historically, police officers worked part-time as truant officers. Therefore, truant officers' primary function was akin to that of the police; and many of the attendance order boxes were also placed in police stations. The policing model of education and crime is theoretically opposed to a right sapproach because it is not enabling. It is premised on a fundamentally flawed assumption about human behaviour that poor parents are unwilling or reluctant to send their children to school. Based on this assumption, the law draws up an elaborate framework of monitoring and penalising defaulting parents and children instead of strengthening access and resource-utilisation of poor parents and their children. For example, consider a situation where a poor parent is unable to send her child to school because of the need for an additional source of income or additional help for household chores. Under the truancy model, a parent who does not send her child to school is automatically denounced as an unwilling parent who does not appreciate the benefits of formal school education. This unwilling parent is penalised under the truancy model. This policing model does very little to change the underlying causes of truancy. In complete contrast to this, in a rights-based model, the State should take measures to strengthen the access right of the child by creating an environment which is conducive to formal schooling. In this context, it is pertinent to mention MV Foundation's experiments with re-allocating time and household chores of mothers to ensure that girl children are allowed to go to school, *i.e.,* a simple time-management technique solved truancy as opposed to imposition of penalty. Alternatively, it has been shown that where crèches are provided at the worksite, the attendance of girl children dramatically improved. Such examples prove that policing attendance is a completely futile method of enforcing attendance. A rights-based model does not have any room for punishing poor parents and their children for absenteeism. It is the duty of the State to create an enabling framework of law as part of its duty to fulfill the right.

EQUALITY AND NON-DISCRIMINATION IN SCHOOL EDUCATION

In addition to being enabling, the law should also guarantee equality and non-discrimination in education. The first component of equality is equality of resources and the problem of economically generated inequalities in education. In education, economic inequality leads to inequality in access, participation and outcomes in education. Scholars have identified processes within education systems that contribute to such inequality. For example, studies have repeatedly shown that selection or admission procedures, grouping procedures used to locate students in different streams in higher education, systems of curriculum, syllabus design and assessment contribute to inequality in the education system.

Most Indian schools have entrance examinations, collect capitation fees, have strenuous interview procedures and so on at the stage of admission; several schools also adopt a system of classifying 'toppers' in one section and failures in another. Tackling such inequality is a very complicated process and requires intervention that may fall outside the purview of education laws. Nevertheless, one solution that has been presented is that admission, selection procedures, and grouping should be made 'transparent and open to democratic scrutiny and public challenge'. Therefore, a rights-based law which adopts the principle of equality should adopt a two-pronged approach of banning identifiable discriminatory processes as well as ensuring that all other processes in schools are documented and made public in order to facilitate public scrutiny and challenge, if required.

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

Equality of power also forms an important element of equality in education. Power may be said to operate from the macro to the micro level. At the micro-level or school-level, equality of power may be facilitated through democratic decision-making on issues concerning the school, where children as well as parents are allowed to participate in the decision-making processes. For example, the Government of Karnataka has introduced school-level democratic decision-making to some extent through the Karnataka Grama Panchayat's (School Development and Monitoring Committees [SDMC]) (Model) Bye-Laws, 2006.

The bye-laws provide that an SDMC, which includes parents and children, should be formed in every government/government-aided school. All decisions regarding the school are required to be taken by this body; and all members are given equal decision-making power during meetings. At the macro-level, democratising education would imply that all actors in education have the

opportunity to engage in education planning. An ideal rights-based law may also need to acknowledge and provide for methods of participatory education planning at the Centre and State levels.

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

QUANTITATIVE MINIMUM ENTITLEMENTS

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

One important aspect of quantitative entitlements is the concept of 'free' education. The meaning of 'free' in the international context is at variance with the manner in which 'free' is conceptualised in the Indian context. While the Committee is against direct costs such as imposition of fees, donations, capitation fees, *etc.*, there seems to be some ambiguity with respect to 'indirect costs'. The Committee has laid down that indirect costs, though generally not permissible, may be allowed on a case-to-case basis. There is no uniform international State practice on this issue.

While assessing a demand that text books should also be provided free of cost as part of 'free education', the Constitutional Court of the Czech Republic has held that free does not imply that the State has to bear all costs. The Court has stated that 'free' in primary education means that the State would bear the costs of establishing schools, their maintenance and operation. However, tuition and teaching materials need not be free. Reportedly provided free of charge in Austria, Bulgaria, Denmark, Finland, Germany, Iceland, Italy, Japan, Sri Lanka and Sweden. In some others, like Nepal and Russia, subsidies are provided for text books. Loan arrangements are also made in countries like Armenia where textbooks are reportedly loaned to pupils against payment of an annual fee and/or the parents have to contribute to the cost of textbooks.

The UN Special Rapporteur has recommended that 'free' would imply that all direct and indirect costs of education should be the responsibility of the Government. A similar approach is taken by the Committee on the Rights of the Child. The meaning of the term 'free' may also be inferred from the Observations of the Committee on the Rights of the Child (ComRC). For example, in its 27th Session, the ComRC observed as follows: 'In addition, the Committee is concerned that in practice primary education is not free and that many parents have to pay school fees as well as related costs such as for uniforms and equipment, which remain too expensive for most families.'

Despite the international variance in the meaning of this term, if costs, both direct and indirect, are viewed as a 'barrier' to education, then automatically, in a rights-approach, there can be no room for direct or indirect costs of education. Experiences at the field show that the notion of free education cannot be limited to a tuition fee waiver or a few incentives such as mid-day meal scheme. For

example, a majority of children from scheduled castes and scheduled tribes require residential schools to receive meaningful school education. Despite all existing incentives, the economic and social conditions of such parents compel them to withdraw their children from schools due to their inability to provide them with the bare minimum requirements at home which would facilitate learning after school hours.

The concept of free education must take into account such factors as well. Other important aspects of minimum quantitative entitlements are related to minimum schooling years, infrastructure requirements, number of schooling hours, ratio of students to teacher, qualification of teachers, number of neighbourhood schools and so on.

Another crucial component of minimum entitlement is closely connected with the issue of bridge/transition course. In order to ensure that the right to formal schooling ultimately reaches children who have been marginalised due to socio-economic conditions, the law should also provide for a right to be integrated into mainstream schools after imposing an outer limit on the number of years in a bridge course and the options available to the child after the completion of the bridge course.

QUALITATIVE MINIMUM ENTITLEMENTS

Under the category of qualitative entitlements, one of the most complex aspects is the curriculum of education. In this context, it is apt to mention that the UN Special Rapporteur has stated that the right to education in international human rights law includes not only the right to 'human rights in education' but also includes the 'right to human rights education.' Curriculum is not only important from the point of view of entitlements but is also important in the context of compulsion and the nature of relationship between the State and the parent regarding the child's education.

Since 'compulsion' involves State coercion, it has on several occasions been diametrically opposed to parental religious, moral and philosophical convictions.

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

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

COMPULSORY ATTENDANCE WITHIN A RIGHTS-BASED FRAMEWORK

Compulsory attendance backed by punitive measures is the central attribute of the truancy model of legislation. In contradistinction to the truancy model, a rights approach should necessarily be enabling. This implies that a rights-based law should aim to provide solutions to problems/barriers. In any event, a rights-approach does not permit the imposition of punishment on persons who are unable to send their children to school due to socio-economic or cultural barriers. It should be reiterated at this point that the nature of the punitive measure is immaterial, *i.e.,* even community service (punitive measure) as provided for

under the Right to Education Bill, 2005 goes against the basic tenor of a rights-approach to education. The imposition of punitive measures is a classic illustration of Amartya Sen's argument that in the overzealous attempt to create a law enforcing a human right, the human right itself may be detrimentally affected. In their zeal to ensure school attendance, officials restrict their activity to strict enforcement of the law and refuse to address policy issues that fall outside the purview of law. The entire State machinery is more concerned with policing attendance rather than creating environments which are conducive to compulsory education by addressing complex problems arising out of child labour, child marriage, lack of housing, malnutrition, migration and so on.

The other aspect of compulsory attendance is the creation of legal exceptions to compulsion. The truancy model coupled with the exceptions to compulsion is a method of negating 'social accountability.' A study of Statelaws reveals that the clause on exceptions to compulsion is often used as a method of completely negating State's accountability. For example, several State laws make 'absence of a neighbourhood school' an exception to compulsion.

Instead of imposing a duty on the State to provide neighbourhood schools, the benevolent State exempts parents from penalty where there are no neighbourhood schools. Such an approach is completely opposed to a rights-based model. In a right sapproach, a neighbourhood school would arguably be a minimum quantitative entitlement which is justiciable.

COMPULSORY EDUCATION VS. FREEDOM OF RELIGION

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

Three types of conflicts may arise between education and religion:

1. Direct conflict where parents may want to provide purely religious education to their children. For example, where a child is inducted into the monastic order of a particular religion at the age of six and thereafter is being given religious instruction; the obvious question is whether such a practice should be exempted as a religious/cultural right or whether it may be viewed as violation of a child's fundamental right to primary education. In cases of such direct conflict, it may be argued that since Article 25 of the Constitution, is subject to Article 21-A, no parent would be in a position to choose religious education to the exclusion of free and compulsory formal secular education.
2. Conflict, which has plagued many countries in recent times, revolves around the limits of religious expression in schools. For example, bans

on wearing hijabs, schools displaying pictures of gods and goddesses of a particular faith, prayers conducted in a particular faith and so on. In such cases, there may be conflicts between a student's right to education, right to religion and the secular nature of the State especially in public schools.

3. Conflict occurs where religious beliefs are opposed to the curriculum of education in government schools. The following case illustrates the need for clarity on the right to content of education, as part of the guarantee to FCE. The issue of parental choice and content regulation was dealt with by the European Court of Human Rights in the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark. The applicants were parents of children who were going to State primary schools in Denmark. As per the Danish Constitution, all children have the right to FCE in State primary schools. The State had introduced compulsory sex education in State primary schools as part of the curriculum. This change in the curriculum was introduced by a Bill passed by the Parliament. There were guidelines and safeguards against a) showing pornography, b) teachers giving sex education to pupils when they were alone, c) giving information on methods of sexual intercourse and d) using vulgar language while imparting sex education. The applicants, who were parents of school going children, gave several petitions to have their children exempted from sex education in the concerned State schools. However, these requests were not met and all of them withdrew their children from the said schools.

The applicants argued that the Denmark Government had violated Article 2 of Protocol No. 1 to the European Convention on Human Rights which states "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions." The State argued that Article 2 would cover only religious instruction and not all forms of instruction. The Court rejected this argument and held that any teaching should respect parental' religious and moral convictions. However, the Court also held that article 2 would be violated only if while imparting sex education, the teachers advocated sex at a particular age or particular type of sexual behaviour. Moreover, the parents still had the freedom to educate their children at home to instill their own religious convictions and beliefs and therefore, imparting sex education *per se* was not a violation of the Article 2.

The Danish Case assumes importance in the Indian context because there have been several controversies regarding curriculum in schools in the context of religion. For instance, the saffronisation of education by the Bharatiya Janata Party and Indian government's policy of 'modernisation of Madrasas (religious schools of Muslims)' pose serious questions of curricular entitlements and safeguards. While these two examples raise several complex questions regarding

curriculum, it also has a common thread – that of a right to secular education of all children, irrespective of their religion. The saffronisation of education combines content regulation with the need for social accountability of the Government.

A combination of a positive and a negative right to curriculum may adequately guard against problems such as saffronisation. Every child should have a right to a core non-negotiable content in education that is coupled with a duty of the State to refrain from arbitrarily interfering with such content. In defining the core minimum content of curriculum, it is advisable to prescribe the non-negotiable minimum in terms of competencies that need to be achieved at the end of each grade.

The advantage of defining the core minimum in terms of competencies is that it gives States and teachers the freedom to contextualise learning within a specific local setting by creating localised syllabus. As regards the negative right, given the nature and increasing evidence of polarisation based on religion in India, it may be stated that right to education should at least include certain safeguards against propaganda-driven curriculum or syllabus.

Therefore, guarding against arbitrary alteration or revision of existing curriculum would necessitate the creation of a systematic process and procedures for developing and revising syllabus at all levels – Centre, State, District and so on. Therefore, the negative right is procedural right against arbitrary State intervention, whereas the positive right is a substantive right to minimum competencies. The case of madrasas raises the crucial question of balancing the interests of religious minority institutions and the right of the child to secular education. Madrasas are largely autonomous and therefore decide upon their curriculum, hours of study, duration of study and so on. The Central Government's policy of modernising madrasas by introducing subjects such as mathematics and science has been criticised as being violative of not only Madrasas' autonomy but also doing injustice to children's right to secular education and free and compulsory full-time formal education.

Without getting into the merits and demerits of modernising madrasas, it may be argued that while minority groups have the right to manage their own educational institutions, the same cannot be considered as having fulfilled the requirement of Article 21-A unless

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

COMPULSION AND MEDIUM OF INSTRUCTION

Another controversial issue in the Indian context would be medium of instruction and right to education. For example, while defining the nature of the relationship between the parent and the State and also defining the scope of compulsion, the law should address whether a child should be compelled to attend a government school where the medium of instruction is completely alien to the child. Alternatively, the law should examine whether the right to

education includes the right to be educated in a manner that is not alien to the child, *i.e.,* where language is not a barrier to education.

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

The Court held that the phrase 'religious and philosophical convictions' does not include linguistic preferences. The Court further held that non-provision of education in a particular language of instruction does not amount to discrimination based on language. Even though it may be argued that lack of schools in a particular medium of instruction does not amount to discrimination, given the extent of migration and diversity in language in the Indian context, the latter may be a genuine barrier to school education. For example, in Manipur, several Naga children are being educated in a language and curriculum that is completely alien to them. As a result of this, the Naga underground movement has issued threats to the Manipuri schools demanding that the Naga population in these schools be taught in a manner that is acceptable to the Nagas. This is illustrative of the fact that in order to make elementary education an effective right, the law should necessarily address the language issue in such a manner that it enables all children to attend schools.

ROLE OF THE COMMUNITY WITHIN A RIGHTS FRAMEWORK

The law would also need to lay down the kind of relationship the State should create with respect to 'State–communities–children' in the context of education. For example, how would the law respond to employers who engage children in labour; how would the law respond to the government's slum demolition drives which completely ruin a school-going child's ability to attend schools? These two examples are classic cases of third party intervention that hinders a child's right to education. The State's duty to protect the right would imply that the State should protect a child's right to education from any form of interference or hindrance.

Another aspect of the 'State–communities–children' relationship is the empowerment of communities, *i.e.,* communities should be empowered with a right of participation in school education. The Karnataka example of community participatory methods of school management is a case in point. Using such creative legal tools, the law could create avenues for legal claims to be made by children viz-a-viz such imperfect obligations. It has also provided a brief insight into some very controversial issues that need to be debated and discussed in order to arrive at a rights-based model of elementary education.

ASSESSMENT OF STATE LEVEL LEGISLATIONS FROM THE 'RIGHTS' PERSPECTIVE

Clarity regarding the phrase 'rights-based' alone is not sufficient for realising the fundamental right to education. In order to effectively ensure that every child is guaranteed the core non-negotiable minimum, the model of legislation becomes crucial. For example, how can a child in Sikkim and a child in Kerala be guaranteed this core non-negotiable minimum right to education? If, for example, a child in Sikkim receives only five years of compulsory education and a child in Kerala receives eight years of compulsory education, then this would definitely be violative of 'equitable' education.

Prima face, there exists a case for the creation of uniform standards across India for ensuring that children are entitled to the same guarantees and core non-negotiable minima. This prima facie case for uniformity is further strengthened by our analysis of the existing State-level laws on elementary education. The following States' laws have been examined – Jammu and Kashmir, Maharashtra, West Bengal, Himachal Pradesh, Karnataka, Tamil Nadu, Kerala, Rajasthan, Delhi, Sikkim, Punjab, Andhra Pradesh, Madhya Pradesh and Meghalaya. The Meghalaya law does not even pay lip service to the concept of compulsory elementary education.

All the State laws penalise poor parents for their children's poor attendance in schools and are in no way enabling. Many of them even criminalise non-attendance and make the offence punishable with a fine. Clearly these laws are based on the truancy model of education. In addition, most of the State laws do not guarantee compulsory education to all children. On the contrary, to quote Weiner, "…compulsory education laws in India do not make education compulsory: they merely establish the conditions under which state governments may make education compulsory in specified areas [emphasis provided by authors], *i.e.,* they merely make compulsory education permissive.

It is entirely up to the discretion of the local authority concerned to draw up a scheme for compulsion under such laws. Therefore, where compulsory education is merely permissive, the question of a justiciable right to education does not arise at all, unless a particular area is brought under a scheme of compulsory education. The West Bengal Primary Education Act, 1973; the Bombay Primary Education Act, 1947; the Tamil Nadu Compulsory Primary Education Act, 1994; the Karnataka Education Act, 1983; the Rajasthan Primary Education Act, 1964; Delhi Primary Education Act, 1960; the Kerala Education Act, 1958; the Assam Elementary Education Act, 1974; Sikkim Primary Education Act, 2000; Punjab Primary Education Act, 1960; and the Andhra Pradesh Education Act 1982 fall under this category.

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

Constitutional mandate. Out of the remaining laws that we analysed, the Jammu and Kashmir School Education Act, 2002; the Himachal Pradesh Compulsory Primary Education Act, 1997; and the Madhya Pradesh Jan Shiksha Adhiniyam, 2002 make primary education compulsory. However, out of these three, the Himachal Pradesh Act again seems to directly contravene the mandate of the Constitution as it defines a child as a person between the age of 6 and 11. This leaves us with the Jammu and Kashmir law and the Madhya Pradesh law. Apart from defining a child as aged between 6 and 14, the Jammu and Kashmir law does not specify any other details or minimum entitlements.

It does not affirm any principle of human rights law. It fails to provide for a grievance redressal mechanism or monitoring method. The Madhya Pradesh law makes compulsory education mandatory for all children from the age of 6–14 years. It also refers to the principle of non-discrimination. It defines 'free' as a tuition fee waiver. However, it provides that where the Parent Teacher Association of a particular school consents to imposing a school development fee, then such a fee may be imposed. Arguably, this too would directly violate the constitutional mandate of free education for all children between the age of six and fourteen. Therefore, the current position regarding State laws on compulsory education is that none of them has been amended to bring it in line with the basic guarantees provided by the Constitution. In addition, all of them fall squarely within the truancy model of legislation.

This analysis clearly demonstrates:

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

CONCLUSION

Before enacting a skeletal legislation supplemented by statutory Model Rules, the Centre should undertake a detailed evaluation of all existing educational policies and schemes using the rights-based approach. There is an urgent need to consolidate the experiences of providing elementary education in the last five decades and evolve a realistic pro-child rights-based policy on education, which may then be translated into legislation.

The institutional framework required to implement such a policy can also be determined only after the policy itself is evaluated and updated. The following aspects provide some guidelines to define the non-negotiable minimum matrix of rights, which may be used to analyse the existing policies and developing institutional framework for implementation:

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

- Creating an enabling framework where solutions to barriers against FCE are provided
- Ensuring that barriers against FCE are not punished
- Ensuring that relationships between child–State, parent–child, parent–State and community–child/parent–State are clearly defined
- Fixing social accountability on different actors and creating a grievance redressal mechanism. This would entail clear identification of duty-bearers at different levels– Centre, State, District, Local level bodies and school.

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

3

Fundamentals of Indian Education

We are to seek for the Indian Ideals which flowered into the National Life; for every country has its own Ideals, and according to the nature of the Thought which is the generating Seed, so is the nature of the National Life which grows up therefrom, and sends forth the branches and bursts into the blossoms which are the products of the National Activity. Says the Upanistat: "Man is created by Thought, and what a man thinks upon that he becomes; therefore think upon Brahman." So also with Nations, since there is no creative Thought other than that of Brahman in manifestation; and because there were so many in India who ever thought of that Supreme, therefore did India flower out into a civilization unrivalled in the depth of its Philosophy, in the spirituality of its Religion, and in the perfection of its Dharma of orderly and graded Individual and National Life, expressing as none other has ever done that balance, that equilibrium, which is Yoga, that which saved her, when all the contemporaries of her splendid Nationality have been carried away by Time's tremendous rapids, and scattered as wrecks over the far horizon of the boundless Ocean of the Past. She shares their Past, but they do not share her Future, for not theirs the secret of her immortal Youth.

And what is that secret? It lay hidden in her Education and her Culture, or rather in the Ideals which created these; for the Ideal is prior to the form, and if today men think that her strength is dissipated, her energy outworn, it is because she has for a moment—for what is a century and a half but a moment in her millennial life?—sold her birthright, as her Mother's first-born child, for a mess of western pottage. Let her turn again to her Ideals, and she shall renew her strength. For Ideals are the generating Life which unfolds though many

incarnations, embodies itself in many a successive form, but remains ever true to type. We, who believe in India's Immortality, do not need to reproduce the bodies, the forms, of the past; but we need that life, the life of the Mother Immortal, shall embody itself in new forms, but that it shall be Her Life, and not another's.

LET US DISTINGUISH BETWEEN EDUCATION AND CULTURE

Education is the drawing out the training of inborn capacities and powers—brought over from former lives and developed in the Svargic or Deva world—which lie as germs in the Vijnanamayakosha, the intellectual aspect of the reincarnating Self, the triplefaced Jivatma, or Atma-Buddhi-Manas. These germs, ready to sprout forth and to grow, germs of the qualities which are to manifest through the Manomayakosha, are, as it were, sown in that stage of the consciousness which we call the Lower Manas, for the expression of which, with the emotions, the Manomayakosha is framed. First, the preparatory stage of reincarnation begins in which this kosha, the sheath of the mind and the emotions, is formed; then followed the Pranamayakosha, that of passions and life-energy; and then the Annamayakosha, the sheath formed by food, the dense physical body. These three are new with each rebirth, and education has not only to draw out and distribute the germs through each sheath, but to develop them, train, and make the sheath sensitive and responsive to the impacts from the external world, accurate in recording them, and in sending them on to the mind, which connects the impression with the object causing it, and thus establishes relations between itself and the outer world, these relations and the action of the mind upon them being Knowledge. Observation by the sense-organs in the physical body; the effects of these on the sense-centres, as sensations; the perception by and the action of the mind on these by memory, analysis, comparison, classification, inter-relations (causes and effects), reasoning on them, anticipation, all these form the field of Knowledge which is tilled by Education.

Culture is the result on the mind of certain forms of Knowledge, and is based on these; but it differs from Education in that it is not the drawing out and training of faculty, but is the result of the exercise of faculties on subjects which arouse sympathetic emotion and imagination, broadening the mind, eliminating personal, local and racial prejudices, acquiring an understanding of human nature in its many aspects, and contacting the life-side rather than the form-side of creatures; hence the quick internal response to other lives, and the intuition of the unity of life beneath the diversity of life-expressions. The difference between Education and Culture is symbolised by the condition of entry into the School of Pythagoras, acquaintance with "Mathematics and Music"—the capacity to use the Intellect—Higher Manas, or Manas in the Vijnanamayakosha—by synthesising the products of the mind and discovering the laws producing them, and by the purifying of the emotions by Beauty. Literature and Art are the instruments of Culture. Science and the "clear cold light" of reason are the area

and the guide of Education. The Life in Nature and the intellectual intuition, which recognises truth by its harmony with his own nature—"whose nature is Knowledge—are the area and the guide of Culture. If these are completely separated during the plastic period of youth, Science tends to hardness, and, in over-specialisation, to narrow-mindedness and intolerance; Culture tends, when exaggerated, to false sentiment and fastidiousness in non-essentials. The training of the instruments of knowledge and the spring of the memory with facts is the work of Education by others in youth, and their application to new facts and conditions is the self-education which continues during life. Culture in youth consists in the unconscious development and refinement of passions into emotions amid beautiful surroundings, for the contact with beautiful objects and the evoking and the control of the emotions in response to them, and the moulding of these by Literature and Art develop the discrimination which is an element in self-culture, the critical faculty which manifests as a balanced judgment, not as mere fault-finding, and lends poise, dignity and gentleness to the attitude towards life. We shall see in a few moments how Beauty was an essential feature of the Indian Ideal of Education and Culture, and necessity for the revival of this Ideal in modern life.

But let us first realise two fundamental differences between Ancient and Modern Systems of Education in their relation to the State, one of them prevailing alike in India and in Britain, and the other peculiar to India.

In the Ancient System of India, Education and Culture were self-controlled, and while the State, the organised Nation, profited by them and from them drew its dignity, its religion, its morality, its effectiveness, and its consequent efficiency, the Legislative and Executive Departments of its Government exercised over them no control, and did not interfere with their management. Kings built Universities and bestowed on them wealth, but claimed in them no authority. A Monarch might enter into the Convocation of a University, but no one rose to greet him and he took his seat like any other visitor; but on the entrance of its Head, the "Venerable of Venerables," all rose and turned their faces towards him and in silence awaited his words. The University was the Temple of Learning, and the learned were its only Hierophants. When Learning visited Royalty, when a Wise One entered a Court, even Shri Krishna descended from His throne and bowed at the feet of the Sage.

In the Modern System, Education is under the control of a Government Department, the Legislature makes laws for it, the Executive appoints its Directors, or the Ministers, who are really its masters, sends its Inspectors into its Schools and Colleges, and puts the Educators into a steel-frame, which it misnames efficiency, This is now alike in East and West. But in India, where Kings had been its nursing fathers and had poured out their treasures at its feet, the foreign Government ignored the Ancient System, and, as its Rule spread, Education and Culture died of starvation in the kingdoms which became provinces. The splendid inheritance from the Indian Past—Hindu, Buddhist and Muslim—disappeared, leaving only the Schools of Pandits, maintained by

Indian Princes, or by the reverent charity of the Hindus, till but one University, that of Nadiya, survived; the Temple and Musjid schools remained for a while and the muffasal village school—that which the East India Company, on being compelled by the British Parliament to spend a lakh on Education, called in 1814, "this venerable and benevolent institution of the Hindus," after the testimony of Sir Thomas Munro in 1813, that there were "schools established in every village". The E.I.Co. ascribed to these "the general intelligence of the natives as scribes and accountants". Dr. John Matthai, in his *Village Administration in British India,* says that "when the British took possession of the country," they found in most parts of the country (except western and central India) that "there existed a widespread system of national Education". Even in 1838, Adam's Reports show a similar state of things in Bengal. He reports the results of an enquiry, held in 1835-1838, made in typical districts of the Presidency, and found both Toles and Madrasahs (High Schools) and Pathashalas and Maktabs (schools attached to Temples and Musjids). The colleges were found, he writes, in "all the large villages as in the towns. The age of the scholars was from about five or six to sixteen. The curriculum included reading, writing, the composition of letters, and elementary arithmetic and accounts, either commercial, or agricultural, or both". I may add that in the village schools "Elementary Arithmetic" included multiplication tables not of only 12 × 12, but up to 20 × 20. The schools however continued to diminish in number. The *Quinquennial Review* for 1907-1912, shows 2,051 Madrasahs in 1907 against 1,446 in 1912, and 10,504 Musjid Schools in 1907 against 8,288 in 1912.

Let me pause for a moment on the age of the scholars mentioned above. In the old days, the education of the child up to the age of seven seems to have been more in the home than in the school. From seven to sixteen, the boy was to be taught and trained in school, and then to pass on to the University. The stage of infancy ends at seven, and up to that age, the body should be the first care, and lessons should be in the form of play, and great freedom of choice should be given to the little ones. No care in later life can restore the stamina of the body ill nourished, or unwisely nourished during those first seven years of life. With the joint family system there were children enough in the household, including those of the dependents, to make a society for the children, in which they learned unconsciously lessons of kindness, of courtesy, of gentle manners and refined speech, of little sacrifices born of love, of mutual helpfulness and mutual service. With the narrowing of the home circle, the playing school is in many ways better and the children are happier in the merry games and the gay company of their little comrades. But the school must be well chosen, the teachers tender and helpful, songs, stories and play that exercises and trains the senses, the hand and the eye, and teaches graceful harmonious movements, are enough.

From seven to fourteen are the years for training the memory and the emotions, for the stories of heroism and of virtue that inspire, drawn from the history of the Motherland, and great men and women; stories too of other countries; of all that can arouse enthusiasm and inspire to service. Thus will the children have

their minds and emotions so trained as to fit them to cross in safety the perilous bridge between childhood and youth. From fourteen to twenty-one is the time for hard mental study. By sixteen, the special capacities will have shown themselves, and will mark out the best avocation for the future life, and specialised Education may safely begin. This is but the barest indication of the broad stages in the preparation for manhood and womanhood, the Ideal of the Student Order of the well regulated life. But the knell of popular education was struck in 1854, when Sir Charles Wood tried, and the Government supported, the singular experiment of teaching the people in a foreign tongue, with the result that after seventy years, 3.4 per cent of the people receive primary education. So we have three stages in Education in India in relation to the State: I. Lavish help from Rulers and complete liberty of Education, paid for by the wealthy and free to the poor, who, in exchange, served their teachers and performed household duties; II. Entire neglect for 97 years, with an interval of a lakh a year spent on it; III. The Government English-speaking Schools, and Colleges, and later Universities with, of recent years, partial and grudging introduction of the vernaculars.

How shall we apply the Indian Ideals to the salvation of Modern Education and Culture in India? That is the question which Indian Universities alone can solve, and before they can answer it, may, before they can even begin the task, the old relationship must be recreated between the State and the Universities. Learning must again be inspired with the Ancient Ideals, and these will be embodied in new forms. And in order that these new forms shall be expressions of India's life, and not strait jackets to confine her, the old freedom must be restored to Education and Culture. Government should assign to educational and cultural institutions the material means for their support, gifts of land, grants of money for buildings, and for the necessary equipment, so that they may be able to give to the Nation the priceless assets of learned and skilled men and women of high character, to carry on the work in every department of national life. Money given to Education by the Nation is not a gift, but an investment. It returns high interests to the Nation as well as power and happiness to the individual.

Learned men produce literature which raises the Nation in the eyes of the world and, far more important, spreads knowledge over the earth, literature which ennobles and inspires not only contemporaries, but generations yet unborn. Science makes discoveries which add to human knowledge, increase man's power over the forces on Nature, and—if it tread only righteous paths—will preserve, uplift any strengthen human life and human happiness. By Education and Culture of man's spiritual, intellectual, emotional and physical nature can he be lifted from the savage to the Sage and the Saint, can poverty be abolished, can society be made fraternal instead of barbarous, can crime, the fruit of ignorance, be gotten rid of, and international and social peace replace war and the strife of classes. Avidya is the mother of poverty, of sorrow, of misery. It is the darkness which the Sun of Vidya must chase away.

A generation of really educated people, with a proportion of the cultured, will change the face of India. Japan educated her people in forty years. As rapid as was the destruction may be the recovery, and each successive generation will show an improved result. Already Indian Ministers have made Primary Education free in seven Provinces and compulsory in three, compulsion to be introduced as rapidly as possible in the other four. When India gains her own political freedom, may she be wise enough to restore freedom to Education and Culture, and, once more, the highest honour to Learning.

After Freedom in the Educational and Cultural field is won, for it is not possible until this freedom is possessed, the very first thing must be the restoration of the Mother-tongues of India to their proper place in that field. Nothing so denationalises a people as the imposition upon them of a foreign tongue, dominating their life and thought. When Germany, Russia and Austria rent Poland into three fragments, each banned the Polish tongue in the schools and imposed its own. Macaulay, with the most generous feeling and the most utter ignorance, urged the substitution of the English language, literature and civilization for those which he regarded as heathen and superstitious. The Mother-tongues were despised, and a gulf was dug between the English-educated minority and the learned in the ancient Mother-language and the middle classes education in tongues derived from it. The free Universities will use the languages of the century throughout all schools and colleges, with English as a second language, and probably other tongues as well. So far, the Universities have given little culture; that has been gained by individuals for themselves. But free Universities will have curricula which shall give both Education and Culture. Students will, as of old, be surrounded with Beauty in the Schools, the Colleges, the Universities.

The second basic difference between the Ancient System and the Modern English one, as imposed on India, is the absence of religious and moral education. In Britain itself, the religion of the country and the morality based on it are taught in the schools as an integral part of education; lately, as Nonconformity and Free Thought spread, a conscience clause has been introduced exempting children, whose parents objected to the Anglican form of Christianity or to Christianity itself, from compulsory attendance at the religious services and lessons.

But when the rule of the East India Company spread, and English Education was introduced into India, the Government schools dropped religious and moral teaching, since, on the one hand, a Christian Government could not teach heathen religions, and, on the other, as there were several religions in India, the Government must treat them all equally, and therefore remain neutral in regard to them.

Thus Indians must pay the taxes which keep up Government and other schools, and must further send their children to these, or to Missionary schools where an alien religion is taught, or open their own schools and teach any religion they belong to, Government giving them grants-in-aid. Modern Education in India

had practically confined itself to the training of the mental and intellectual nature, and has ignored the unfolding of the spiritual nature, the evoking and training of the emotional nature, and, until lately, the development and training of the physical body to a high state of efficiency.

The result has been, in the older generations, the overstrain of the nervous system, the enfeebling of the physical health, the shortening of the period of vigorous maturity, often a sudden breakdown, or, at best, the premature appearance of debility and old age. Further, the exclusive development of the intelligence and the neglect of the emotions has overstimulated the self-regarding instincts, and has largely destroyed the feeling of Social and National Dharma, of duty to Society and to the Nation; hence the decay of public spirit, of social service, of responsibility and of sacrifice for the common weal, which characterise the good *citizen* as distinguished from the good *man.* These were prominent in the result of the Ancient System; as Shri Krishna said:

> *Janaka and other indeed attained to perfection by action; having an eye to the welfare of the world, thou also shouldst perform action. Whatsoever a great man death, that other men also do; the standard he setteth up, by that the people go...As the ignorant act from attachment to action. O Bharata, so should the wise act without attach-ment, desiring the welfare of the world...He who on earth doth not follow the wheel thus revolving, sinful of life and rejoicing in the senses, he, O Partha, liveth in vain.*

This brings us to a very serious question, which has to be decided before you can settle the grading of your Education and Culture: that which in the West is called "Vocational Education". This is founded on the realisation of the fact that in modern days Society is no longer a cosmos, but has fallen into chaos, into anarchy, and that this disorder must be remedied if modern civilization is to survive.

As Society in the Ancient India Ideal was a community of national beings, not a fortuitous concourse of atoms, it was regarded as an organism, a body politic with definite organs, each discharging a definite function, for the benefit and health of the whole community. This system was called Caste, and it was necessarily built up by Cast Education. The qualities of each pupil point to his natural avocation in the Nation. The lad who loves the open air and the care of animals, should not be an accountant, or a Clerk in city office. Nor should the quiet youth who seeks study and loves figures be sent off to a farm or a market gardener's. This is recognised in the "learned professions": Law, Medicine, Engineering demand and have separate instruction. A sturdy athletic lad fond of games is not tied down to a stool in a Bank, but is made an Engineer, to plan out railways, or enters some other active occupation. A budding philosopher must not be sent to a factory, nor a poet to a coal-mine. While a general level of Education and Culture should be reached, so that mingling of different types should be useful and agreeable, specialisation is necessary after this is attained. At Takshasila, it was not thought unreasonable that a poor student with an

aptitude for some branch of learning, should meet the cost of his board and lodging by cutting firewood and helping in domestic affairs. In studying he was on equal terms with a student whose father paid one thousand pieces for his education. No student was allowed to have any money, and a King's son was as poor as the son of a Brahamana peasant. Outcastes, however, were not received, for two Chandalas, who disguised themselves as Brahamanas but betrayed themselves by coarse language and manners when one of them burned his mouth, were beaten and sent away.

Students there were taught according to their caste. The Brahamana followed Literature as a rule, while the Kshattriya learned less Literature, but became skilled in the use of arms. Medicine and Surgery and Anatomy were there for the future physician, Mathematics for the astronomer. The courses include so much that to follow them all the manifestly impossible.

As most progressive people, hypnotised by words, object to caste, because it has been abused, if you wish to avoid prejudice, you can drop the word and call it Vocation. But, as Shri Krishna pointed out:

> *The four castes were emanated by Me, by the different distribution of qualities and action.*

This is the essence of Cast: the utilisation of physical heredity to provide bodies suitable for the manifestation of the qualities was an advantage, but unessential, and could only be secured by the co-operation of Devas with men, the men following the Dharma laid down for each caste and thus preserving a sub-type of physical body, to which the Devas guided the appropriate egos, *i.e.*, the agos who had evolved the given "distribution of qualities". The group of qualities was that which fitted the ego to discharge one of the functions of one of the fundamental organs of the body politic: Education, spiritual, intellectual, moral, physical; Government; Organisation of Production and Distribution; Production. In each there are many sub-divisions, as Government would include Kings, Assemblies, Judges, Lawyers, Police, *etc.* These are the predominant and essential groupings of qualities, whether they are called Castes or Vocations. In the Aryan Race, the four great groups were called Castes, and Casts was a scientific system of Social Service according to the inborn qualities of the individual, birth being a convenient, but not essential, concomitant. While it remained on these lines it was honored.

It became a matter of National and Social Privileges, and is now therefore resented and, in its present form, it is doomed to disappear. Sub-castes arose sometimes from guilds of artisans, like gold-smiths, who now form a fairly powerful sub-caste in Southern India. Families carrying on the same occupation tended to live together in a particular area in a village, and made a "cheri," of their own. Others arose on religious points, or different customs. But those connected with occupations were the most numerous. Under the Ancient System, youths were trained for their future functions, National and Social, and this is reappearing in the West, as Specialised and Vocational Training, no longer confined to the learned professions, such as Law and Medicine, but extending

over all avocations, commercial, trading, industrial and manual, turning the unskilled into the skilled, and thus increasing the value of each to the Nation, each with his own vocation, necessary and honorable, because a function of the organised National life.

It is remarkable that Johan Ruskin, with his far-reaching vision as artist and poet, as well as Auguste Comet, with his encyclopedic knowledge and keen and lucid intelligence, both recognised the necessity of rescuing Europe from, its anarchic social condition, if it were to survive. John Ruskin, in his *Unto This Last,* says:

> *Five great intellectual professions, relating to daily necessities of life, have hitherto existed in every civilized Nation:*
> *The Soldier's profession is to defend it.*
> *The Pastor's to teach it.*
> *The Physician's to keep it in health.*
> *The Lawyer's to enforce justice in it.*
> *The Merchant's to provide for it.*
> *And the duty of all these men is, on due occasion, to die for it.*
> *"On due occasion," namely:*
> *The Soldier, rather than leave his post in battle.*
> *The Physician, rather than leave his post in plague.*
> *The Pastor, rather than teach Falsehood.*
> *The Lawyer, rather than countenance Injustice.*
> *The Merchant—what is his "due occasion" of death?*
> *It is the main question for the Merchant, as for all of us. For, truly, the man who does not know how to die, does not know how to live.*

Ruskin then proceeds to discuss the Ideal Merchant, and, doubtless quiet unconsciously, he describes the Ideal Vaishya. But I must not follow him further on this line, as it would lead me away from Education.

Auguste Comte's classification is not so good, as it is based on a separation of Capital and Labour, and on a rigid barrier of birth instead of on a distribution of qualities.

It is, however, worthy of note that two thinkers, one purely intellectual, the other artistic, should both revert to what is supposed to be an outworn superstition, and that the intuition of the artist has carried him to the truth of the existence of a law of Nature of essential importance of Society, the disregard of which is menacing civilization. That law unites length of days and general prosperity with the assignment of human beings to the National function for which their qualities fit them. For the proper discharge of that function they must also be fitted by a suitable Education.

India must once more have an Ideal whereby to shape an Education suited to her needs, and to her coming lofty position among the Nations of the world. Can she find a loftier Ideal than that which was her Pole Star in the past, and which preserved her from an antiquity the history of which remains alone in the "Memory of Nature," in the archives of her Rishis, in her own literature, an

antiquity which cannot be checked by what is called history, for so far none exists earlier than her own, and archeological researches extend it ever further and further back, and so far tend to confirm her claim to an immense antiquity. All we can say is that history as recognised in Europe, shews nothing contrary to it, and that Europe-recognised history has never known her save as learned, wealthy, prosperous, great in her commerce, her trade, her arts and her crafts, in the magnificence of her courts and the skill of her artificers and her agriculturists, her people brave and gentle, courteous and hospitable to strangers, until the interlude of which the charter signed by Elizabeth of English was the embryo, and which will close when she is again Mistress in her own household.

I have spoken of the honor paid to Learning in India; whether it was Ancient. Middle or Modern India, whether in the Hindu, Buddhist, or Muslim Period. Learning was sought for its own sake as the mark of the highest human development, that of Man, the Thinker, short only of the supreme achievement of the Paravidya, Self-Realisation. Even to that, Jnana was one of the paths, as we shall see tomorrow.

It is worthy of notice that, in India, Education spread downwards; it was not built up from below. Indian Civilization was a product of the country not of the town, of the forest not of the city. Greek Civilization evolved in her cities and reached its highest point in the City-Stage. But as Rabindranath Tagore has said:

> *A most wonderful thing that we notice in India is that here the forest not the town is the fountain-head of all its civilization.... It is the forest that has nurtured the two great Ancient Ages of India, the Vaidic and the Buddhistic. As did the Vaidic Rishis, Lord Buddha also showered His teaching in many woods of India. The royal palace had no room for Him, it is the forest that took Him into its lap. The current of civilization that flowed from its forests inundated the whole of India.*

Here is an Indian Ideal that it would be well to revive, for this planting of Universities in the midst of great cities is European, not Indian. Oxford and Cambridge alone in England have kept the tradition of their Aryan forefathers. The modern "Civic Universities," as they are called, are planted in the midst of the most tumultuous, hurrying, noisy cities in England. Not from them will come sublime philosophies or artistic masterpieces; but they will doubtless produce men of inventive genius, miracles of machinery, new ways of annihilating space. But for a country in which a man is valued for what he is, not for what he has, in which a man's life consisteth not in the abundance of the things which he possesseth, the Indian Ideal is the more suitable.

The essence of that Ideal is not the forest as such, but the being in close touch with Nature; to let her harmonies permeate the consciousness, and her calm soothe the restlessness of the mind. Hence, it was the forest, which best suited the type and the object of the instruction in the days which evolved Rishis; instruction which aimed at profound rather than at swift and alert thought; which cared not for lucid exposition by the teacher, but presented to the pupil a kernel

of truth in a hard shell, which he must crack unassisted with his own strong teeth if he would enjoy the kernel; if he could not break the shell, he could go without the fruit: instruction which thought less of an accumulation of facts poured out into the pupil's memory than of the drawing out in him the faculty which could discover a truth, hidden beneath a mass of irrelevancies; of such fruitful study the Hindu Ashram in the forest is the symbol.

It must have a few representatives, at least, in India, if she is to rise to her former level in supreme intellectual and spiritual achievement, some places in which the three Margas may be taught and Yoga may be practised, until the Yogi is fit, as of old, to go out into the world of human activity, as the wise man who lives that which the *Bhagavad-Gita* teaches. This was learnt by some of the adults in the Ashrama and the Vihara, where also under the then conditions the youth of the Nation could be trained in any of the Vijjas (branches of learning) and the Shilpas (Art and Crafts) without sharing in the studies of the elders and the ascetics, yet sharing in the atmosphere they created, which radiated from them. A few "forests" should exist in India, for those who seek the Paravidya, that She may again become the spiritual Teacher of the World.

The Buddhist Vihara obtained similar results by founding the University in a spot of natural beauty, and enclosing a huge space with a high wall, pierced as in Nalanda with but one gate, in Vikramasila by six, in all cases carefully guarded by a Dvara Pandita. Within were not only splendid buildings—"Towers, domes and pavilions stood amidst a paradise of trees, gardens and fountains." There were flower-strewn lakes and blossom-laden shrubs. Well was understood the influence of natural beauty. The sacred books of Hindus and Buddhists were studied; the curriculum included anatomy and medicine, and it will be remembered that Ashoka in the third century B.C., established hospitals both for men and animals, and Mr. Dutt speaks of these being "established all over the country". One list of the subjects studied gives the five Siddhantas, Logic, Grammar, Philosophy and Metaphysics, History, Arithmetic, Geometry, Astronomy, Sanskrit, Pali, Music and Tantric medicine. Dr. Macdonnell states that in Science, Phonetics, Grammar, Mathematics, Anatomy, Medicine and Law, the attainment of Indians was far in advance of what was achieved by the Greeks.

In the *Chhandogyopanishat* we read how Narada resorted to the Lord Sanat Kumara, and prayed to be instructed by Him, and He asked what he knew already. And Nara da gives a list which reminds one of the curricula of the Universities which we know, and which evidently existed in the Ancient Hindu Age. For Narada replied:

> *O Lord, I have read the Rig Veda, the Yajur Veda, the Same Veda, fourth the Atharva Veda, fifth the Ithihasa and Purana, Grammar, Rituals, the Science of Numbers, Physics, Chronology, Logic, Polity, Technology, the Science cognate to the Vedas, the Science of Bhutas, Archery, Astronomy, the Science of Antidotes, and the fine arts. [Shankara annotaies the last as the Science of making essences, of*

dancing, singing, music, architecture, painting, etc. (Shilpa)]... Unto him said Sanat Kumara: "All these that you have learned are merely nominal."

And then He leads him on step by step.

Thus "did the Lord Sanat Kumara explain what is beyond darkness". The lists given may avail to shew why men remained in the forest, or in a monastery which was also a University for youth, into quite late maturity.

During the whole course in school as in college, strict Brahmacharya was enjoined. Here, again, is an Ideal which must be restored. The rule of Manu for the student was strictly observed: *simple dress, plain food, hard bed, the vow of the Brahmachari.* There were no exceptions, prince, noble, commoner, all were treated alike. Not is Ancient, as in Modern, India were young princes allowed to live softly, luxuriously, and they lived to a healthy old age. Now, we have boys at school who are fathers, and the seeds are sown of premature old age.

Nor must we forget how the lack of Brahmacharya in the student reacts on the child wife. Happily now young men are demanding educated brides, and hence the period of Education is being prolonged. I am not going to argue as to the orthodox view of pre-puberty marriage: Pandits find texts for and against; but this I say: if you will look at the registered death rates at different ages, you will find that the curve of the death rate of married girls shoots up suddenly at the age of 15; silent but terrible witness to the superstition which cuts short the thread of girl-life, and sacrifices the fairest and sweetest women in the world on the altar of child-marriage.

I have not found in connection with the Buddhist Universities the same attention to physical exercises as one *reads in the Jatakas in relation to Takshasila. There student practised archery, the use of the sword and the javelin, and there were military, medical and* law schools. We read also that young nobles, trained in Arts and Crafts, used to visit on their travels, after leaving the University, artists and craftsmen, and see that a high level was maintained. Thus the University re-acted on the villages, and preserved the artistic capacities and traditions of the people.

In the Muslim Period, there was a remarkable development of Architecture, an art in which the Musalmans excelled, as Arabia, Spain and India testify. The courts of the Musalman Rulers were sanctuaries of learned men, of painters, poets and musicians.

Their use of jewels in architecture was extraordinarily skilful, giving richness without being meretricious. As with the Hindus and their temples, schools were attached to the Musjids, giving primary education, while Madrasahs afforded the higher education, Whether in Hinduism, Buddhism or Islam we find a similar care for Vocational Education among the higher social classes, supplying the Nation with the professions necessary for the healthy functioning of the National Life, maintaining the high level of Literature and the Arts, as well as the training of the statesman, the Minister, the military and civil organisation and administration.

The manual labour classes were equally well provided for by general instruction in reading, writing, arithmetic, accountancy, and careful training in the simple and more artistic crafts, the first for home use, the second for sale to local and export merchants. The teaching of religion and morality was universal, and much was done for the adult culture of villagers by the wandering Sannyasis who travelled on foot from village to village, and in the evenings related stories from the sacred books and chanted stotras and legends.

Taking a bird's-eye view, we may perhaps say that the Ashramas were dominated by Philosophy and Metaphysics, while not neglecting the Sciences and the Arts; the Viharas, were dominated by Science, while again not neglecting Philosophy and Arts; the Madrasahs were dominated by Art, with a divided allegiance to Science. Such classifications are, however, somewhat arbitrary, and all poured rich knowledge into the national life. To the people all were closely related, for they spread that love and reverence for Learning which shed abroad, by the stimulating force of example the superiority of Learning to Wealth, the value of Voluntary Poverty and of Sacrifice consecrated to Social Service, a Social Order which conduced to mutual usefulness, and a Beauty which, as in Japan today, is said by Mr. E.B. Havell to be "not a luxury for the rich, but the basis of National Education". He goes on:

> *Poetry has done as much for National Culture in Japan as it did formerly in Greece, and, until the nineteenth century, in India also. Poetical tournaments are still a favourite form of popular entertainment in Japan, and even among the poorest classes any occasion of domestic importance, either joyful or sad, is marked by poems composed by the people themselves. In the spring mornings in Japan the working classes, the poorest of the poor, and not only the well-to-do, will rise by hundreds to watch the opening of the lotus flowers; the flowering of the plum and cherry trees in the early summer are days of national rejoicing. India need not cease to take delight in Beauty, and to have faith in the inspiration of Nature which her ancient Rishis taught, because she has become poor. It is far worse to be poor in spirit than to be poor in worldly goods. Modern science and English education are not sufficient substitutes for Art. It will not profit India to gain the whole world and lose her won soul.*

The disappearance of Indian Ideals was as sudden as it was disastrous; invasions and even the establishment of a foreign Empire and foreign kingdoms previous to the invasion and triumph of the East India Company in 1757, had not touched the Soul or the Spirit of India. She had been invaded but she had assimilated the invaders and had enriched her own Culture by theirs.

Portions of her land had been conquered and occupied, but she turned the conquerors into Indians. But the East India Company not only drained her of her accumulated wealth and reduced her to poverty, but despised her Learning and her Art, crushed her with ignorance, and filled the palaces of her Princes with Brummagen imitations and glass-legged sofas and chairs.

It destroyed her self-respect and jeered at her religion and her traditions. It consummated her degradation by imposing on her an Education in a foreign language, till her educated people talked it better than their Mother-tongue. Having destroyed the Schools which had given it clerks and accountants, *it wanted English-knowing men to fill the lower ranks of its administration, so introduced its new system.* It got them, but the corollaries thereof were unexpected and disconcerting. It taught them English history and they became interested in English struggles for Liberty. It gave them the masterpieces of English Literature, and they studied Milton's *Areopagitica,* and declaimed Shelley's *Masque of Anarchy.* They admired the Ideals held up, and desired to find Liberty among the "blessing of British Rule". They found it not, and thirty years after the introduction of Sir Charles Wood's educational measure, they met in Madras and decided to create an Indian National Congress.

Forty years later, having revived Indian religions and started Muslaman and Hindu colleges and schools, and having meanwhile studied Indian history and assimilated its lessons, we have resolved to revive the Ancient Ideals of Indian Education and Indian Culture, to teach our children *in their Mother-tongue, to make Indian Ideals the basis of Indian Civilization, renouncing the hybrid and sterile ideals of anglicised-Indianism, and to adept them to a new form, instinct with the Ancient Life, and moulding it into a glorious new body for the Ancient Spirit.* India will then lead the world into a new era of Literature and Beauty, Brotherhood and Peace.

EDUCATION—PROVISIONS IN THE CONSTITUTION OF INDIA

The Directive Principles of the state policy contained in Part-IV of the Constitution of India pertaining to education are:

- *Article 45:* The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education to all children until they complete the age of 14.
- *Article 46:* The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- *Constitutional Amendment of 1976:* This amendment included Education in the Concurrent List which was initially a state subject. Though essentially the role and responsibility of the States in education remained unchanged by this amendment, the Union Government has accepted a larger responsibility of reinforcing the national and integrative character of education by maintaining quality and standards.
- *Article 21 A:* Inserted as a fundamental right in 2002, Right to Education – 93rd Amendment mentions that 'the state shall provide free and compulsory education to all children of the age of six to

fourteen years in such manner as the State may, by law, determine'. The state discretion has not yet been realised and the right is yet to come into force.

- *Role of Local Self Government Institutions:* In order to impart certainty, continuity and strength to the Panchayat Raj Institutions (PRIs) and Urban Local Bodies (ULBs), the 73rd and 74th Amendments have come into force in 1993. These amendments of the Constitution of India, provided for empowerment of panchayats and Nagarapalikas by way of reserving 33 per cent seats for women; and for the citizens belonging to the Scheduled Castes and the Scheduled Tribes in proportion to their population. Articles 243G and 243W and 11th & 12th Schedules of the Constitution indicate the subjects to be devolved to the panchayats and Nagarapalikas respectively.

While the Eleventh Schedule of Constitution deals with evolution of functions to different tiers of Panchayats in respect to twenty nine subjects including education – primary and secondary schools, Article 243W of the Constitution of India, specifies the powers, authority and responsibilities with respect to Municipalities. Among the 18 major functions to be performed by Municipalities mentioned in Article 243 W there are cursory reference to educative functions rather than any explicit reference to it.

Some such references are:

- Planning for economic and social development;
- Safeguarding the interests of the weaker sections of society, including the handicapped and the mentally retarded;
- Promotion of cultural, educational and aesthetic aspects

In the absence of a clear cut mention of education as an important function of the ULBs, the references in Schedule XII and provisions in the respective state Act provide clues for interventions in education.

ROLE OF ULBS IN EDUCATION SECTOR IN AP

In Andhra Pradesh, the rural local self government institutions are constituted as Zilla Parishads, Mandal Parishads and Gram Panchayats catering to the district and below. In the state, the rural local bodies include twenty two Zilla Parishads, around eleven hundred Mandal Parishads and nearly twenty two thousand Gram Panchayats. The urban areas were further classified as Municipal Corporations, Municipalities, and Nagar Panchayats depending on population, density of population and other factors. This classification has further been streamlined as per the population figures of the Census in 2001 as below:

Classification	*Population Size*
Class I	***1, 00,000 and above***
Class II	***50,000 - 99,999***
Class III	***20,020,000 – 49,999***
Class IV	***10,000 – 19,999***
Class V	***5,000 – 9,999***
Class VI	***Below 5,000***

Going by the trend of urban growth in the state, it is estimated that by year 2020, the urban population will more than double. Presently in AP, there are fifteen Municipal Corporations, one hundred and three municipalities and seven Nagar panchayats. Traditionally in Andhra Pradesh, Zilla Parishad at district level was responsible for providing education at Secondary level and Mandal Parishads are responsible for providing education at Primary and Upper primary levels in the rural areas. The responsibilities of the Zilla Parishads and Mandal Parishads include opening of schools, upgradation of schools, provision of school buildings, infrastructure, *etc.*

Personnel related issues like postings, transfer, promotions of teachers were also discharged by them till 1998. The services of Panchayat Raj teachers are provincialised and service related issues are vested with government. However, in the municipal areas of nine Coastal districts and four districts of Rayalaseema, municipalities are responsible for providing educational facilities. Municipalities are also responsible for service related issues of teachers in the education institutions under them. There are no schools within the powers of municipalities in the districts of Telangana region.

Access, Enrolment and Retention

Municipalities in Coastal and Rayalaseema areas are maintaining elementary and secondary schools. The Municipal Act provides that municipalities may establish schools. In urban areas of the nine Coastal districts and four Rayalseema districts, schools are run by the concerned municipality/municipal corporation. Municipalities are responsible for opening/upgradation of schools in the urban areas in these thirteen district while schools in urban areas of the ten districts of Telangana region are under the state government.

Infrastructure

Municipalities are responsible for provision of infrastructure facilities like school buildings, sanitation facilities in the municipal schools. The buildings and other infrastructure are the property of the municipality. All educational programmes of government like Sarva Siksha Abhiyan (SSA), Mid-day Meals (MDM) Programme, *etc.*, are being implemented in municipal schools also.

Human Resources

Teaching and non- teaching staffs are municipal employees and they are under the administrative and disciplinary control of the municipality. The onus of rationalisation, selection, transfers and promotions lie with the municipal authorities. In the absence of sufficient number of teachers, the municipalities are recruiting Vidya Volunteers (VVs) to undertake classes especially in the primary sections.

Recruitment, Transfers and Promotions

From 1994, Recruitment of teachers has been entrusted to the District Selection Committee (DSC); and after examinations, interviews and selection,

DSC is sponsoring the candidates to the municipality and the municipality is giving the appointment orders. After this stage, they become municipal employees and they will be under the administrative and disciplinary control of the municipality. The general recruitment of teachers by the government at the state level in the last three recruitment tests is limited to the government and the schools under Panchayat Raj.

Provincialisation of teachers is also limited to the extent of teachers working in PR Institutions. The service matters of teachers working in Municipal schools are not streamlined. Clear-cut procedures of transfers are not prescribed and the procedures followed by the municipalities are not uniform across the state. However, an attempt made to rationalise the teachers in municipal schools on the lines of government and Panchayat Raj schools by passing Government orders has not resulted in much desired rationalisation of teachers in Municipal schools.

A municipality is a unit for all purposes. All teachers in a municipality are under one unit for purposes of promotion or reversion, *etc.* Panel Committee in the municipality prepares panel for promotions. For promotion to HM of a secondary school, the panel committee includes DEO as head. Chairperson is the appointing authority. He is empowered to remove or dismiss a municipal teacher. However, approval of DEO is necessary to remove a teacher. Secondly, Commissioner is competent to impose other penalties. Transfers of municipal teachers are within the municipality only. Teachers are transferred from one school to another in the same municipality. In recent past, government is transferring teachers from one municipality to the other, if both the municipal councils agree for the proposal. Even, the Panchayat Raj teachers are being transferred to municipalities. However such teachers have to take last rank in the new municipality.

Payment of Salaries and other Grants

Salaries of teaching and non- teaching staff are paid by Govt. through education grant. While releasing the grant, it is reduced to the extent of education tax collected by municipality. Pensions to the teaching staff are also paid by government. Office expenses and other expenditure are incurred by the municipalities.

Monitoring and Supervision

While the municipal authorities inspect the school, it is to the extent of administrative matters. The inspecting officers of Education Department of government, deal with technical matters like syllabus, students' performance, public examinations, *etc.*

Quality Issues

The trends in enrolment show a clear shift to private schools in urban areas. While rural children are still patronising government/local body schools, in urban areas; children at all levels of education are clearly showing preference

to private schools. Poor infrastructure, lack of sanitation facilities, lack of subject teachers due to non- participation in DSC regularly, teacher absenteeism, are some of the factors leading to poor performance of students resulting in low demand for these schools.

CONVERGENCE OF ULBs AND EDUCATION SECTORS

The focus of the present study is to cover various aspects of access, enrolment, retention of children in Municipal schools. Extension of various schemes like SSA, MDM etc to the municipal schools is also discussed. The analysis focuses on the quality of education provided to the burgeoning urban children in municipal schools and issues related to monitoring and supervision. The study attempts to throw light on the quality of service delivery being provided in municipal schools with suggestions for possible changes. An attempt is made to highlight the critical issues in providing quality education to the urban poor with possible solutions to improve the quality of service delivery through reforms at policy, perception and practice levels.

METHODOLOGY

This project involved both doctrinal and empirical research to arrive at an evaluation of present service delivery in municipal schools. It included detailed study of the existing scenario and analysis of areas where convergence of ULBs and Education sector are required. The analysis is based on secondary data and field observations in select Municipalities. The study was completed by including secondary information, coupled with field level observations in schools in two municipalities and discussion with departmental stakeholders like, District Education Officers, Deputy Education Officers, School Supervisors and Additional Commissioner of MC, Head Masters, senior teachers and DWCRA members undertaking cooking of the mid-day meals. The interactions took place in Kurnool, Vijayawada and Chittoor. The analysis takes into account some best practices on the relevant issues and provides a framework for convergence with the education department.

EDUCATIONAL SCENARIO IN INDIA TODAY

More and more parents, therefore, were turning towards private schools even in villages and wayside slums. The PROBE team discovered that private schools, even in remote villages, were very active in teaching and getting good results for their pupils. In the private schools the teachers did not have job security and consequently, their continuation depended on their performance, watched both by the owners who wanted a fair name for their schools and the parents, who could shop around for a school with a good name anyway. That motivates the teachers to work hard and put their heart and soul into teaching. Those village schools charged very reasonable sum of 35-50 rupees per month; in the city slums the going rate was 60-100 rupees per month.

These private schools were more popular because they all taught English, in addition. In the slums around Charminar in Hyderabad alone there were as

many as 500 such schools belonging to a single Federation, serving predominantly the poorer sections of society like the Rickshaw pullers, daily wage earners, vegetable sellers, fisher women, and the like. They charged very modest fee of around a thousand rupees an year. None of them depended on government subsidy! These schools also had an altruistic motive in reserving a quarter of their seats for the poorest of the poor in the locality giving them away free. Similar experiments were going on in many other developing countries like Thailand, Columbia, Tanzania, and Chile. This method could be easily replicated elsewhere. In fact, Prof. Tooley recommends many of these methods to the inner city area schools that starve for want of funds and good teachers.

This self-help idea was the one that prompted the first ever private medical college in India in Manipal by a thinking man, Late Dr. T. M. A. Pai, who wanted that the motivated students should be provided with an opportunity to pursue their interest, assisted by their parents chipping in their lot to sustain the institutions. The Manipal Academy of Higher Education, a Deemed to be University, is the result of his initial effort. Independent surveys have given us very high rating not only in India but abroad. We have students from thirty English speaking countries. We have been assessed as one of top four colleges in medical education.

Institutions do not depend for their growth on either the government or other owners. Educational institutions get their name and fame because of the men and women who struggle to keep up the highest academic standards as also the ethical values. Our founder's motto was to nurture the best of teachers. Having been in these institutions for forty years I could vouch for that truth. Universities should be proud of their faculty and not their brick and mortar or equipment as much. Our powers-that-be do not seem to realize this naked truth.

It is only in our country that private effort in education is being looked down upon and treated badly. People outside governmental control have founded some of the great institutions all over. A banker, like Dr. TMA Pai, founded the University of Edinburgh, way back in the eighteenth century. That was the time of the Scottish enlightenment when Edinburgh was considered to be the Athens of the north. Except the University of Georgia Medical School, most of the American medical institutions of repute are in the private sector. Harvard, Yale, Stanford, Johns Hopkins, Mayo Clinic, Cleveland Clinic and most of the others belong to that class. The Guy brothers, business tycoons of those days, founded the famous Guy's Hospital Medical School in London. They are not untouchables in their countries, but are venerated very much as centres of excellence and repute.

This pioneering Manipal experiment, the first of its kind in India, unfortunately has been badly replicated by many others to make it into a big "business" in higher education. These kind of unscrupulous methods are being abetted and nurtured by politicians and their goons for their own benefit. That is no reason why the original idea of Dr. T.M.A.Pai should be found fault with by our thinkers. Many of the later institutions do not have even the bare minimum

necessities, not to speak of the all-important faculty. It would be shocking to know that a sizable percentage of them thrive only on visiting faculty, who rarely visit. People in authority would overlook all these so long as their machinery is well oiled and greased! Thanks to the munificence of our greedy powers-that-be, such institutions thrive better in India. It is only the honest and the meritorious that suffer in this environment.

What is the need of the hour? Many of our journalists with the holier-than-though attitude towards private efforts at higher education and many of our armchair intellectuals who live in ivory towers, having no touch with reality and without any personal experience in the field, think that education, outside the government setting, is getting commercialized in India. They feel that this is the greatest sin and should be curbed at any cost. We would be happy to host them here to have first hand knowledge of the trials and tribulations of running excellent educational institutions.

Similar arguments were put forward for "socialism" of the Russian variety in the '50s, despite the fact the Mahatma Gandhi had strongly advocated the cottage industry and village development as the need of the hour. Now even the champions of the mega things in development are convinced that "small is beautiful". The country is suffering from the fall out of that sin at an enormous cost to the people. Governments got involved in every aspect of the common man's life, starting from transport, electricity, water supply, food distribution, industry, health care, hotels, and what have you. None of them function properly even after half a century! It has now dawned on the politicians that they should get out of these as soon as possible. Education is another field where the government has miserably failed. Sooner they realize this the better for our future generations.

We must nurture and develop private schools and even professional colleges that keep up excellent standards of education. There should be no compromise on standards. Let us learn the lessons of the PROBE study. Let private institutions depend on their excellence for their very existence! Allow them a level playground without throttling them. Let there be an independent accreditation body of independent people of integrity that periodically publicizes the standards for students and parents to know.

Let there be survival of the fittest without any outside agency bringing in unreasonable restrictions. Let the buyer, the well-informed student, take the pick. The bad institutions would die a natural death in the process. That is the exact way how American medical education was cleaned of the unscrupulous medical schools of which there were more than two hundred in the fifties. Flexner Committee, an independent body, rated all of them. Their findings were made public by the government repeatedly in national dailies over a period of a month or so. Only seventy-two colleges survived, as the rest died a natural death for want of student aspirants to fill their seats. No amount of regulations and rules would work that effectively, since the crooked owners could twist many of the latter.

This reminds me of a lecture given by Mrs. Margaret Thatcher, the then Prime Minister of Britain, in one of the conferences on "quality control". She got up to speak and started by narrating her own experience, as the grocer's daughter, at her father's shop, when she was young. "Whenever the vegetables we sold were good the customers came back; when the vegetables were bad the vegetables came back and the customers went away to other shops! That is quality control." How true! The institutions should survive on their merit alone and not on rules and controls in the open market. That would be healthy for higher educational institutions as well. The really bad institutions will die a natural death under those conditions, as no student would want to go there.

The private institutions should be allowed to grow without the usual constraints of the "licence-raj" let loose on them both by the politicians in the government and their henchmen. The above categories do not want to loosen their grip on the private institutions. The corrupt people's bread and butter are these institutions. That is precisely why they want to have their complicated regulations and rules to have an absolute control over private effort at education. Our biggest curse is this "license-raj" system. The root of all corruption starts there. The more rules that the government puts forward, the better for the greedy in power. Every single rule is an opportunity for corruption.

This country, or for that matter, even the developed countries, would not be able to subsidize primary education, leave alone higher education, in the new millennium. The recipient should pay for higher education. If he is poor or hails from an economically backward community, the government could help him raise a loan from the Educational Development Bank to be repaid only after he gets a job and the interest thereon could be waived or reduced depending on his economic status.

Most governments would not be able to service the interest on their foreign borrowings in the next decade even with all their revenue collection. Many of them would not have the money to pay their staff! In that situation education could only be in the private sector. Our netas should not be under the delusion, that by selling the idea to the gullible public that commercialization in education is bad for the country, they feel that they could continue to use this "milch cow" to fill their coffers for elections and also to hoard money for their progeny. They seem to forget that they can not take the hoarded money with them when they go to meet their maker.

Even the famous "Unnikrishnan" judgement of the Supreme Court subscribes to this view that private education is bad in principle. I am sure with the present scenario one could go back to the Supreme Court for a revision of that judgement in the background of the wisdom from the PROBE investigations. With more evidence accumulated against the view, our adversarial system of justice might agree with the new wisdom.

As of now the private institutions face great hostility from the government. They are viewed with suspicion as thieves. While there are thieves in every field of human endeavour, there are also excellent institutions run on ethical

principles. Of course, there is no free lunch anywhere. The private institutions should be allowed to get back a reasonable return on their investments and also be able to break even to sustain themselves. A logical financial assessment of the needs vis-à-vis their expenditure could be made by an independent body whose members' credentials could be bared for public scrutiny before being appointed, but the committee should not have any kind of restrictions, either from the governments or the watchdog bodies. I am sure there are many in this country that are honest and ethical. In fact, they are in the majority, but they are a silent majority not noticed by our media and also the merit award giving bodies of the country! Let them be given at least this thankless job of overseeing private initiative in educating our masses in higher studies.

Many of our leaders in the government behave as if they belong to a higher race. I am reminded of what French President Giscard d'Estaing wrote in his memoirs in 1981. "In my country" he said, "there is the idea that those who govern belong to another race."

Earlier we change the set up and clean up the stables the better for the future generation. With more than five hundred million young men and women looking for higher education in the country in the next fifty years, we would create chaos in the near future unless we set our house in order. There is no desirable pattern of non-governmental educational efforts in higher education prescribed so far. Consequently, the unscrupulous would want to commercialize education. Unfortunately, they are the ones that get all the perks from the powers-that-be as they supply the needs of the latter. Those who want to be honest and authentic get all sorts of hurdles put on their way.

Every rule is made to be used to either make money for the rulers and their ilk or for having some control over the hapless organizations in the field of higher education. A survey of the present facilities for higher education in the existing set up would throw up worse things than what was brought out by PROBE team in primary education.

While the government set-ups have very little infrastructure, the private ones are made to achieve the impossible. I get a feeling that there must be a deep-rooted conspiracy to keep up the governmental hegemony in education for the politician and the bureaucrats to make money perpetually. This reminds me of the nice study published from the Cato Institue in Washington edited by Doug Bandow and Ian Vasquez entitled Perpetuating Poverty, wherein the authors have systematically shown how the World Bank and the International Monetary Fund have promoted poverty in the developing world for the ultimate good of the big powers, so that they could keep the former under their thumb perpetually. Writing a commentary on the book, Melvyn B. Krauss, professor of economics at the NewYork University, has this to say: "This book destroys the myth that the multilateral aid agencies are forces for good and shows they are instead a major fraud perpetuating poverty in the developing countries……..The editors are to be congratulated for editing this precise, cold-eyed, and extremely important collection of essays that merits a wide audience."

EDUCATION: THE MAIN INSTRUMENT OF CHANGE

DEVELOPMENT OF HUMAN RESOURCES

These difficult, complex, significant and urgent problems are all interdependent, and the shortest and most effective way to their solution is obviously to make a simultaneous attack on all fronts.

This will have to be attempted through two main programmes:

1. The development of physical resources through the modernisation of agriculture and rapid industrialisation. This requires the adoption of a science-based technology, heavy capital formation and investment, and the provision of the essential infrastructure of transport, credit, marketing and other institutions; and
2. The development of human resources through a properly organised programme of education.

It is the latter programme, namely, the development of human resources through education, which is the more crucial of the two. While the development of physical resources is a means to an end, that of human resources is an end in itself; and without it, even the adequate development of physical resources is not possible.

The reason for this is clear. The realisation of the country's aspirations involves changes in the knowledge, skills, interests and values of the people as a whole. This is basic to every programme of social and economic betterment of which India stands in need. For instance, there can be no hope of making the country self-sufficient in food unless the farmer himself is moved out of his age-long conservatism through a science-based education, becomes interested in experimentation, and is ready to adopt techniques that increase yields.

The same is true of industry. The skilled manpower needed for the relevant research and its systematic application to agriculture, industry and other sectors of life can only come from a development of scientific and technological education. Similarly, economic growth is not merely a matter of physical resources or of training skilled workers; it needs the education of the whole population in new ways of life, thought and work. Robert Heilbroner describes the journey to economic development undertaken by a traditional society as 'the great ascent' and points out that the essential condition for its success is human 'change on a grand scale'.

He observes:

- 'The mere layin of a core of capital equipment, indispensable as that is for further economic expansion, does not yet catalyse a tradition-bound society into a modern one.

For that catalysis to take place, nothing short of a pervasive social transformation will suffice; a wholesale metamorphosis of habits, a wrenching reorientation of values concerning time, status, money, work; and an unweaving and reweaving of the fabric of daily existence itself.' These observations are applicable to advances on the social, political and cultural fronts as well.

EDUCATION AS INSTRUMENT OF CHANGE

If this 'change, on a grand scale' is to be achieved without violent revolution there is one instrument, and one instrument only, that can be used: EDUCATION. Other agencies may help, and can indeed sometimes have a more apparent impact. But the national system of education is the only instrument that can reach all the people. It is not, however, a magic wand to wave wishes into existence. it is a difficult instrument, whose effective use requires strength of Will, dedicated work and sacrifice. But it is a sure and tried instrument, which has served other countries well in their struggle for development.

It can, given the will and the skill, do so for India. This emphasis on the social purposes of education, on the need to use it as a tool for the realisation of national aspirations or for meeting national challenges, does not imply any underestimation of values for the individual. In a democracy, the individual is an end in himself and the primary purpose of education is to provide him with the widest opportunity to develop his potentialities to the full.

But the path to this goal lies through social reorganisation and emphasis on social perspectives. In fact, one of the important principles to be emphasised in the socialistic pattern of society, which the nation desires to create, is that individual fulfillment will come, not through selfish and narrow loyalties to personal or group interests, but through the dedication of all to the wider loyalties of national development in all its parameters. This direct link between education, national development and prosperity which we have emphasised and in which we deeply believe, exists only when the national system of education is properly organised, both qualitatively and quantitatively.

The naive belief that all education is necessarily good, both for the individual and for society, and that it will necessarily lead to progress, can be as harmful as it is misplaced. Quantitatively, education can be organised to promote social justice or to retard it. History shows numerous instances where small social groups and elites have used education as a prerogative of their rule and as a tool for maintaining their hegemony and perpetuating the values upon which it has rested.

On the other hand, there are cases in which a social and cultural revolution has been brought about in a system where equality of educational opportunity is provided and education is deliberately used to develop more and more potential talent and to harness it to the solution of national problems. The same is even more true of the quality of education.

A system of university education which produces a high proportion of competent professional manpower is of great assistance in increasing productivity and promoting economic growth. Another system of higher education with the same total output but producing a large proportion of indifferently educated graduates of arts, many of whom remain unemployed or are even unemployable, could create social tensions and retard economic growth. It is only the right type of education, provided on an adequate scale, that can lead to national development; when these conditions are not satisfied, the opposite effect may result.

Judged from this point of view, it becomes evident that the present system of education, designed to meet the needs of ail imperial administration within the limitations set by a feudal and traditional society, will need radical changes if it is to meet the purposes of a modem democratic and socialistic society-changes in objectives, in content, in teaching methods, in programmes, in the size and composition of the student body, in the selection and professional preparation of teachers, and in organisation. In fact, what is needed is a revolution in education which in turn will set in motion the much desired social, economic and cultural revolution.

The main concern of this Report is to identify the major programmes that can bring about this educational revolution which has three main aspects:

1. Internal transformation so as to relate it to the life, needs and aspirations of the nation;
2. Qualitative improvement so that the standards achieved are adequate, keep continually rising and, at least in a few sectors, become internationally comparable; and
3. Expansion of educational facilities broadly on the basis of manpower needs and with an accent on equalisation of educational opportunities.

It is with the first group of the programmes, namely, the transformation of the system to reflect the needs and aspirations of the Indian people.

RELATING EDUCATION TO THE LIFE, NEEDS AND ASPIRATIONS OF THE PEOPLE

As is well known, the existing system of education is largely unrelated to life and there is a wide gulf between its content and purposes and the concerns of national development.

For instance:

- The educational system does not reflect the supreme importance of agriculture which is neglected at all stages and does not attract an adequate share of the top talent in the country; enrolment in the agricultural faculties of universities is extremely low; and agricultural colleges are comparatively weak and underdeveloped;
- The main task before the nation is to secure rapid economic development. If this is to be successfully accomplished, education must be related to productivity. The present system is too academic to be of material help in increasing national wealth;
- The schools and colleges are largely unconcerned with the great national effort at reconstruction and teachers and students generally remain uncommitted to it. They are often even unaware of its principles and very rarely have opportunities to participate ill its programmes;
- Instead of promoting social and national integration and making an active effort to promote national consciousness, several features of the educational system promote divisive tendencies; caste loyalties are encouraged in a number of private educational institutions; the rich and the poor are

segregated, the former attending the better type of private schools which charge fees while the latter are forced, by circumstances, to attend free government or local authority schools of poor quality; and-at a time when the need to cultivate a sense of moral and social responsibility in the rising generation is paramount, education does not emphasise character-formation and makes little or no effort to cultivate moral and spiritual values, particularly the interests, attitudes and values needed for a democratic and socialistic society.

There is hardly any need to multiply such instances. The nature of the transformation needed in our educational system is generally recognised. What we wish to emphasise is its urgency. Traditional societies which desire to modernise themselves have to transform their educational system before trying to expand it, because the greater the expansion of the traditional system of education, the more difficult and costly it becomes to change its character.

This truth has been lost sight of and, during recent years, we have greatly expanded a system which continues to have essentially the same features it had at its creation about a century ago. In our opinion, therefore, no reform is more important or more urgent than to transform education, to endeavour to relate it to the life, needs and aspirations of the people and thereby make it a powerful instrument of social, economic and cultural transformation necessary for the realisation of our national goals.

This can be done if education is related to productivity;

- Strengthens social and national integration; consolidates democracy as a form of government and helps the country to adopt it as a way of life;
- Hastens the process of modernisation; and
- Strives to build character by cultivating social, moral and spiritual values.

All these aspects are interrelated and in the complex process of social change, we cannot achieve even one without striving for all.

UNDERSTANDING THE SIGNIFICANCE OF EDUCATION AS A CONCURRENT LIST ENTRY IN THE CONSTITUTION

Education Transferred from State List to Concurrent list

Having clearly demonstrated that the State laws lack uniformity and are also clearly violative of the Constitutional mandate, the question that needs to be examined is how can we ensure uniformity in the enforcement of standards in elementary education? In order to answer this, it is important to briefly look into the legislative powers that are vested with the Centre and State with respect to elementary education. The Constitution, which is based on the principle of federalism, adopts a three-fold distribution of legislative powers. Different subjects for legislation find mention in one of the three lists, namely the Union List, State List and Concurrent List in the Seventh Schedule to the Constitution. While the Parliament and State Legislatures have exclusive legislative power

over entries in the Union List and the State List respectively, both the Parliament and the State Legislatures have the power to legislate over entries in the Concurrent List. The three identified rationales underlining the placement of certain entries in the Concurrent List are:

- To secure uniformity in the main principles of law
- To guide and encourage local efforts
- To provide remedies for mischief arising in the local sphere, but extending, or liable to extend beyond the boundaries of a single province.

Education, which was originally in the State List, was subsequently transferred to the Concurrent List by means of a Constitutional amendment in 1976. Entry 25 of the Concurrent List reads as follows: "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Purpose and Implication of the Transfer of Education from State list to Concurrent List

The significance of the 1976 amendment and its implications are discussed in the National Education Policy of 1986 and 1992. The Policy clearly refers to the 'substantive, financial and administrative' implications of the amendment.

The Policy states as follows:

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

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

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

> national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country."

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

COUNTERING THE DEFEAT OF THE CONSTITUTIONAL AMENDMENT OF 1976

Having emphasised upon the purpose of this amendment, a question arises as to the legal tools that are available to the Centre for standard-setting, through which basic norms on FCE can be enforced in States. The only legally enforceable tool of standard-setting that is available to the Centre is that of enacting a Central legislation. Since education is in the Concurrent List, State Legislatures too have complete power to legislate on education. This power of the States is subject to Article 254(2) of the Constitution, *i.e.*, in the event that the States enact a law, the provisions of the State law should not conflict with those of the Central law on the same subject. Where there is no Central law on a particular subject in the Concurrent List, the State Legislature is competent to legislate in that field. Till date there has been no Central law on elementary education. Jammu and Kashmir, Meghalaya, Madhya Pradesh, Andhra Pradesh, Punjab, Sikkim, Delhi, Rajasthan, Kerala, Tamil Nadu, Karnataka, Bihar, Himachal Pradesh and West Bengal have enacted laws on the subject of elementary education within their respective States.

In addition to State level legislations, between 1996 and 2005, several draft Central Bills on Right to Education, albeit with different names, have been debated and discussed at the national level. The latest effort in 2005–2006 has been abandoned by the Centre and the Centre has instead passed the buck on to the States. However, the Centre has been magnanimous enough to circulate the 2005 Bill as a Model Bill 2006 for States to emulate. It is important to decry this development as a complete eye-wash and legislative fraudulence since this Model Right to Education Bill has no legal value whatsoever. The Model Bill is not only unenforceable but also does not affect the legality of the existing State laws. The farce of terming the Right to Education Bill, 2005 as a Model Bill is evidenced by the fact that even after it was circulated amongst all the States; the Minister for Education from Maharashtra stated that ration cards of parents of out-of-school children would be cancelled. This is despite the fact that the socalled Model Bill clearly envisages only one punitive measure for compelling attendance, which is mandatory community service by parents.

In complete contrast to the unenforceable 'model' Bill, legally enforceable model rules have been adopted by the Centre in other branches of law. For example, under the Industrial Employment (Standing Orders) Act, 1946, the Centre has incorporated several Model Standing Orders that have the force of statutory orders which cannot be derogated. Similarly, under the Juvenile Justice

(Care and Protection of Children) Act, 2000 as amended in 2006, the Central Government's Model Juvenile Justice (Care and Protection of Children) Rules, 2002 will acquire legal enforceability (which they did not have prior to the 2006 amendment) if adopted by the Parliament.

Unless a Central law is enacted governing FCE, the entire purpose of transferring education from the State List to the Concurrent List through the 1976 Constitutional amendment would be defeated. Moreover, the idea of 'partnership' and standard setting that is envisaged by the current National Policy on Education would also be defeated in the absence of a Central Law. It is important to develop a Central law in such a manner that it balances the two-fold purposes of standard-setting and Centre-State partnership as envisaged in the Indian Education Policy. True partnership would be possible only where the Central law gives adequate flexibility to States to develop and incorporate innovations into the law without diluting core minimum standards. This flexibility is also important because under the Constitution, after the 73rd and 74th Amendment, the Panchayat Raj Institution and the urban local self-government bodies have also been given importance in the context of education.

The Central core minimum standards should be such that it enables need-based localised interventions. For example, Karnataka has taken the progressive measure of developing delegated legislation to institutionalise community participatory methods of monitoring and developing schools in rural areas within the existing Panchayat Raj Institutional framework. This has been done by constituting School Development and Monitoring Committees at the school level. Similarly, in Andhra Pradesh, novel experiments have been initiated drawing linkages between child labour and education. Such processes should be encouraged and permitted within the overall framework of the Central law and the latter should not operate as a bar against such regional innovations. Therefore, the Central law should merely lay down core norms, standards and systems of accountability that are required to be adhered to by all States. These can best be accommodated through a skeletal Central legislation. In order to supplement the skeletal legislation, the Central Act may provide for the enactment of Model Rules that have statutory force, which would be binding on States in the event of State inaction with respect to delegated legislation. In enacting such a skeletal legislation, the limitations of the law should be kept in mind and change should be progressively brought about. The law should also make provisions for institutionalising its periodic review with a view to facilitating progressive changes that address its own lacunae.

4

Right to Education: An Historical Account

The Right to Education Act came to its present form after the concerted efforts of many groups and agencies in the country. The first law on compulsory education was introduced by the State of Baroda, in 1906. This law provides education for boys and girls in the age group of 7-12 years and 7-10 years respectively. In 1911, Gopal Krishna Gokhle unsuccessfully moved a Bill for compulsory education in the Imperial Legislative Council. The Legilative Council of Bombay was first amongst the provinces to adopt a law on compulsory education. In spite of all these efforts universalisation of education in the country was poor due to lack of control over resources. Thereafter, National Policy on Education, 1968 was formed and implemented. It was the first official document evidencing Indian Government's commitment towards elementary education. Thereafter, the country witnessed the National Policy on Education in the year 1986. In this policy also, Right to Education was not recognized. Again, emphasis was given universalisation of elementary education. In the year 1990, the policy was reviewed by the Acharya Rammurthy Committee. The committee recommended that right to education should be included as a fundamental right in Part III of the constitution. However, this recommendation was not implemented immediately. But, on the basis of the committee's recommendation, National policy on Education, 1992 was formulated.

In 1992, in the case of Mohini Jain Vs State of Karnataka, the Supreme Court of India held that ' right to education is concomitant to fundamental rights enshrined under Part III of the constitution and that every citizen has a

right to education under the constitution. Subsequently, in the case of Unnikrishnana, J.P. Vs State of Andhra Pradesh, the Supreme Court held that " though right to education is not stated expressively as a fundamental right, it is implicit in and flow from the right to life guaranteed under article 21 and must be construed in the light of the Directive Principles of the constitution. Thus, ' right to education, understand in the context of Article 45 and 41 means (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. The landmark judgments of the Honbl'e Supreme Court and initiatives from many other agencies had forced the government take initiatives in this direction. In fact, Government of India has launched many of programmes for strengthening elementary education in the country. Prominent amongst them are District Primary Education Programme (DPEP) of 1994. Subsequently, in 2001 for spreading elementary education in India, Government has launched ' Sarva Shiksha Abhiyan (SSA)." These programmes were aimed at making elementary education accessible to children of the age six to fourteen years old. Elementary education has been defined as classes I through VIII. In 2002, Indian constitution was amended which states that the state shall provide free and compulsory education to all children of the age of six to fourteen years. This is the 86th amendment of the constitution.

In 2005, a draft Right to Education Bill was circulated but could not get its final shape because of the apprehension that Government may not be able to bear the high financial costs involved in implementing the act all throughout the country. Later on the bill was placed before the Rajya Sabha in December, 2008.

The Bill was then returned to a Standing Committee on Human Resource Development. After the formation of UPA II Government, the bill was finally passed by the Rajya Sabha on 20th June, 2009 and by the Lok Sabha on 4th August, 2009.The Right of children to Free and Compulsory Education Act, 2009 received assent of the President of India on 26th August, 2009.

THE RIGHT TO EDUCATION ACT

In furtherance of its constitutional obligation under Article 21-A, the Indian Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009, with a host of provisions to regulate and even restrict the running of schools. The essential schema of this act, as articulated in Section 12, mandates government schools to provide for free and compulsory elementary education and directs private unaided schools to do the same in respect of children belonging to the weaker sections and disadvantaged groups, subject to a maximum of twenty five per cent of their student intake. In the case of the latter, the act guarantees them reimbursement, in respect of the 25 per cent of students admitted through the 'free' quota, of the same per-child-expenditure as would be incurred by a government school.

'Elementary education' is defined in Section 2(f) as education from the first class to the eighth class, the expression 'child belonging to disadvantaged group' is defined in Section 2(d) as a child belonging to the Scheduled Caste, Scheduled Tribe, or any other socially and educationally backward class or similar group that is disadvantaged owing to gender or social, cultural, economic, geographic, linguistic, or similar factors, and the expression 'child belonging to weaker section' is defined in Section 2(e) as a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government.

This scheme and various other provisions that make clear the state's intention to micro-manage the running of schools of all hue, instigated heavy constitutional attack on the RTE Act. The Supreme Court, in response, has come out with its verdict upholding this enactment on 12.04.2012, in *Society for Unaided Private Schools of Rajasthan* v. *Union of India*. The response is rendered even more interesting due to the strong notes of dissent struck by Justice Radhakrishnan.

There are three different themes common to any state regulation on educational institutions, regardless of the nature of education imparted. First, to what extent can the state insist upon 'reservations' in the case of educational institutions run entirely on private funds? The response to this is rooted in understanding the proper character of education vis-a-visArticle 19(1)(g) of the Constitution, such as whether it is a business, occupation, trade or pure charitable activity. If the state can indeed thrust the obligation to reserve a certain percentage of seats upon private unaided educational institutions, the second theme arises. Is there any distinction between 'minority' institutions and others in so far as extending the power of the state to provide for reservations is concerned? This, in turn, depends on the preferred reading of Article 30 and assessing whether this fundamental right goes beyond the general freedom to carry on business conferred under Article 19(1)(g).

The third theme is the nature and content of regulations, apart from reservations, that the state can provide for in both minority and non-minority educational institutions. Apart from these, the RTE Act, due to its specific regulatory domain of primary education and the presence of Article 21-A, raises a fourth theme, being whether non-state actors can be saddled with a responsibility primarily cast upon the government under Article 21-A. The court, in the RTE case, has addressed these issues but in an unsatisfactory manner. Since the fourth theme, that of horizontal application of rights, has seldom come up prior to this case for judicial scrutiny, this article will focus on this theme. In essence, this article argues that both the dissenting judgment and the majority verdict take extreme positions based on absolute prioritization of one set of fundamental rights over the other, thus resulting in ambiguous articulation of the proper standard of judicial review in situations involving the horizontal application of fundamental rights.

In general, fundamental rights are only enforceable against the state. Indeed, Article 13 prohibits the 'state' from making any law that takes away or abridges

the fundamental rights conferred by Part III of the Constitution. The constitutional history behind the introduction of fundamental rights also makes it clear that these rights were meant to protect the citizen against the state. However, our Constitution makers were aware of the fact that certain vital rights could be infringed upon by private actors too, and this explains the different language employed in provisions such as Article 17 (abolition of untouchability), Article 23 (prohibition of traffic in human beings and forced labour) and Article 24 (prohibition of employment of children in factories).

For a good thirty years this division between a few fundamental rights, enforceable against private citizens, and the many that were enforceable only against the state, worked well. It is with the unfettered expansion of Article 21 through the doctrine of 'unenumerated' rights that problems crept in with this otherwise simple division. If Article 21 did cover within its now wide sweep, the right to a clean environment, shelter, medical care and various other such judicially crafted rights, would these rights be enforceable at all without active cooperation by non-state actors? A classic instance of this difficulty caused by the unconstrained enlargement of the rights under Article 21 is the decision in *Vishaka* v. *State of Rajasthan*. Here, the court took serious exception to an incident involving the rape of a social worker employed by the state of Rajasthan, and went to the extent of framing guidelines for prevention of sexual harassment in any workplace.

The court justified this exercise of judicial power by harping on violation of fundamental rights under Articles 14, 15, 21 and 19(1)(g). However, the court failed to appreciate that the extension of these guidelines to private entities required a separate conceptual enquiry. While dispensing with conceptual analysis, the court showed concern only towards how best sexual harassment could be eradicated from the workplace. Keeping in mind the fact that many organizations are owned by private entities post liberalization, the sweeping application of fundamental rights to non-state actors perhaps brought about a desirable outcome on the facts of this case.

This does not unfortunately translate into doctrinally sound constitutional jurisprudence as private actors, as opposed to the state, have their own fundamental freedoms. The right to one man's privacy could well amount to an unreasonable restriction on the other's right to free speech, when horizontally applied. Similarly, the right of one person to non-discrimination could impact on a private corporation's right to carry on business. In short, the nature of the enquiry has to be necessarily different when imposing a duty on non-state actors, who themselves enjoy fundamental rights, than on state actors who are mandated to respect fundamental rights regardless of the difficulty in complying with their 'duty'.

It is also important to appreciate that the word 'right' allows for different contextual connotations. It may, on some occasions, give the right holder an entitlement to demand something positive from the world at large or specific duty bearing individuals. In certain other situations, the right holder is only immunized to the extent of non-interference with his right by others. The idea

of fundamental rights was largely a guarantee of the latter, and not the former. The notion of positive action was in fact incorporated, though not as an entitlement, in Part IV of the Constitution that deals with the Directive Principles of State Policy. However, the judiciary, through creative expansion of Article 21, diluted the traditional 'negative rights' study of Articles 14, 19 and 21 by reading in some of the directive principles as well as international treaty obligations within the purview of Article 21.

The state could no longer remain a silent non-interfering spectator, and onus was cast upon it to dedicate its machinery to the effective fruition of these 'socio-economic' rights. This assumes particular importance in the context of primary education, as the court in *Unnikrishnan* v. *State of Andhra Pradesh* relied on Article 45, a directive principle, to hold that the state had a duty, under Article 21, to provide for free and compulsory education of its citizens till the age of fourteen. The difficulty with this approach towards interpreting Article 21 is twofold: one, the state has no real resources to ever *guarantee* the discharge of its duty and in most cases, the right remains merely one on paper, and two, the state can justify resort to restrictions on private actors in the guise of giving wings to the positive right in question.

This is precisely the case with the RTE Act, as the positive right judicially created in *Unnikrishnan* and *Mohini Jain* v. *State of Karnataka*, and constitutionally enshrined through Article 21-A, has been misconstrued to make private entities liable for the fulfilment of this right with little or no heed being paid to the fundamental rights enjoyed by them. This is evident from the best foot put forward by the Union in support of the act, being the submission that Article 21-A, which gives effect to a socio-economic right, would trump other fundamental freedoms and 'negative' rights such as the right to carry on business in Article 19(1)(g). The correct response to this submission required an understanding of the history behind Article 21-A as well as the possibility of horizontal application of rights in our constitutional jurisprudence, both of which are strikingly absent in the majority verdict.

In this regard, the dissent by Justice Radhakrishnan traces the events leading to the introduction of Article 21-A, and attempts to draw the majority's attention to the potential hazards of imposing the state's duty on private actors. The painstaking review of the progress of this constitutional amendment from the day the Constitution (Eighty-third Amendment) Bill, 1997 was born within the confines of the Department of Education in the Ministry of Human Resource Development, to when it finally got included in Part III, reveals that the initial draft specifically prohibited the state from making '*any law, for free and compulsory education…in relation to the educational institutions not maintained by the State or not receiving aid out of State funds*.' Subsequently, political compulsion prevailed, and it was considered fit to leave it to the judiciary to decide on the scope and width of Article 21-A.

The dissent draws a linkage between the enactment of the RTE Act in 2009 and parallel developments in the field of higher education such as the decisions

of the Supreme Court in*T.M.A. Pai Foundation* v. *State of Karnataka*, *Islamic Academy of Education* v. *State of Karnataka*, and *P.A. Inamdar* v. *State of Maharashtra*. Analyzing these decisions, the dissent concludes that Parliament was fully aware, at the time of enacting the RTE Act, that private unaided educational institutions of both minority and non-minority status could not be burdened with reservations. This judicial view, according to Justice Radhakrishnan, ought to permeate the debate surrounding Section 12 of the RTE Act, as there was no strong reason to deviate from the same.

More importantly, the dissent examines several decisions of the Indian Supreme Court where Article 21 was liberally interpreted to include positive socio-economic rights, as well as pronouncements by the South African Constitutional Court, to conclude that even in jurisdictions where socio-economic rights have been exalted to the status of constitutional rights, those rights are available only against the state and not against private non-state actors such as private schools or hospitals unless they receive some aid, grant or other concessions from the state. The dissent also concludes that the beneficiaries of a socio-economic right cannot make inroads into the rights guaranteed to other citizens.

This part of the dissent forms the crux of the actual debate surrounding Articles 21-A and 19(1)(g) and the interplay between these rights, and is unfortunately ignored in its entirety by the majority. This is unfortunate as the majority could have trodden the middle path, applied the doctrine of proportionality, and yet probably arrived at the same outcome that it eventually did. This would have been at variance with, and better than, the extreme position in the dissenting opinion that a constitutional amendment on the lines of Article 15(4) and 15(5) ought to have been introduced to specifically provide for reservations in private unaided educational institutions. This would also have been more a conceptually sound precedent than the other extremity that the majority endorsed, being a complete negation of Article 19(1)(g) by the mere presence of Article 21-A and its laudable objective.

Before examining the limited reasoning that the majority verdict discloses, a few words on judicial review are in order. Judicial review signifies both the power of, and the standard for, courts to examine the constitutional validity of state action. It is, therefore, imperative while exercising this power that the correct standard or approach is adhered to, so that future courts, when confronted with similar conflicts, can follow the right precedent. A judgment which arrives at the seemingly correct outcome through incorrect means is still a wrong decision, both because it serves as an undesirable precedent and because none can predict with clockwork accuracy the actual outcome had the correct test been followed. The majority verdict, when viewed from this angle, stands influenced entirely by a few factors, some of which are no doubt relevant but hardly conclusive, and thus falls into the above well of incorrect judicial reasoning.

There are two glaring errors in the majority reasoning. First, the assertion that the impugned scheme of the RTE Act is justified since the running of an

educational institution is a charitable activity in India, heavily misconstrues the *TMA Pai* and *Inamdar* decisions. While it is no doubt true that the 11 judge bench in *TMA Pai* did consider education to be a recognized head of charity, the seven judge bench in *Inamdar* had categorically held that even this consideration would not permit the state to impose its reservation policy on private unaided educational institutions. It was, therefore, imperative that the majority explain why private unaided schools stand on a footing separate from private unaided colleges. But for the incantation of Article 21-A, the verdict is rather silent on this issue.

This brings us to the second major flaw, being that of absolute prioritization of Article 21-A over 19(1)(g) merely because of the laudable objective sought to be achieved through the introduction of the former provision. The majority holds that the RTE Act is a reasonable restriction under Article 19(6) since it has been enacted to give effect to Article 21-A, but this begs the question as to whether the scheme contained in this act is still a reasonable one. This, in turn, is an enquiry that goes way beyond the mere objective of the legislation to a balancing of competing interests. This is more so in situations where a fundamental right is sought to be enforced against non-state actors who, as rightly pointed out by Justice Radhakrishnan, are themselves protected by fundamental rights. The majority conducts no such balancing exercise, thus leaving open to our imagination the correct standard of judicial review in cases involving horizontal application of fundamental rights.

Right from the decision in *State of Madras* v. *VG Row*, the Supreme Court has held that various factors such as the nature of the right alleged to have been infringed, the underlying purpose of the restriction, the extent and urgency of the evil sought to be remedied, the disproportion of the restriction, and the prevailing conditions at the time of imposition of the restriction, would all be relevant in determining the reasonableness of the restriction placed on a fundamental freedom contained in Article 19. Though the restriction in this case related to Article 19(2), the same principle was held applicable to Article 19(6) in *Collector of Customs, Madras* v. *Nathella Sampathu Chetty*. This has in fact prompted the court, in *Om Kumar* v. *Union of India*, to remark that the principle of proportionality has been applied vigorously to state action in India ever since 1950. The doctrine of proportionality essentially involves a balancing of competing interests to ensure a proportionality of ends, as well as securing the proportionality of means by permitting only the least restrictive choice of measures by the legislature or the administrator for achieving the object of the legislation or the purpose of the administrative order.

Essentially, there are three important criteria used while applying the doctrine of proportionality. The necessity criterion prevents the state from taking any action that goes beyond what is necessary to achieve its aims, *i.e.*, the method least burdensome to the affected persons. The suitability criterion insists that the means chosen be suitable for achieving those aims. The balancing criterion guarantees a proportionate balance between the burden imposed on affected

persons and the purpose sought to be achieved. In determining the reasonableness of any restriction using proportionality, the legislative objective should be sufficiently important to justify such a restriction, the measures designed to meet the legislative objective should be rationally connected to it, and the means used to impair the right or freedom should be no more than is necessary to accomplish the objective. These principles go to show that the nature of the competing interests play a significant role in ascertaining the limit on constitutionally permissible restrictions.

The above framework of judicial review fits perfectly with the kind of issues that crop up when fundamental rights are sought to be extended to non-state actors. In the specific case of the RTE Act, factors such as the laudable objective behind Article 21-A, the exclusion of the exception favouring private unaided institutions in the final version of the amendment, the virtual impossibility of fulfilling this objective if non-state actors including minority educational institutions were to be excluded from its purview, the relatively reduced 25 percentage of reservations and the reimbursement of basic cost to the private unaided institutions would have weighed in favour of the act. On the other hand, factors such as those highlighted by Justice Radhakrishnan in the dissent would, instead of rendering the act unconstitutional under any circumstance whatsoever, end up on the proportionality scale as factors weighing the balance against the state. The court would also have to keep in mind the economic viability of running private schools post the introduction of the impugned scheme.

Needless to say, none of these factors would have arisen in a case of vertical application of fundamental rights, where the state is obliged to unconditionally respect the citizen's right. The RTE case reveals a preference for one-dimensional analysis both by the majority and the minority, an approach wholly inadequate while reviewing the validity of legislation that casts duties of the state on non-state actors. For this reason alone, the constitutional validity of the RTE Act ought to be reconsidered by a larger Constitution Bench by expanding the scope of enquiry to include the factors highlighted above and balancing them.

The inadequacy of the court's approach shows up best when it addresses the issue of application of the RTE Act to minority unaided institutions. This issue mattered not in the dissent since Justice Radhakrishnan had concluded that the act would be constitutionally invalid regardless of the minority/non-minority character of these educational institutions.

However, the majority's treatment of this issue, and its conclusion that the act would not apply to minority unaided institutions, offers the most powerful argument yet to reconsider this decision. While arriving at this conclusion, the majority has yet again applied the 'absolute prioritization of rights' analysis, wherein Article 30(1) supersedes the obligation cast on the state and non-minority private unaided institutions under Article 21-A.

The basis for this prioritization is again unclear and more likely than not, erroneous, especially because the precedents in *TMA Pai* and *Inamdar* strongly indicate that both Articles 19(1)(g) and 30(1) provide the same level of protection

to unaided private educational institutions with the latter being exclusively applicable to the schools run by the minorities. If the protection under Article 19(1)(g) could be superseded by the RTE Act due to the laudable objective furthered by Article 21-A, as the majority held it did, consistency demanded a similar view to be taken in respect of Article 30(1) as well.

An independent enquiry is, however, required to examine whether the above outcome could have been sustained, had the correct standard of review – the proportionality standard as put forth by this article – been applied. Coming back to the exercise of weighing and balancing, two additional considerations in law, and one of fact, would most certainly figure in this exercise. The considerations in law are Article 30(1), no doubt, and Article 15(5). Article 30(1) is a special provision that vests with religious and linguistic minorities, the important right to establish and administer educational institutions of their own choice. Whether this provision makes any difference to the balance is doubtful as Article 19(1)(g), in the opinion of the larger benches in *TMA Pai* and *Inamdar*, guarantee as much of protection as Article 30(1) to the non-minorities who cannot avail of the latter provision. More importantly, larger benches of the Supreme Court have held that Article 30(1) is not an absolute right and can be curbed in national interest.

The majority, which waxed eloquent about Article 21-A and its nationally significant objective, cannot possibly take a different view of this objective only when it comes to minority unaided institutions. Therefore, in the scales of proportionality review, Article 30(1) makes no difference, in the context of minority institutions, to the balance as exists in the case of non-minority institutions. At best, Article 30(1) would permit the minority institution to prefer students from their own community while admitting the 25 per cent 'free quota', as long as such preference was exercised in a fair and transparent manner. This was even conceded by the Union of India.

Article 15(5), on the other hand, does play an instrumental reason in tilting the balance, and for the reason that this provision, the constitutional validity of which was not in question before the court, specifically contains an exemption favouring minority educational institutions. The constitutional history of this provision, introduced in response to the decision of the court in *Inamdar*, is also a pointer to the fact that the state, while seeking to override the rights under Article 19(1)(g) in the field of education, never desired to do so in respect of the rights under Article 30(1). While the Union never sought to defend the RTE Act as a proposed measure under Article 15(5), and understandably so since the scope of this provision is much narrower than what the RTE Act attempted to cover, this is certainly a factor weighing in support of not extending the RTE Act to minority educational institutions. This factor could even be conclusive if not for the next factor, one of fact. This factual consideration puts back the balance in favour of Article 21-A, and the Union's case for applicability of the RTE Act to minority educational institutions. This all important factual consideration is the substantial percentage of the total number of unaided private

schools that qualify for 'minority' status in various states. While no comprehensive nationwide study was presented in this regard for the consideration of the court, some of the facts speak louder than ever. In Karnataka, the rough estimates are that out of 10,252 unaided schools, 6,600 would qualify as minority institutions. As per the 2007-08 statistics relied on by the Supreme Court, of the 12,50,755 schools imparting elementary education in India, 80.2 per cent were government run, 5.8 per cent were private aided and 13.1 per cent were private unaided. Due to the extreme ambiguity in defining the term 'minority', it has been difficult to ascertain the percentage of private unaided schools that would qualify for exemption. It could well be the case that if minority unaided institutions were exempt from the purview of the RTE Act, this legislation would not come anywhere close to achieving its stated objective. Apart from this, the court also ought to have factored in the rent-seeking behaviour this exemption would trigger, as institutions of all kind and character vie for minority status.

The above factors have been highlighted not to contend that the ultimate outcome in the RTE case is erroneous, but to show how an incorrect standard of review can result in various governing considerations being ignored by the adjudicatory body. This, in itself, is a strong reason to reconsider the debate on the constitutional validity of the RTE Act.

The Supreme Court, by following an incorrect path, has muddled the manner in which enquiry into the constitutional validity of a legislation that advocates horizontal application of fundamental rights ought to be conducted.

This error is accentuated by the apparently illogical and discriminatory conclusion arrived at by the court, that the RTE Act would not apply to minority unaided institutions. The application of the proportionality standard of review could have addressed most of this criticism by inspiring confidence that justice has not only been done, but evidently so.

5

Right to Education Act, India: The Challenges Ahead

It would be premature to comment on whether or not the Right to Education Act (RTE) will achieve its objectives but it sure is going to be an uphill task despite the promising speech of the prime minister and the enforced act. Transformation cannot take place without a beginning.

The Act has now become a reality and there is an atmosphere of jubilation, anticipation and enthusiasm all around. It is the first step taken but more need to be followed to reach anywhere. Inclusive Education had become the need of the hour. The road ahead is not going to be an easy one and implementing the Act fairly, poses a major challenge involving creative and sustained efforts.

Let us look into some of the challenges but before that, here is a brief overview.

RIGHT TO EDUCATION ACT: A SYNOPSIS

Here are some of the highlights of the historic Right to Education Act:

- Every child in the age group of 6 to 14 years will have a right to free and compulsory education in a nearby school.
- Private and unaided educational institutes will have to keep 25% of the seats for students belonging to the weaker sections.
- No child would be failed or expelled and will not be required to pass any board examination till the age of 14.
- All students who complete their elementary education will be awarded certificates
- Financial burdens will be shared between the center and states.

- Infrastructure of schools will be improved; Recognition will be subject to improvement
- Quality of education will be improved

CHALLENGES AHEAD

Right to Education Act: Financial Challenges

The Right to Education Act is already plagued with various financial hurdles and challenges. The fiscal burden is to be shared between the center and the states in the ratio of 55: 45 and 90: 10 for the North-Eastern States. This project is going to involve funds to the tune of Rs. 15,000 crores. Many states have already voiced their inability to mobilize funds and entered into a dispute with the center. Uttar Pradesh, Bihar, Punjab and many states have expressed that they would not be able to implement the Act in the absence of funds from the center. Orissa in fact wants the same status enjoyed by the North Eastern states with respect to the Act. The success as far is the financial issues are concerned largely depends upon the center-state cooperation.

The ambitious project is already falling short of around Rs.7.000 crores in the very first year itself.

Since the Act involves improving the infrastructure of schools, training teachers, creating more facilities besides the manifold increase in intake, huge finances would be involved and it is difficult to envisage how the economics of it all will be worked out.

Right to Education Act: Challenge to Find Qualified Teachers

The dearth of good and qualified teachers is going to be one of the most crucial challenges faced in implementing the act. In the absence of competent teachers who are considered the pillars of education, it would be next to impossible for the Act to realistically achieve its goals. It is a fact that at any given point, about 25% teachers are on leave in India and a majority of them are unable to do full justice to their professions due to a myriad of reasons.

As it is evident from the Act that school drop outs and others would be brought back into the education stream again, it would entail hiring almost double the number of teachers. It would be a challenge to find quality teachers without any performance based salaries or any incentives. The salary mechanism will need some serious revisions and the disparities removed before any influx of efficient teachers can take place. It is going to be a challenge to bridge the gap even by introducing teacher's training programmes.

According to a teacher of a reputed school in Delhi, there are hundreds of students in one class and there is a huge gap between the training imparted to teachers and what they practice on ground.

Our HRD Minister himself has acknowledged that there is a shortage of about five lakh teachers. In the face of this, how will it fulfill its promise of providing quality education to all? It is going to be a huge challenge.

Right to Education Act: Challenge to Provide Infrastructure

In a survey on 'Elementary Education in India', conducted by the National University of Educational Planning and Administration (NUEPA), it has been found that almost half of the recognized elementary schools in the country do not have separate toilet for girls. This goes out to prove and depict the sorry state that our schools are in. It is going to be a challenge to provide the requisite infrastructure that the Act expects.

The Act demands that the building of all the schools should be weather proof. According to the Act there should be one teacher for every 30 students. The survey has come up with dismal details in this regard. There are 5.79 million teachers teaching in the elementary schools currently and each school has an average of 4.5 teachers.

The Act suggests barrier free entries for all the schools whereas presently, only about 40% of the schools have ramps. Basic facilities like access to drinking water is also lacking in many schools. The Act stipulates a play ground for every school. Looking at the current scenario it looks like it is going to be extremely challenging to provide the necessary infrastructure and that too with an increased intake of teachers and students.

The other major infrastructure challenge will be to establish a balance between Centre and State. Several regulatory measures can only be taken after individual inputs from state governments. There are no clear demarcations between the responsibilities of the center and state and it would be a challenge to work out the details.

Right to Education Act: Challenge to Provide Equality and Quality in Education

HRD Minister has paved the way for huge challenges ahead by promising quality education to all. It has already been seen that it will be difficult to do so in the absence of good teachers. The Act says that no student would be dropped from school or not passed till the age of 14. With the mix of such students in class, it would be very difficult for the teachers to ensure quality. Substantial efforts would be required to maintain and impart quality education.

Teachers and the supporting staff of schools will find it tough to remain impartial and treat all the students on an equal footing without any biases. Besides this, they will also be responsible for encouraging harmony amongst the varying strata of students.

Right to Education Act: Challenge to Enforce 25% Quota for Weaker Sections

It remains to be seen whether this clause to reserve 25% of seats for weaker sections by Private unaided schools will turn out to be a boon or a bane. On one hand the Act aims at removing this bipolarity in education and on the other it is feared that interfering in the functioning of private schools will have an adverse

effect on the quality of education. These institutes claim to have brought some semblance of order to the education system in our country. It is going to be a challenge for the government to work out modalities which can strike a balance between a six year old child who has just entered school and a child who has been to a school since the age of 3.

It will be a cultural and social shock for him. Since it will be mandatory not to fail any child till standard 8th, the classes would be full and ensuring quality education in the light of this a huge challenge. The biggest challenge in this is going to be the definition of weaker sections. This is where malpractices can creep in. A monitoring mechanism will also have to be set up to ensure its fair implementation.

What will happen when a child belonging to the quota category wants to change school in higher classes? Logistics need to be worked out for a smooth transition there also. Will this help in eradicating the socioeconomic divide? It is tough task to bring together children from varying economic and social backgrounds on the same platform. It would indeed be challenging for the teachers to maintain equilibrium and create an environment for them to blend together.

Right to Education Act: Challenge to Bring Child Laborers to Schools

Now that right to education has become a fundamental right of each and every child, it should also be applicable to those thousands of students who are being used as child laborers and have been denied education till now.

There are more than 12 million children in India who are engaged in child labour and these are just official figures. Unless and until a special provision is made in the Act, it would be challenging to bring back these children to school.

These are some of the problems that have littered the path but our HRD Minister is quite confident of overcoming these challenges and propel India towards even greater heights.

This Act has put India in the same league as U.S.A., and 130 other Nations as far as the right to education is concerned. Nothing can change overnight but there is a ray of hope. A hope that if all these hurdles and shortcomings are overcome and the loopholes removed, then this will become the road leading towards an Educated India, a Proud India.

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Indian legislation enacted by the Parliament of India on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21a of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010.

HISTORY

Present Act has its history in the drafting of the Indian constitution at the time of Independence but is more specifically to the Constitutional Amendment that included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill.

A rough draft of the bill was composed in year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools.

Passage

The bill was approved by the cabinet on 2 July 2009. Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 26 August 2009 as The Children's Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Manmohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India."

Highlights

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children (to be reimbursed by the state as part of the public-private partnership plan). Kids are admitted in to private schools based on caste based reservations. It also prohibits all unrecognised schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age.

The RTE act requires surveys that will monitor all neighbourhoods, identify children requiring education, and set up facilities for providing it. The World Bank education specialist for India, Sam Carlson, has observed:

The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. It is the parents' responsibility to send the children to schools in the US and other countries.

The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation-the Persons with Disabilities Act. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act.

Implementation and Funding

Education in the Indian constitution is a concurrent issue and both centre and states can legislate on the issue. The Act lays down specific responsibilities for the centre, state and local bodies for its implementation. The states have been clamouring that they lack financial capacity to deliver education of appropriate standard in all the schools needed for universal education. Thus it was clear that the central government (which collects most of the revenue) will be required to subsidise the states.

A committee set up to study the funds requirement and funding initially estimated that Rs 171,000 crores or 1.71 trillion (US$38.2 billion) across five years was required to implement the Act, and in April 2010 the central government agreed to sharing the funding for implementing the law in the ratio of 65 to 35 between the centre and the states, and a ratio of 90 to 10 for the north-eastern states. However, in mid 2010, this figure was upgraded to Rs. 231,000 crores, and the center agreed to raise its share to 68%. There is some confusion on this, with other media reports stating that the centre's share of the implementation expenses would now be 70%. At that rate, most states may not need to increase their education budgets substantially.

A critical development in 2011 has been the decision taken in principle to extend the right to education till Class X (age 16) and into the preschool age range. The CABE committee is in the process of looking into the implications of making these changes.

Advisory Council on Implementation

The Ministry of HRD set up a high-level, 14-member National Advisory Council (NAC) for implementation of the Act. The members include

- Kiran Karnik, former president of NASSCOM
- Krishna Kumar, former director of the NCERT
- Mrinal Miri, former vice-chancellor of North-East Hill University
- Yogendra Yadav – social scientist. India
- Sajit Krishnan kutty Secretary of The Educators Assisting Children's Hopes (TEACH)India.
- Annie Namala, an activist and head of Centre for Social Equity and Inclusion
- Aboobacker Ahmad, vice-president of Muslim Education Society, Kerala.

Status of Implementation

A report on the status of implementation of the Act was released by the Ministry of Human Resource Development on the one year anniversary of the Act. The report admits that 8.1 million children in the age group six-14 remain out of school and there's a shortage of 508,000 teachers country-wide. A shadow report by the RTE Forum representing the leading education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule. The Supreme Court of India has also intervened to demand implementation of the Act in the Northeast. It has also provided the legal basis for ensuring pay parity between teachers in government and government aided schools

Haryana Government has assigned the duties and responsibilities to Block Elementary Education Officers–cum–Block Resource Coordinators (BEEOs-cum-BRCs) for effective implementation and continuous monitoring of implementation of Right to Education Act in the State.

Precedents

It has been pointed out that the RTE act is not new. Universal adult franchise in the act was opposed since most of the population was illiterate. Article 45 in the Constitution of India was set up as an act:

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

As that deadline was about to be passed many decades ago, the education minister at the time, M C Chagla, memorably said:

Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding... They meant that real education should be given to our children between the ages of 6 and 14 – M.C. Chagla, 1964. In the 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in the Sarva Shiksha Abhiyan model in the 1990s. RTE takes the process further, and makes the enrolment of children in schools a state prerogative.

Criticism

The act has been criticised for being hastily-drafted, not consulting many groups active in education, not considering the quality of education, infringing on the rights of private and religious minority schools to administer their system, and for excluding children under six years of age. Many of the ideas are seen as continuing the policies of Sarva Shiksha Abhiyan of the last decade, and the World Bank funded District Primary Education Programme DPEP of the '90s, both of which, while having set up a number of schools in rural areas, have been criticised for being ineffective and corruption-ridden.

Quality of Education

The quality of education provided by the government system remains in question. While it remains the largest provider of elementary education in the country forming 80% of all recognised schools, it suffers from shortages of teachers, infrastructural gaps and several habitations continue to lack schools altogether. There are also frequent allegations of government schools being riddled with absenteeism and mismanagement and appointments are based on political convenience. Despite the allure of free lunch-food in the government schools, many parents send their children to private schools. Average schoolteacher salaries in private rural schools in some States (about Rs. 4,000 per month) are considerably lower than that in government schools. As a result, proponents of low cost private schools, critiqued government schools as being poor value for money.

Children attending the private schools are seen to be at an advantage, thus discriminating against the weakest sections, who are forced to go to government schools. Furthermore, the system has been criticised as catering to the rural elites who are able to afford school fees in a country where large number of families live in absolute poverty. The act has been criticised as discriminatory for not addressing these issues. Well-known educationist Anil Sadagopal said of the hurriedly-drafted act:

It is a fraud on our children. It gives neither free education nor compulsory education. In fact, it only legitimises the present multi-layered, inferior quality school education system where discrimination shall continue to prevail.

Entrepreneur Gurcharan Das noted that 54% of urban children attend private schools, and this rate is growing at 3% per year. “Even the poor children are abandoning the government schools. They are leaving because the teachers are not showing up.” However, other researchers have countered the argument by citing that the evidence for higher standards of quality in private schools often disappears when other factors (like family income, parental literacy-all correlated to the parental ability to pay) are controlled for.

Public-private Partnership

To address these quality issues, the Act has provisions for compensating private schools for admission of children under the 25% quota which has been compared to school vouchers, whereby parents may “send” their children in any school, private or public. This measure, along with the increase in PPP (Public Private Partnership) has been viewed by some organisations such as the All-India Forum for Right to Education (AIF-RTE), as the state abdicating its “constitutional obligation towards providing elementary education”.

Infringement on Private Schools

RTE Act In September 2012, the Supreme Court subsequently declined a review petion of the Act.

Barrier for Orphans

The Act provides for admission of children without any certification. However, several states have continued pre-existing procedures insisting that children produce income and caste certificates, BPL cards and birth certificates. Orphan children are often unable to produce such documents, even though they are willing to do so. As a result, schools are not admitting them, as they require the documents as a condition to admission.

Admissions

Children are admitted in to private schools based on caste based reservations.

PURPOSE OF GRANTING CULTURAL AND EDUCATION RIGHTS TO THE MINORITY IN INDIA

India is a land of myriad ethnic, religious, caste and linguistic minorities affiliated to distinct belief systems, sub-cultures and regions. Integration of these diverse communities, some large enough to aspire to a regional homeland and others content to remain as part of the Indian state has been a central preoccupation of Indian governments since 1947.

It is important to understand the condition of the minority in the present and past scenario. Despite the several efforts by the government to improve the condition of the minority, constitutional guaranteed rights, different institution and commission established to monitor, failed. Minority faces discrimination, violence and atrocities.

These cults have come into the light many times whether it is Gujarat riots where more than 2000 Muslims were killed, or following Indira Gandhi assassination led to the murder of 3000 Sikhs in Delhi. Atrocities against dalit in Bihar, Jharkhand, Maharastra Gujarat, and in north eastern part of the India is very common.

We can see the results of this kind of ruthless discrimination in Maharastra in recent days. *The purpose to guarantee these rights and to distinguish them from majority was not creating such discrimination but to make them able, to diffuse them with the majority. Even the foreigner residing in India and forming the well defined religious and linguistic minority also fall under the preview of this Article.* 'Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.'

Before moving ahead we have to ponder over some of the concepts which are important. First and foremost what is minority? Second what are the rights guaranteed to them? Who guarantee them these rights? For what purpose these rights are bestowed to them? Is it serving its requisite end?

MINORITY

The Constitution does not define the terms 'minority', nor does it lay down sufficient indicia to the test for determination of a group as minority. Neither Motilal Nehru(1928) nor The Sapru report has tried to define minority.The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined minority as under:

(1) The term 'minority' includes only those non-documents group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
(2) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
(3) Such minorities should be loyal to the state of which they are nationals.

The first initial afford was in In Re Education bill by Supreme Court to define minority. Justice S.R. Das C.J., suggested the techniques of the arithmetic tabulation, held that the minority means a "community, which is numerically less than 50 percent" of the total population.

The definition refers to group of individual who are particularly smaller as the majority in a defined area. Definition however does not indicate as to what factor of distinction, subjective or objective are to be taken as the test for distinguishing a group from the rest. Thus, while considering 'minority', a numerically smaller group, as against the majority in a defined area, some place emphasis upon certain characteristics commonly possessed by the members constituting the minority and, to them, these characteristics serves as objective factors of distinction. In this sense the term used to cover "racial, religious or linguistic sections of the population within a State which differ in these respects from the majority of the population." Distinction can be made on different basis; types of minority can be racial, religious or linguistic minority. There have been different rights guaranteed to minorities by the constitution.

MINORITY RIGHTS IN INDIA

The constitution of India guarantees different rights to the minority. These are cultural and educational rights which have been guaranteed under Article 29 and 30.

Article 29 Protection of interests of minorities.

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

The application of this Article is upon person having a distinct language, script or culture of its own and it takes into the consideration two types of minority one linguistic and other religious minority. If they have the same can be protect it. This right includes the rights "to agitate for the protection of the

language." It also not subject to any reasonable restriction like other fundamental rights and hence it is an absolute right. Under Article 29(1) any school or university can promote education in regional language as far as it is done for minor and language of the minor.

In D.A.V school, Jullundur v. state of Punjab the above provision was challenged on the ground that the college administered by the religious minority *i.e.*, Arya Samaj and affiliated university would be compelled to study the religious teaching of the Guru Nanak and this would mount to violation of the Article 29.Supreme court declined the view and said that the there is no mandate in the provision for compelling affiliated colleges either to study religious teaching of the Guru Nanak, or to adopt in any way the culture of the Sikh. If the university includes the teaching and life of the saint for the research and philosophical it can not be said that the affiliated colleges are being required to compulsorily study his life and teaching.

The provision meant that for the promotion of the majority language minority should not be stifle. If any body does it will be trespass on the rights of the sections of the citizens who have distinct language or script and which they have a right to conserve through their own educational institutions. So the minority institution affiliated to the Guru Nanak University to teach in the Punjabi language, or in any way impeding their rights to conserve their language, script or culture. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

This Article is wide and unqualified. It confers a special right not on the minority but to the majority also for the admission in the state maintained or aided educational institution. If it would be only limited to the minority it would mean that majority has no right for the admission in the state maintained or aided educational institution. This it is very clear trough these provision that in any case no one can discriminate on the ground of the language, caste or religion. Whether it is state maintained education institute or private aided institution. Now it is important to know the application of the above Article. Dispute of its application was firstly arisen in State of Maharastra v. Champakam. Communal G.O. of the state of Madras allotted seats in medical and engineering college in the proportionately to the several communities. A Brahmin candidate who could not be admitted to the engineering college challenged the G.O. as being inconsistent with the Article 29(2). Supreme Court held that the classification on the ground of the caste was inconsistent with the provision of the Article. Even though petitioner has got much higher marks than those who secured by non Brahmin who were admitted in the seats allotted to them, he could no admitted in any institution. The reason was that he was Brahmin. In another case Supreme Court denied the view that intake of students on the ground language is violating of the fundamental rights. In instant case Bombay Government by an order banned the admission of those whose language is not English to a school using English as a mode of instruction. Argument advanced

by the state was that by doing it is trying to promote national language. Court said that the view is right but could not be upheld as it is violating of the fundamental rights. So there should not be any discrimination on ground of language in matter of admission which has been clearly stated by the Hon'ble Supreme Court of the India.

Dividing sates in two regions and then allocating seats for medical and engineering college in the state between these regions does not violate Article 29(2). Refusal of admission on grounds of not possessing requisite academic qualification or because any one was expelled for the indiscipline. Reservation for rural student passing class out of VIII was held bad decision in Suneel Jitley v. State of Haryana. Supreme Court said that basis of reservation was irrational. As student from the rural area can study in urban area still he would have been preferred. While a student of urban area could have been studied in rural area and could have became entitled for reservation. Also the education up to VIII standard does not make any difference to medical education. Hence there was no nexus between the classification and object sought to achieve.

Relation between Article 29(2) with article 15(1) and 15(4)

Article 15(1) prohibits discrimination on grounds of religion, race, sex, caste or place of birth. Still there is significant differences between these two articles, 15(1) protects all citizen against discrimination by the state where as Article 29(2) extends protection against the state, or any body who denies the right conferred. Article 15(1) is much broader than the 29(2) as it covers numerous conditions where as article 29(2) only deal with the protection against only one wrong namely denial of admission in state aided or maintained educational institute. Article 15(1) broader than 29(2), whenever second one is not applicable the first one is apply.

Article 15(4) was added by first amendment of the constitution. It was introduced for the advancement of the socially and educationally backward classes of citizen or of SC and ST. Rights guaranteed under Article 29(2) is limited by the Article 15(4) as it has provision of reservation in an educational institute for some section of the Indian citizen.

If state prescribe a some percentage of reservation in any educational institute for a certain section of the people under Article 15(4), but not increases more than the prescribed limited than reservation of the rest can not be set aside as it would be violating of the fundamental right under article 29(2). Any reservation of seats in an educational institute seats not justified under Article 15(4) cannot be valid.

Article 30. Right of Minorities to Establish and Administer Educational Institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
(1A) In making any law providing for the compulsory acquisition of

any property of an educational institution established and administered by a minority, referred to in clause (i), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

The benefit of Article 30(1) extends only to linguistic or religious minorities and not to any other section of the Indian citizens. Article here sate linguistic and religious minority. Here minority means that community which is less than 50 percent of the total population with the respects of the population of the state.

The words in the article administer and established in the Article 30(1) have to be read together. This means that the religious minority will have the right to establish the educational institution and can administer it only. If it established by the other community or by any other person then they cannot claim the right under this article. Like Aligarh Muslim university was established by the statutory provision and hence can be designated as minority educational institute.

The minority factor to attract Article. 30(1) is the establishment of the institution established by the minority concerned. The Supreme Court has observed in Azeez Basha. Article 30(1) postulates that the religious community will have the right to establish and administer education institute of their choice meaning thereby where religious minority establishes an education institution, it will have the right to administer institute of their choice provide that they have established them not otherwise. It has to be proved by producing satisfactory evidence that the institution was established by the minority claiming to administer it. The onus of the proof lies on one who asserts an institution is a minority institution. It is sole decision of the court to decide whether the institution is minor or not. Even the government has recognized it as minor institute.

In Yogendra Nath Singh v. State of uttar pradesh the Government recognized an institution as minor institution. This order was challenged in the high court through a writ petition. Looking into the antecedent history of the institution right from its inception, the court decide that the institution was not established as minority institution, and, therefore, it could not granted the minority status even though it presently it was managed by the minority community. Under this Article both the condition "established and managed" should be read together and absence of even one would unfit the institution for the status of the minority institution.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Article 30(2) bars the state, while granting aid to educational institution on the ground that it is under the management of a linguistic or a religious minority. Government aided educational institute should not be discriminated by the state on the ground that it is under the management of a minority, whether based on religion or language. Minority educational institute are entitled to get financial assistance much the same way as the educational institutions run by the majority community. This does not mean that the minority educational institution can claim state as a matter of right. But there should not be discrimination while providing financial assistance.

PROBLEMS ASSOCIATED WITH EDUCATION IN RURAL AREAS IN INDIA

The concept and phenomenon of education based on school-going is of modern origin in India. Education in the past was restricted to upper castes and the content taught was also ascriptive. However, today, to lead a comfortable life in this fast-changing world, education is seen as the most influential agent of modernization. The educational attainments in terms of enrolment and retention in rural India gen-erally correspond to the hierarchical order. While the upper castes have traditionally enjoyed and are enjoying these advantages, the Scheduled Caste and other backward castes children have lagged behind in primary schooling. Studies have revealed that chil-dren of backward castes are withdrawn from school at an early age, by about 8 or 9 years.

An important reason for withdrawal of children from school is the cost and work needs of poor households. Income and caste are typically correlated with lower castes having lower incomes and higher castes having better endowments in terms of land, income and other resources. Thus, one fact is certain that there is a clear divide in the villages, along caste lines, regarding access to schools.

The very poor children are enrolled in the municipal school because it provides a number of incentives such as lower expenditure on books, uniforms, fees, *etc*. The well-off children go to the private school, where English and computers are given more importance.

The tendency in favour of private schools in rural areas is influenced by people's perception of private schools, as a means of imparting quality education in English medium. The poor rural girls, if not all, con-stitute a major junk of disadvantaged groups that are excluded from the schooling pro-cess, especially because they enter late into school and drop out earlier. Parental illiteracy is another cause for lack of interest to become literates. Many rural children enrolled are thus first generation learners, who come from illiterate families thus, they have to single handedly grapple with school life, mastering language and cog-nitive skills without parental help and guidance.

Most of these illiterate parents do what-ever is possible to educate their children because education for them acts as a vehicle of social mobility. Moreover, education and the subsequent attainment of town jobs is often looked

upon by many of these rural families, especially families belonging to lower castes, as a means to break out of their position in caste hierarchy.

The religious beliefs and practices of a community can also largely impact the overall attitudinal and behavioural profile of an individual or group. In the Indian context, reli-gion has a sway over people's minds and exerts a great influence over their behaviour.

The motivation and attitudes of the people towards education are also moulded, to a large extent, by their religious beliefs. The literacy rate for Muslims is notably lower com-pared to Hindus but not better than Christians and Sikhs.

Poverty among Muslims, who also happen to be one of the most economically back-ward groups, is the actual reason for their preference for madrasas (Islamic schools), because they are absolutely free and more flexible as compared to formal government schools. This seems to be the only option for poor Muslims, who often cannot afford to pay for the education.

DEFECTS OF PRESENT SYSTEM

According to Amartya Sen, 'Primary education in India suffers not only from inadequate allocation of resource, but often enough also from terrible management and organiza-tion. To him, management and organization of schools is still in a terrible State in India. That means, there are three major defects in the present educational sys-tem. The first is the physical environment in which the student is taught, the second is the curriculum or the content, which he/she is taught, and the third is the teaching method or the teacher, who is teaching.

PHYSICAL ENVIRONMENT

Today's society clings to schools to such an extent that a co-dependent relationship is created between the broader and friendly notion of education and the manipulative real-ity of school. Education should not be limited to the sphere of the school.

It should have to encompass nearly every aspect of life. Schools should act as locations where the ideas of education are planted in the students and education has to become the foundation for how the students look at the world around them and how they interpret these things.

Instead the present situation is that, the seeds of education are planted into the children in the schools but it does not go much further than the school system.

The public in general and rural people in particular, often think of schools as a place for teachers to instruct children on the 'three Rs'—reading, writing and arithmetic. Schools are not con-sidered as places, where the students are taught many life skills that will help them suc-ceed in their future endeavors.

Access to school is no more a problem in most parts of India. Ninety eight percent of population has access to school within a walking distance of 1 km. The core problem is the unpreparedness of the school system for mass education. Classrooms in most pri-mary schools in rural areas are typically uninviting, with leaking roofs, uneven floors and scraggly mats to sit on.

Added to that, most of the schools do not have electricity, drinking water or toilets. In some schools, students of different ages are made to sit in one room. These students squat in passive postures, even regimented columns, with often the 'brightest' and the socially advantaged sitting in front. At a given time, a typical school could have at most two teachers trying to 'police' children of all five primary classes.

The best teaching that these teachers may undertake is to make the students copy or recite from the textbook. Sounds emanating from the school are normally distin-guishable from afar in the form of a ritual cacophonous chorus of children chanting their lesson, often shouting their guts out in a cathartic release.

Surprisingly, no normal sounds— of joyous laughter, creative play of words, singing or recitation of poems, ani-mated participation, excited discovery, or even the irrepressible curious questioning the characteristic of every child of that age are found in schools.

The major drawback in these schools is that in the mechanical race to achieve 'schooling for all' the government seems to have completely missed out on what constitutes 'learning for all'. Here, greater emphasis is placed on establishing schools but not on what goes on inside a school.

The result is high enrolment figure and equally high dropout rate. The students enrolled are compelled to attend school regularly and take all the exams, and the result is a sizeable number of students fail and are compelled to repeat classes. These students ultimately give-up the hope, resulting in high resource wastage of the government, while at the same time inculcating a sense of despair among the students, thus, reducing the poten-tial of their human development.

The quality of education is the main issue. For a long time, the educationists had thought that the high dropout rate is because of parental poverty and disinterestedness rather than concentrating on the failure of the school system.

A paper by Jandhyala B. G. Tilak, titled 'Determinants of Household Expenditure on Education in Rural India, which is based on the results of NCAER's 1994 Human Development in India (HDI) survey, tries to clarify some of such myths that are associated with the education in rural India.

The study mentions that the real household expenditures on education in India is not 'virtually non-existent', but is considerably higher.

Some of the observations made by this study are as follows:

1. First, there is a complete absence of 'free education' in India, regardless of a household's socio-economic background, spending on education is very sub-stantial even at the primary school level.
2. Second, 'indirect' costs, such as books, uniforms and examination fees, are very high, even in government-run schools, including at the primary level. According to National Sample Survey Organization (NSSO), in 1995-96, the average expenditure per student pursuing primary education in rural India in a govern-ment school was Rs.219, and for students going to local body schools, private-aided schools and private-unaided schools, it was Rs 223, Rs 622 and Rs 911, respectively.

3. Third, given the absence of a well-developed credit market for education, expenditure on education is highly (and positively) correlated with income.
4. Fourth, willingness to pay and 'compulsion to pay' (*i.e.*, the need to compensate for a shortage of government spending on education) are two important factors.
5. Fifth, government spending and household spending on education are not sub-stitutes but complementary. An increase in government spending is associated with an increase in household spending (due to an enthusiasm effect, resulting from improvements in school facilities, number of teachers, *etc.*).
   Conversely, a reduction in government expenditure leads to a decline in household spending on education. (Equivalently, the elasticity of household expenditure to govern-ment expenditure is found to be almost unitary, and positive.)
6. Finally, the provision of schooling in rural habitations, or the provision of such school incentives as mid-day meals, uniforms, textbooks, *etc.*, are both associ-ated with the increased household demand for education.

6

Evaluating the Right to Education

Three years since the passing of the Right of Children for Free and Compulsory Education Act (RTE), an ever increasing number of children have gained access to schools. Yet, a large amount of data still points to the fact that student learning levels are still unacceptably low.

Last month various civil society groups working in the field of education came together to discuss the importance of shifting the RTE'S focus from infrastructure (inputs) to learning (outputs) at a special RTE conference in Delhi. "There is no measure of learning outcomes associated with the RTE at the moment.

Last month nearly 3 lakh budget private schools were closed across India. Over 4 crore children accessing these schools were affected because their schools did not meet the infrastructure requirements of the RTE. However, whether these schools were meeting the learning outcomes of education were never judged," explains Ashish Dhawan, CEO of Central Square Foundation, who spoke at the event.

Dhawan took the case of Gujarat to illustrate the relevance of learning outputs. "Gujarat is the only state to have placed 85 per cent weightage on learning outcomes. This means that budget schools in the state can remain open if they are doing a good job teaching their children," adds Dhawan.

Another point stressed by the speakers was the need for the education sector to participate in more quality assessment surveys to improve transparency and measure progress effectively. "Without measurement one cannot improve human conditions and solve problems. India needs to participate in international benchmarking surveys like the Programme for International Student Assessment

(PISA) and Trends in International Mathematics and Science Study (TIMSS)," says Sridhar Rajagopalan, MD, Educational Initiatives. From the failure to generate awareness amongst parents about the 25 per cent reservation for economically weak students (EWS) to tedious school applications, there are many hurdles left for the RTE to conquer. Yamini Aiyar, director of accountability initiative at the Centre for Policy Research added another major problem-the failure of the School Management Committees (SMC) under the RTE-to the growing list during her speech at the event.

"Parents have a vital role to play in the efficient functioning of a school. However, the very purpose of a SMC gets defeated as funds fail to come in on time and when they do come, parents are not given the training needed to plan how to use them," says Aiyar. It seems there's a long way to go before the RTE can score a 100 per cent in its progress report card.

CONVENTION ON THE RIGHTS OF THE CHILD

Legal Framework: The Convention on the Rights of the Child is the recognized ethical and international standard for human rights pertaining to children. There needs to be an enforcement mechanism in order to get all developing nations to agree on how to legislate for new laws in their national legislatures for a free basic education particularly including girl children. This paper has documented fifteen international human rights conventions that give the child the legal basis to obtain a free and basic education. The Convention on the Rights of the Child have been ratified and are part of domestic law in all the nations of the world except two, Somalia and the United States. Somalia does not have a recognized government and could not vote and the United States for conservative political reasons this paper posits have not ratified the Convention. This Convention being the most ratified in the history of the United Nations gives work for girl child legitimate international legal weight. The Convention is the legal justification this project is using for the legal framework to ensure education for all girl children

Justification: The 'Aims of Education' as written in the Convention on the Rights of the Child is articulated in Article 28 and Article 29. With simple clear language Article 28 (1) reads, "Parties recognize the right of the child to education, with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular: (a) Make primary education compulsory and available free to all. (e) Take measures to encourage regular attendance. (3) Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries." (Twenty-Five Human Rights Documents: 1994, 87)

The United Nations High Commissioner for Human Rights sees Article 29(1) as having far more reaching importance. "The aims of education presented and

agreed upon by all States parties promote, support and protect the core value of the Convention: the human dignity and the equal and inalienable rights innate to every child." (UNHCHR, 1990) The aims in Article 29(1) are "Parties agree that the education of the child shall be directed to (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights…(c) The development of respect for the child's parents, his or her own cultural identity, language and value… (d) The preparation of the child for responsible life in a free society… and (e) The development of respect for the natural environment." (Twenty-Five Human Rights: 1990, 87)

The paper argues that there is still a need for more education about the Convention on the Rights of the Child in the developed world concerning the effective implementation of the rights for the rest of the world. Yet, while the challenges to universal children's education are formidable, some developing countries are lagging considerably behind in giving basic education its deserved prominence on national agendas.

The developing world can offer powerful incentives for change. "There is no either–or to the ways that can affect change." (Dewey, 1934) By introducing a tried model of learning that is student centred, this web-site can add to the strength of the existing international educational system in teaching children about the real world. Pooling resources, ideas, people, and agendas, all focused on children can be a powerful agent of change.

Learning Technology and the Convention on the Rights of the Child: It is also the goal of the web-site to be focused to help teach educators and students in the developed world about the basic educational needs of girl children as stated in the Convention on the Rights of the Child. Advances in technology and learning sciences led researchers to the point of view that "allowed learning with technology as the means for building problem-solving skills and for achieving learner autonomy." (Berryman: 1993; Streibel: 1993) This is an important part of the democratic process the Convention on the Rights of the Child espouses.

The web-site is constructed as a vehicle of action that will provide unique solutions and tools to the problems of educating girl children in the developing world. The problems that emerge from the literature on girl education and development can then be adequately addressed. For capacity building in education to occur it is essential that there are clear guidelines as well as a framework where human capital can grow. The education web-site provides ample opportunities for action by having numerous links to appropriate non-governmental organizations that support the Convention on the Rights of the Child.

The paper posits that the challenge of applying technology to educational reform is to first secure the guarantee to an education as stated in the Convention on the Rights of the Child, Article 28-29. The provisions and the implications of the Convention on the Rights of the Child must be "widely known and

respected in all spheres if we are to foster stronger civil societies that routinely support the child's best interests." (UN, 2000) The connections then created by the web-site can be used and maintained within school communities as well as local communities to benefit and advance the cause of education of girl children.

The web-site with the connections it is capable of creating enables wider communities of stakeholders to become involved in the education of girls in the least developed countries. These stakeholders can include: "parents and extended family members, community organizations, business community, government employees, educators and educational administrators'." (Lento, O'Neill & Gomez, 1998) The development of "bottom up virtual communities can greatly enhance the support for this issue worldwide." "Involving parents is particularly important as it leads to improved student involvement." (Flaxman & Inger, 1991)

Internet as Teaching Tool: There is a norm socialization process by which an education web-site can contribute. In short this project agrees that "principle ideas are helped by individuals and these ideas can become norms." (Risse & Sikkink: 1999, 29) The Internet, this paper posits, can provide the means for the dissemination of knowledge about real world issues to effect long-term change in the teaching of the Social Sciences. The growing body of literature on human rights and the potential for international acceptance of new norms effecting domestic change in the developing countries has some very practical web applications for schools. Yet, in reading the literature one sees only provisions for the mechanism and the dialogue but not how to acquire the financial means that is necessary for change in the area of education for girls.

One needs to look at the fifteen international legal documents that have provisions for free and compulsory primary education for children. This creates a legal standard for the "micro-macro, technological-globalization forces" that will ultimately determine the role children will play in developing a sustainable economy. (Rosenau: 1990, 9) The 'Turbulence' created by these micro-macro forces creates non-governmental organizations, individuals and non-profit groups, that will lead the way to changing the current status of girl education in the twenty-first century. "Creating turbulence for change is positive and the greater the number of actors in the environment the better the chance for success." (Ibid: 1990, 9)

Legal international documents are not sufficient in obtaining equal education for girls. Only by pressure from above by nation-states and by pressure from below by grassroots organizations can the transition towards equal and quality education with the result of sustained improvement of educational conditions be achieved. Change will occur, this paper argues, by centralizing a cooperative effort around the Convention on the Rights of the Child, in particular, Articles 28-29. Basic Education as a human right is also documented in numerous other Conventions (See Appendix III). International law introduces basic education as a legal right but there also needs to be the involvement of Non-Governmental Organizations governments, businesses, financial resources, individuals, human

rights curriculum, access to Internet technology, and debt relief that is partially reallocated to education. The World Wide Web can connect different actors speaking different languages in the education process. BOES.org has created a web education site in multiple languages that uses the Convention on the Rights of the Child as the central theme that most actors can agree upon.

Objective of the Study: The objective of this study is to create a web-site for teachers and students of developed countries because this paper believes that this will contribute to the education of girls in developing countries. The contribution to the education of girls in the global south will occur given the proper sequence of events have occurred. First the web-site is developed addressing the need for educators and students to obtain knowledge. This includes learning through relationships where theorists and researchers state that " all of these outcomes often occur through social processes where learners gain a new understanding of how social relationships and culture have shaped their beliefs and feelings." (Christopher; Dunnagan; Duncan; Paul:2001, 134) Second is that educators and students in the developed world communicate on an on-going basis with educators and students in the developing world.

HUMAN RIGHTS EDUCATION-PROBLEM AND PROSPECTS

A second decade on Human Rights Education is proposed, which would:

Provide a sense of common collective vision, goals and action, as well as an opportunity to increase partnership at all levels;

Provide international support for regional and national programmes created in line with the first Decade, an incentive to continue them and to start new ones;

Represent the commitment of the international community (including the United Nations, Governments and civil society) to continue to pursue human rights education'.

Therefore, it is hoped that the importance of the Human Rights education will be realized and our country will be able to overcome the Human Rights violations.

HUMAN RIGHTS AND DEVELOPMENT

Human rights and development aims converge in many instances and are mutually beneficial though there can be conflict between their different approaches. Today a Human Rights based approach is viewed by many as essential to achieving development goals. Historically the "minority clauses" guaranteeing civil and political rights and religious and cultural toleration to minorities were significant acts emerging from the peace process of World War I relating to a peoples rights to self-determination. Overseen by the League of Nations Council the process allowed petitions from individuals and was monitored under the jurisdiction of the Permanent Court of International Justice. The 'clauses' are an important early signpost in both the human rights and development histories.

Human Rights History

The initial impetus of the current human rights legal regime and movement was in reaction to the Nazi atrocities of World War II. Human Rights are importantly referred to in theUnited Nations Charter in both the Preamble and under Article 1 though only sparingly. The preamble of the UN Charter reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". Article 2(4) however prohibits the use of force and has ever since be used to block humanitarian actions though Chapter VII provides for Security Council enforcement measures.

The Charter established the Economic and Social council which set up the UN Human Rights Commission now the United Nations Human Rights Council. Chapter VI of the Charter entitled International Economic and Social Cooperation provides Article 55 (c) the "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Article 56 requires States to take joint and separate actions in cooperation with the UN to achieve their mutual aims. Human rights are inherent in the progress of economic social and cultural goals and therefore to Human Development as such.

The Universal Declaration of Human Rights 1948 is not binding law and reflects an unwillingness of Allied powers to codify an International Bill of Rights where fears that colonial interests would be negatively affected were still influential. Human rights are viewed as universal, indivisible, interdependent and interrelated. René Cassin one of the architects of the declaration conceived the rights as divided into 4 pillars supporting the roof a temple, "dignity, liberty, equality, and brotherhood". Articles 1 & 2 comprising the first pillar relates to human 'dignity' shared by all individuals regardless of religion, creed, ethnicity, religion, or sex.

Articles 3-19 the second pillar invokes first-generation rightscivil 'liberties' fought for during the Enlightenment. Articles 20-26 the third pillar are second-generation rights, relating to political, social and economic equity, championed during the Industrial Revolution.

Articles 27-28 the fourth pillar are third-generation rights associated with community and national solidarity advocated from the late 19th. These pillars support the roof of the temple Articles 29-30 representing the conditions in society under which the rights of individuals can be realized

Certain civil and political rights converging with development aims include Article 2 which entitles everyone to rights without distinction as to race, colour, sex, or language; Article 3 the rights to life, liberty and security of person; Article 8 the right to effective remedy and Article 9 the right to an independent tribunal; Article 19 entails freedom of expression and Article 20 freedom of peaceful assembly; Article 21 is the right to participate in government and Article 26 provides rights to education.

Article 28 importantly signifies ' Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration

can be fully realized. The right calls for enforcement mechanisms and echoes Chapter VII of the UN Charter permitting security council intervention for human rights violations on a scale that threatens world peace. The UN Charter allows for a limit to state sovereignty were Human Rights are threatened. Two critiques of the declaration are that it did not make political rights dependent on multi-party democracy and there is a lack of protection for ethnic minorities, protecting individual rights do not necessarily protect group rights.

The nexus between grave human rights violations and international security is significant as atrocities within a sovereign state are of concern to international law, when they upset neighbouring states in a manner disturbing to world peace. Article 55 of the Charter states "promotion of the respect for human rights helps create conditions of stability" and "recognition of... equal and inalienable rights of all members of the human family is the foundation... of peace in the world". Taken together the United Nations Charter and Universal Declaration of Human Rights provide a legal mechanism which may challenge the sovereign rights of States to oppress people within their own jurisdiction

The Vienna Declaration and Programme of Action (VDPA) reaffirms the right to development under part 1, paragraph 10 and was adopted by consensus at the World Conference on Human Rights1993. The United Nations Office of the High Commissioner for Human Rights was created by the declaration and endorsed by the United Nations General Assembly (UNGA) under resolution 48/121.

The Rio Declaration on Environment and Development sought solutions to poverty, the growing gap between industrialized and developing countries and environmental problems. All elements were accorded equal weight and the declaration defined the rights and obligations of nations in 27 principles and recognizes "the polluter pays" as its guiding tenet.

The Action 2 Plan of Action and work plan stems from the UN Secretary General report Strengthening of the United Nations; An Agenda for Further Change. integrating human rights into humanitarian, development and peace keeping work throughout the UN system. The plan introduces the UN Common Learning Package and a Human Rights-Based Approach (HRBA) which builds on the experience of all agencies. The emphasis of the HRBA is based on common understanding and requires that 1) all programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments; 2) human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process and 3) development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

The major human rights principles guiding the programme are regarded as universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.

POVERTY REDUCTION STRATEGY PAPERS

Poverty Reduction Strategy Papers (PRSP) were first introduced in 1999 as a condition of eligibility for debt relief among Heavily Indebted Poor Countries (HIPC). The rationale of the process was to promote national and local 'ownership' of macroeconomic policies ensuring that they were sufficiently adapted to relieving poverty in the poorest countries.

The process represents an embrace of the values of participation and transparency in the formulation of macroeconomic policy, and thus has the potential to shape the content of these policies in order to meet the needs of the poor. (PRSP's) are prepared by member countries in a participatory process with domestic stakeholders and development partners like the World Bank or International Monetary Fund.

These are updated every three years with progress reports describing the country's macroeconomic, structural and social policies and programmes over a three year or longer period to promote growth and reduce poverty. Interim PRSPs (I-PRSPs) summarize the current knowledge and analysis of a country's poverty situation, describe the existing poverty reduction strategy, and lay out the process for producing a fully developed PRSP in a participatory fashion.

Country documents, along with the accompanying IMF/World Bank Joint Staff Assessments (JSAs), are available on their websites by agreement with the member country as a service to users of the IMF and World Bank websites. The introduction of PRSPs was a recognition by the IMF and the World Bank of the importance of country ownership of reform programmes as well as the need for a greater focus on poverty reduction.

PRSPs aim to provide the crucial link between national public actions, donor support, and the development outcomes needed to meet the United Nations' Millennium Development Goals (MDGs), which are centered on halving poverty between 1990 and 2015. PRSPs guide policies associated concessional lending as well as debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative.

Five core principles underlie the approach. Poverty reduction strategies should be 1) country-driven, promoting national ownership of strategies through broad-based participation of civil society; 2) result-oriented and focused on outcomes that will benefit the poor; 3) comprehensive in recognizing the multidimensional nature of poverty; 4) partnership-oriented, involving coordinated participation of development partners (government, domestic stakeholders, and external donors); and 5) based on a long-term perspective for poverty reduction.

In 2001 The UN High Commissioner for Human Rights commissioned the 2001 guidelines for the integration of human rights into poverty reduction Strategies which were further developed in the 2005 guidelines The Commissioner in a concept note also states that the human rights framework is "a useful tool strengthening the accountability and equity dimensions of the Poverty Reductions Strategies. In 2008 specific strategies were introduced in regards to Poverty Reduction and Health that affirmed the place of Human Rights in the achievement of the Millenium goals.

HUMAN RIGHTS & THE MILLENNIUM DEVELOPMENT GOALS

In September 2000, world leaders made commitments in the Millennium Declaration UN resolution 55/2 on topics that included peace, security, human rights, the environment and development targets which were later configured into the eight Millennium Development Goals (MDGs).

These goals are sets of development targets that center on halving poverty and improving the welfare of the world's poorest by 2015. The IMF contributes to the goals through advice, technical assistance, lending to countries and mobilizing donor support.

The Millenium Declaration considers six fundamental values necessary for international relations 1) freedom to raise children in dignity, freedom from hunger and from the fear of violence, oppression and injustice, including democratic and participatory governance based on the will of the people. 2) equality, no individual or nation must be denied the opportunity to benefit from development. 3) solidarity, global inequities must be managed to distribute costs and burdens fairly in accordance with the principles of equity and social justice, while those who benefit least deserve help from those who benefit most. 4) tolerance, differences within and between societies should not be feared or repressed, but cherished as a precious asset of humanity, while cultures of peace and dialogue among all civilizations should be promoted. 5) Respect for nature. Prudence must be shown in the management of all living species and natural resources, through sustainable development and unsustainable patterns of production and consumption must be changed in the interest of the future welfare of our descendants and 6) shared responsibility, responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally.

Human rights have played a limited role in influencing MDG planning, though there are strong similarities between them and the content of the MDGs which resemble many economic and social rights. MDGs provide benchmarks for economic and social rights, while human rights strategies offer enhanced legitimacy, equity and sustainability to the MDG policies. The Millennium Declaration substantially refers to human rights and leaders have committed themselves to respecting recognized human rights and fundamental freedoms, including the right to development. Economic, social and cultural rights, the rights of women, migrant, minorities, and participation are all emphasized in the declaration yet the pursuit of the MDGs has been in isolation from it. MDG targets are not sufficiently focused on inequalities within a country and human rights instruments require a minimum core level of economic, social and cultural rights to be immediately realized for all and for all discrimination in the exercise of rights to be eliminated. Inequalities within countries lead to violent conflict and countries focus on the relatively well-off among the poor in order to reach a particular MDG target.

The MDGs are accompanied by 18 targets measured by 60 indicators though the relationship between the goals, targets and indicators is not always clear. A range of activities are promoted as a means of achieving the MDGs such as tailoring the MDGs to the regional, national and local context and undertaking national needs assessments and monitoring progress through yearly MDG reports.

Non-State actors also carry human rights responsibilities with at least a minimum duty of not interfering with human rights such as the OECD Guidelines for Multinational Enterprises provides a complaint system for violations by companies. A specific critique of MDGs is that they place emphasis on the mobilization of financial resources and technical solutions, but less on transforming power relations that are partially responsible for levels of poverty. The World Bank has observed that in many situations the real barriers to progress on the MDGs are social and political. The realization of human rights therefore may be a precondition to fulfilling development goals

Poverty

The present global institutional order is foreseeably associated with avoidable severe poverty and its impositions may constitute an ongoing human rights violation. There are many measures of poverty and it is now regarded that poverty is more than the measure of a low income. Amartya Sen argues that individual physical characteristics, environmental and social conditions as well as behavioural expectations all play a role. The UN Committee on Economic, Social and Cultural Rights defines poverty as "human conditions characterised by chronic deprivation of resources capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living"

Jeffrey Sachs place poverty in an historical trajectory with the ending of slavery, colonialism, segregation and apartheid but do not link these human rights movements to current causes of poverty elimination. Policy economists discuss minimum standards, transparency, and participation unrelated to the human rights framework where poverty is seen to increases social wastage distorting economic and service delivery outcomes. Joseph Stiglitz in *Making Globalization Work* refers to a gap between economic and political globalization and that a growth oriented economic analysis disregarding the impact of income on the realization of rights such as health or education and focusing instead on making choices in a world of limited resources. There is debate whether attention to civil and political rights makes way for economic development or whether economic growth is more likely to create institutional and political development. The G-20 2005 Statement on Global Development Issues does not mention human rights or human development and good governance is referred to only in relation to economic policy. In the 2009 the Global Plan for Recovery and Reform also fails to mention human rights or human development. The ingrained philosophy is a world economy based on market principles and effective regulation.

A strand of economics embraces human rights language such as the International Development Ethics Association who apply a normative approach to development theories. The Merida Declaration provides "the absolute respect for the dignity of the human person regardless of gender, ethnic group social class, religion age or nationality. The UN Development Programme UNDP which is promoted by the Human Development and Capability Association (HDCA) is open to a human rights perspective as stated in theHuman Development Report of 2001 "human development and human rights are mutually reinforcing helping to secure the well-being and dignity of all people".

The Economic and Social Council put out a statement in May 2001 specifically addressing poverty as a human right concern and Special Rapporteur Mohammed Habib Cherif reported to the Sub Commission on the Promotion and Protection of Human Rights at its 58th session now the Advisory Committee on Human Rights and extreme Poverty.

Human rights under these development perspectives revolve around the concept of freedom with expanding choice. The World Conference on Human Rights the Vienna Declaration confirmed that extreme poverty and social exclusion constitute a violation of human dignity and urgent steps are necessary to achieve better knowledge of extreme poverty and its causes.

The first MDG is to Eradicate Extreme Poverty and Hunger. Economic growth is regarded as the principal mechanism to achieve this goal while a human rights approach requires a focus on poor growth and a consideration of groups seeking development paths other than the conventional free market, export-driven model. The targets here are 1) To halve, between by 2015, the proportion of people whose income is less than $1 a day comparable to the *Right to adequate standard of living*; 2) to achieve full employment and decent work for all is comparable to the *Right to work* and 3) to halve by 2015 the proportion of people who suffer from hunger, comparable to the *Right to food*, and correspondingly rights to life and health.

South-eastern Asia is the first developing region to reach the hunger reduction target ahead of 2015. Undernourished people in the total population of the region decreased from 29.6% in 1990-1992 to 10.9% in 2010-2012. However, globally the slowing of growth brings continual job losses. Unemployment has increased by 28 million since 2007, and an estimated 39 million people have dropped out of the labour market, leaving 67 million people without jobs as a result of the global financial crisis. Though the number of workers living with their families on less than $1.25 a day has declined dramatically over the past decade by 294 million, new estimates show that 60.9% of workers in the developing world still live on less than $4 a day.

In Yemen the World Food Programme (WFP) Food For Girls Education Programme has been tackling hunger and enrolment challenges, where more than 60% of primary school children not in schools are girls. Families who send their girls to school are eligible to receive an annual ration of wheat and vegetable oil. Since 2010 the programme has reached almost 200,000 girls.

Whilst in India the UNDP is supporting the Mahatma Gandhi National Rural Employment Programme, promoting laws passed in 2005 which guarantee the right to a minimum of 100 days of paid work a year for landless labourers and marginal farmers. The scheme now provides 50 days work a year to around 50 million households where almost half of the beneficiaries are women.

The Zero Hunger Challenge another UN initiative with numerous NGO partners has as it aims 1) 100% access to adequate food all year round; 2) zero stunted children less than 2 years old; 3) where all food systems are sustainable; 4) a 100% increase in smallholder productivity and income; and 5) a zero loss or waste of food.

Education

Varun Gauri argues that economic and social rights, such as the right to health care or education, may be understood not as legal instruments for individuals, but as duties for governments and international agencies such that everyone bears some responsibility for their fulfillment. Economists accept that the realization of high standards of health and education are conducive to economic growth.

The human rights approach regards transparency and empowerment as ends in themselves, while an economic approach sees them as instrumental to a welfare outcome.

The second MDG is to Achieve Universal Primary Education. The target is to ensure that by 2015, children everywhere will be able to complete a full course of primary schooling comparable to the *Right to education*, the goal however ignores the requirement of *free primary education* as conceived by the human right.

Even after 4 years of primary schooling, as many as 250 million children cannot read and write undermining the basis for all future learning. Going to school is not enough and improving actual learning is critical. Early school leaving is a major factor, 137 million children entered first grade in 2011, with 34 million likely to leave before reaching the last grade, an early leaving rate of 25%, the same as in 2000. Poverty, gender and residential location are key factors keeping children out of school. Children from the poorest households are three times more likely to be out of school than children from the richest households. Globally 123 million youth aged 15 to 24 lack basic reading and writing skills whilst 61% of them are young women.

Positive developments have occurred in Afghanistan and Bangladesh where the Let Us Learn initiative has overcome barriers to education. UNICEF enrolled 3,917 five year olds in school programmes, including 153 disabled children from the most disadvantaged region of rural Bangladesh, 60% of which were girls. In Afghanistan 9,339 children and youth participated in community based learning programmes with 84% being girls. UNICEF and partners responded to 286 humanitarian crises in 79 countries in 2012 and helped some 3.56 million children and adolescents gain access to formal and non formal basic education.

The Secretary-General's Global Education First initiative (GEFI) has a commitment with companies and private foundations making pledges of over $1.5 billion ensuring that all children have a quality, relevant and transformative education, whilst the Global Partnership for Education (GPE) helped more than 19 million children go to school since 2003. Leading donors promised an initial $1.5 billion over three years, with the fund aiming to secure another 25 million children in school as of 2014.

Gender Equality

The third MDG is to Promote Gender Equality & Empower Women. Eliminating gender inequality is supported by international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women. The goal sets women's empowerment as the objective but the related target is narrowly concerned with education. Eliminating gender disparity in primary and secondary education by 2015 is narrowly conceived but comparable to Women's Right to equality. Of note the share of women employed outside of agriculture rose to 40% in 2013 but only by 20% in Southern Asia, Western Asia and Northern Africa while the global share of women in parliament continues to rise and reached 20% in 2012.

Gender gaps in access to education have narrowed but inequalities remain in all levels of education, girls face barriers to schooling, particularly in Northern Africa, sub-Saharan Africa and Western Asia. Access to secondary and university education remains unequal with disparities at universities the most extreme. In Southern Asia, 77 girls per 100 boys are enrolled in tertiary education while in sub-Saharan Africa the gender gap in enrolment has widened from 66 girls per 100 boys in 2000 to 61 girls per 100 boys in 2011.

Poverty is the main cause of unequal access to education with women and girls in many parts of the world forced to spend many hours fetching water and girls often do not attend school because of a lack of adequate sanitation facilities. Child marriage and violence against girls are also significant barriers to education. Women still enter the labour market on an unequal basis to men, even after accounting for educational background and skills. Women are often relegated to vulnerable forms of employment, with little or no financial security or social benefits.

Regarding women's rights & land empowerment Kerry Rittich notes that programmes which promote the formal real property rights of women, in place of customary laws or other informal mechanisms, have the potential to both improve and retard women's access to land. The programmes promoting property rights tend to go together with measures to formalize, commodify, and individualize landholdings, and that these three processes often intensify the dispossession of women who may have had access to land under informal arrangements or customary law. The promotion of property rights from an economic perspective may well undermine the social rights of women in developing countries. Legal conceptions of property, treat property not as a

mere resource but as a set of relations between individuals and groups. This approach may highlight otherwise unforeseen distributive consequences for women, moving from an informal property regime to a formalized and individualized one.

Mason and Carlsson note that, unless gender inequality in land holding is taken into account when implementing land tenure reforms, improved land tenure security may diminish women's land holdings. A variety of factors can lead to this result, including discriminatory inheritance laws, the application of an androcentric definition of 'the head of household', and inequalities in women's capacity to participate in the market for land. Costa Rica and Colombia land reforms were undertaken in a way that improved women's ownership of land. Women who own the land they work have greater incentives to raise their labour productivity, and women who earn more income are more likely than men to invest in the household and in their children's education and nutrition stressing the importance of applying a human rights lens such that norms of non-discrimination and equal property rights are required when implementing economic reforms.

CHILDREN'S RIGHTS

The fourth MDG is to Reduce Child Mortality. A human rights approach emphasizes the State's obligations regarding the availability of functioning health systems and making sure that all groups can effectively access them by addressing obstacles like discrimination. The target here is the reduction of two-thirds of the mortality rate of children under five by 2015 comparable to the *Right to life*. Around 17,000 fewer children are dying each day, yet 6.6 million children under five died in 2012, mostly from preventable diseases. In sub-Saharan Africa, one in ten children dies before the age five.

Sub-Saharan Africa and Southern Asia accounted for 5.3 million 81% of the 6.6 million deaths The main killers are pneumonia, prenatal and intrapartum complications, diarrhoea and malaria. The first month, particularly the first 24 hours, are the most dangerous in a child's life. Newborns now account for almost half 44% of under-five deaths and undernutrition contributes to 45% of all under-five deaths. Over the past two decades in Bangladesh UNICEF has supported local efforts training community health-care workers leading to a decline in maternal and child mortality. Infant mortality declined from 100 deaths per 1,000 live births in 1990 to 33 deaths per 1,000 live births in 2012. In the same period under five mortality dropped by 72% from 144 deaths per 1,000 births in 1990 to 41 deaths per 1000 births in 2012.

The development goal is related to *Child Labour*. Rights advocates regard child labour as a violation to numerous rights of a child such that it must be eradicated to ensure children's human rights are ends themselves while development economics views child labour as an inter-generational loss of potential income. Children suffer diminished human capital where reductions in health and education affect their future productivity. The International Labour

Organization's (ILO's) estimates that current levels of child labour will result in an income foregone of $5 trillion between 2000 and 2020. Currently 23% of the world's children aged between 5 and 17 are engaged in some form of work.Betcherman demonstrates the important insights that economic analysis can provide in understanding how best to reduce child labour. Factors contributing to child labour can be seen in terms of incentives that encourage child work, constraints that compel children to work, and decisions that may not be made in the best interests of the children. Other factors must also be considered, direct (books, transport) and indirect (poor quality, loss of household labour) costs of education leading parents to regard education as not providing sufficient immediate returns to the household or child.

Elizabeth Gibbons, Friedrich Huebler, and Edilberto Loaiza consider how, at the level of statistical analysis, the application of the human rights principle of non-discrimination can affect our understanding of child labour. Existing methods of calculating the extent of child labour under report the degree of work done by girls, because the measures exclude household chores. By failing to consider 'female work' within the definition of child labour, the impact of child work on the educational and health attainment of girls is made invisible. Gibbons, Huebler, and Loaiza also investigate some factors affecting school attendance; labour and household poverty are generally constraints on attendance but a mother's educational attainment correlates positively with school attendance, revealing the inter-generational payoff from investments in girls' education. Household wealth and the level of education of the primary caretaker also have a significant effect on educational attainment

In India the Right of Children to Free and Compulsory Education Act has led to the inclusion of a justiciable right to education in relation to children between the ages of 6 and 14 and provides an impetus to government to address critical problems in the provision of education. The idea of education as a 'fundamental right' focuses local political action and agitation among oppressed communities, who rely on the new constitutional provision as a way of pressing demands on local and regional government.

Maternal health

The fifth MDG is to Improve Maternal Health. The target is to reduce by three quarters the maternal mortality ratio and to achieve universal access to reproductive health by 2015 comparable to *right to life and health*. Complications during pregnancy or childbirth are one of the leading causes of death for adolescent girls, 140 million women worldwide married or in civil union would like to delay or avoid pregnancy, but have no access to family planning. 47 million babies were delivered without skilled care in 2011.

Maternal mortality is lower in countries where levels of contraceptive use and skilled attendance at birth are high. sub-Saharan Africa has the world's highest maternal mortality ratio with a contraceptive use of 25% and low levels of skilled attendance at birth. Education for girls is vital to reducing maternal

mortality. The risk of maternal death is 2.7 times higher among women with no education, and 2 times higher among women with one to six years of education than for women with twelve plus years of education.

Supported by UNFPA, Bangladesh is training midwives according to international midwifery standards. Hundreds of nurses have upgraded their knowledge with practical and theoretical training. In India more than two-thirds of maternal deaths occur in impoverished states due to the inability to get medical care in time. UNICEF and its partners are working to avoid these preventable maternal deaths through innovative schemes such as a conditional cash transfer programme for women who deliver in health facilities. In Sierra Leone a year after the launch of the Free Health Care 2010 initiative there was a 150% improvement in maternal complications managed in health facilities and a 61% reduction in the maternal mortality rate.

Launched at the UN MDG Summit in 2010, Every Woman Every Child mobilize global action to save the lives of millions women and children and to improve their health and lives. Partners in this area include The GAVI Matching Fund for Immunization, a private-public initiative in which the UK Department for International Development and the Bill & Melinda Gates Foundation match contributions from the private sector to deliver critical vaccines to the lowest income countries. Furthermore, UN Women is implementing a joint programme in Central African Republic, Chad, Guinea, Haiti, Mali, Niger and Togo highlighting links between violence against women and maternal health, promoting funding and training midwives and health workers.

Combating disease

This sixth MDG is to combat Hiv/Aids, Malaria and other diseases. The goal has three targets 1) to halt and reverse HIV/AIDS, 2) to achieve universal treatment for HIV/AIDs 3) to halt and reverse Malaria and other Diseases unquestionably reflecting the *Right to health*. To date 2.3 million people are newly infected by HIV each year, with 1.6 million in sub-Saharan Africa. Tuberculosis (TB) mortality rate decreased 41% between 1991 and 2011, yet TB killed 1.4 million people in 2011, including 430,000 among people who were HIV-positive. Multidrug resistant TB is a major global challenge and the rate of people accessing treatment is slow.

In 2008, reports appeared that malaria parasites in Cambodia and Thailand were resisting artemisinin, the most effective single drug to treat malaria. The countries launched a joint monitoring, prevention and treatment project in seven provinces along their shared border, with support from WHO. In Thailand more than 300 volunteer village malaria health workers were trained to provide free services to test for malaria and directly observe the treatment of patients. Use of a smart phone to capture data on patients and to monitor treatment has accelerated progress. An electronic malaria information system (e-MIS) uploaded on the health workers' mobile devices shows malaria volunteers where to find patients, the status of their treatment, the situation and trends. In Ethiopia a

programme, supported by UNICEF and its partners, is preventing transmission of the virus from HIV-positive mothers to their children, a critical measure in ensuring an AIDS-free generation.

The Getting to Zero initiative has ten Southeast Asian nations committed to making Zero New HIV Infections, Zero Discrimination and Zero HIV-Related Deaths a reality.

Environmental sustainability

The seventh MDG is to Ensure Environmental Sustainability. A human rights approach to sustainable development emphasizes improving accountability systems, access to information on environmental issues, and the obligations of developed States to assist more vulnerable States, especially those affected by climate change.

There are four targets in this goal 1) To integrate principles of sustainable development into country policies and reverse the loss of environmental resources comparable to a*Right to environmental health*; 2) to reduce biodiversity loss by achieving a significant reduction in the rate of loss; 3) to halve by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation comparable to the *Right to water and sanitation* and 4) to achieve, by 2020, a significant improvement in the lives of at least 100 million slum dwellers, comparable to the *Right to adequate housing*.

Of note a staggering 2.5 billion people still do not have access to toilets or latrines. Open defecation is a practice that poses serious health and environmental risks and stopping it is a key factor in the progress of sanitation goals. In 2013, UN Member States adopted the Sanitation for All resolution calling for increased efforts to improve access to proper sanitation. The number of slum dwellers however continues to grow, due to the fast pace of urbanization. The number of urban residents living in slum conditions was estimated at 863 million in 2012, compared to 650 million in 1990 and 760 million in 2000.

Species are moving towards extinction at an ever-faster pace, and reduced biodiversity has serious consequences for the ecosystem services upon which all people depend. The largest loss of forests occurs in South America, around 3.6 million hectares per year from 2005 to 2010.

Deforestation threatens global sustainability and the progress towards hunger and poverty reduction as forests provide food, water, wood, fuel and other services used by millions of the world's poorest. Brazil's northeast the most densely populated semi-arid region in the world has limited rainfall and cyclic drought forcing many of the 22 million residents to resort in illegal charcoal production, stripping the region of forests. A project by the International Fund for Agricultural Development (IFAD) to promote agro-ecology is showing farmers how to make a living from the land while conserving the environment.

Nearly one-third of marine fish stocks have been overexploited and the world's fisheries can no longer produce maximum sustainable yields due to continuing expansion of the fishing industry in many countries. The Montreal

Protocol has led to a 98% reduction in the consumption of ozone-depleting substances since 1986 yet carbon dioxide emissions have increased by more than 46% since 1990.

Africas first transboundary biosphere reserves in Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger and Senegal are set up with funding from the Global Environment Facility, working with the UN Environment Programme (UNEP) and UNESCO in 2002. The reserves prevent desertification, testing sustainable economies and integrating local communities.

The development goal is strongly related to rights to *Food, Water & Sanitation*. Defined as 'freedom from hunger', the right to food may be seen as a right to 'nutrition'. Nutrition is achieved not through food alone but with clean water, health-care, hygiene, and other inputs. In India despite constitutional protections of certain economic and social rights, including the right to food, and relatively stable democratic institutions, the underprivileged are excluded from actively participating in democratic politics, with the result that their aspirations and priorities are not reflected in public policy. The elitism of public policy further disempowers the poor by perpetuating their deprivations.

The state bearing primary responsibility for the right to food, there is also responsibilities on local communities and families to ensure basic nutrition is equally available to all members. Dre'ze accepts that this complicates the question of how the right to food can be enforced, additionally the right to food cannot be realized in isolation from other social and economic rights, such as the right to health.

The Rio +20 Conference took place in 2012 produced the Future We Want outcome document and created the UN High-level Political Forum on sustainable development which issued the Global Sustainable Development Report in 2013 its special theme the convergence of climate, land, energy, water and development issues. "The unabated rise in the scale of materials consumption has increased global environmental, social and economic pressures. There is increasing evidence that we are jeopardizing several of the Earth's basic life support systems. Countries and people trapped in persistent poverty have probably suffered most from these impacts. And future generations will most likely face much greater challenges to meet their own needs". The future we want outcome document

HUMAN RIGHTS EDUCATION: MEANING, OBJECTIVES AND PRINCIPLES

Today education is one of the most important functions of State and local governments. It is required in the performance of our most basic responsibilities. It is the principal instrument in awakening the human beings to cultural values, non-judgementalism, tolerance, and in preparing them to adjust to complex environments where rights and duties cooperate. There is growing consensus that education in and for human rights is essential and can contribute to both the reduction of human rights violations and the building of free, just and peaceful

societies. Human rights education is also increasingly recognized as an effective strategy to prevent human rights abuses. To receive Human Rights Education is also a Human Right to which everyone is entitled to by virtue of being a human being. In the present Indian society poor people have been ignored as far as education is concerned. They too are entitled to Human Rights Education so that they become aware of all the rights to sustain a life, full of dignity.

The irony of our times is that on the one hand we have a human rights jurisprudence which has reached its peak of glory and on the other we see human rights violations all around and this keeps happening in newer and newer forms-ethnic, displacement from homeland, *etc.*, to name a few.

Last decade was dedicated to the concept of Education For All and it primarily focused on access to education. However, after a decade of action, the results show that access to education is not enough. More than that a right to access education, each person has a right to participate in a quality education. There is growing consensus that education in and for Human Rights is essential and can contribute to both the reduction of Human Rights violations and the building of free, just and peaceful societies. Human rights education is also increasingly recognized as an effective strategy to prevent human rights abuses.

Human Rights Education is stressed in all human rights documents as "an essential contribuion to the development of a global human rights culture".

Universally, Human Rights Education is defined as training, dissemination, and information efforts aimed at building a universal culture of Human Rights by imparting knowledge and skills, and moulding attitudes. This kind of education is needed to identify and eliminate from the school system all that is prejudicial to the human rights. Moreover, it would lay down certain guidelines to translate conceptual clarity and focus for each stage.

Under the present conditions of market mechanisms in economy, the greatest part of the society considers it impossible to achieve rule of law and form a civil society without creating new ideology, which should combine revival or our national ideals with the universal democratic values.

Just Human Rights and freedoms represent the main values and fundamental elements of rule of law. The strategic line of modern civilization's spiritual development is to consider Human Rights the supreme value and bring up the society to respect and protect Human Rights. The society which is based on violence, hostility and hatred, lacks vitality, it has no prospects. Since the adoption of the World declaration on Human Rights in 1948 UN and UNESCO constantly appeal to the governments of different countries to give more information about human rights in the society, spread various international documents in primary and secondary educational institutions.

7

Education and Awareness of Legal Rights in India

Legal education in the India generally refers to the education of lawyers before entry into practice. Legal education in India is offered by the traditional universities and the specialised law universities and schools only after completion of an undergraduate degree or as an integrated degree. In India, legal education has been traditionally offered as a three years graduate degree.

However the structure has been changed since 1987. Law degrees in India are granted and conferred in terms of the Advocates Act, 1961, which is a law passed by the Parliament both on the aspect of legal education and also regulation of conduct of legal profession. Under the Act, the Bar Council of India is the supreme regulatory body to regulate the legal profession in India and also to ensure the compliance of the laws and maintenance of professional standards by the legal profession in the country.

To this regard, the Bar Council of India prescribes the minimum curriculum required to be taught in order for an institution to be eligible for the grant of a law degree. The Bar Council also carries on a period supervision of the institutions conferring the degree and evaluates their teaching methodology and curriculum and having determined that the institution meets the required standards, recognizes the institution and the degree conferred by it. Traditionally the degrees that were conferred carried the title of LL.B. (Bachelor of Laws) or B.L. (Bachelor of Law). The eligibility requirement for these degrees was that the applicant already have a Bachelor's degree in any subject from a recognized institution. Thereafter the LL.B./B.L. course was for three years, upon the

successful completion of which the applicant was granted either degree. However upon the suggestion by the Law Commission of India and also given the prevailing cry for reform the Bar Council of India instituted upon an experiment in terms of establishing specialized law universities solely devoted to legal education and thus to raise the academic standards of legal profession in India. This decision was taken somewhere in 1985 and thereafter the first law University in India was set up in Bangalore which was named as the National Law School of India University (popularly 'NLS'). These law universities were meant to offer a multi-disciplinary and integrated approach to legal education. It was therefore for the first time that a law degree other than LL.B. or B.L. was granted in India. NLS offered a five years law course upon the successful completion of which an integrated degree with the title of "B.A.,LL.B. (Honours)" would be granted.

Thereafter other law universities were set up, all offering five years integrated law degree with different nomenclature. The next in line was National Law Institute University set up in Bhopal in 1997. It was followed by NALSAR university of law set up in 1998. The National Law University, Jodhpur offered for the first time in 2001 the integrated law degree of "B.B.A, LL.B. (Honours)" which was preceded by the West Bengal National University of Juridical Sciences offering the "B.Sc., LL.B. (Honours)" degree. KIIT Law School, Bhubaneswar became the first law school in India in 2007 to start integrated law in three different streams and honours specialisation; ie. BA/BBA/B.Sc. LLB (Honours).

However despite these specialized law universities, the traditional three year degree continues to be offered in India by other institutions and are equally recognized as eligible qualifications for practicing law in India. Another essential difference that remains is that while the eligibility qualification for the three year law degree is that the applicant must already be a holder of a Bachelor's degree, for being eligible for the five years integrated law degree, the applicant must have successfully completed Class XII from a recognized Boards of Education in India.

Both the holders of the three year degree and of the five year integrated degree are eligible for enrollment with the Bar Council of India upon the fulfillment of eligibility conditions and upon enrollment, may appear before any court in India.

ACADEMIC DEGREES

In India, a student can pursue a legal course only after completing an undergraduate course in any discipline. However, following the national law school model, one can study law as an integrated course of five years after passing the senior secondary examination.

- Bachelor of Laws (LL.B.) - The LL.B. is the most common law degree offered and conferred by Indian universities which has a duration of three years. Almost all law universities follow a standard LL.B. curriculum, wherein students are exposed to the required bar subjects.

- Integrated undergraduate degrees - B.A. LL.B., B.Sc. LL.B., BBA. LLB., B.Com. LL.B. These degrees are mostly offered in the autonomous law schools having a duration of five years.
- Master of Laws (LL.M.) - The LL.M. is most common postgraduate law degree which has a duration of two years.
- Master of Business Law
- Doctor of Philosophy (Ph.D.)
- Integrated MBL-LLM/MBA-LLM. -Generally a three years double degree integrated course with specialisation in business law.

ADMISSION

As of 2009, admission to LLB and LLM in most of the autonomous law schools in India is based on performance in Common Law Admission Test (CLAT). However, the National Law University, Delhi, National Law University, Orissa and the private autonomous law schools conduct their own admission tests. Admission to Jindal Global Law School is done through the LSAT examination conducted by Law School Admission Council, USA conducted by Pearson VUE, through its affiliate in India.

In most of the traditional universities, the admission is done on the basis of an admission test to the constituent law college or a common admission test for its affiliated colleges (Guru Gobind Singh Indraprastha University). Some traditional universities and affiliated colleges also admits student on the basis of merit in the preceding examination.

LEGAL LITERACY

Education in its crudest form is misinterpreted by the society as retaining only facts figures and other statistical data, but in reality education is self analysis and self motivation for a better life and to construct a superior society. And perhaps until one gains legal knowledge and know-how of the constitutional machinery, nobody is competent enough to establish and lay foundation for a better society. Legal literacy in its purest definition is "the elementary knowledge of law and information about the legal processes and not explicitly the in-depth advocacy."

The facts and figures which present the literacy rate in India are futile unless the subject is aware of the basic legal knowledge. Such legal literacy should also be popularized amongst the youth in order to safeguard the society against the atrocities of the executive without which all rights and information would only be a set of feckless text. The drooping in the level of the Indian civil society can be particularly accounted for as one of the reasons for condensing parameters of the legal literacy. A legal-literate person knows about his rights-duties, his claim and privileges and all needed information to fight the unwanted supremacy of the Executive in the country. I would like to exemplify the fact with a short personal incident- A group of people devoid of legal knowledge were adamant on not getting a bail order from the Magistrate but to bribe the

Police officials to postpone his arrest under the influence that the thanedaar is more powerful than the Court!! Hahaha. Seems funny but not to them who are staunch believers of the supremacy of the police and not of the law. And when we look into this embarrassing issue, we strongly feel that independence has not yet been achieved by the real Indian. It has delimited itself only to the Parliament and the high-offices and has been curtailed by the Government to reach the common Indian. Because India is not build up with the bureaucrats who sit in their air-conditioned offices but the farmers and the common man who choose them. Hence the need of the hour is to strengthen the basic legal knowledge amongst the masses. The dropout rate in India for elementary education is 61 out of 100 which in common language means that for every 100 children admitted in class 1st only 39 complete their elementary education and reach the secondary education strata *i.e.*, class 9th and the remaining 61 do not. The condition is worse in Bihar with 80.63 per cent dropout and the possible worst in Nagaland with around 90 per cent. Shockingly, only 3 crore youths in the age group of 14-18 years out of the total 12 crore could be admitted in higher education institutions in the year 2005-06. When even the basic elementary education has failed to be imbibed amongst the majority of the Indians, it would be a deceit to expect wonders within years. Article 45 says "The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution free and compulsory education for all children until they complete the age of fourteen years." But to utter bitter surprise even after 60 glorious years of independence the MDM (Mid-Day Meal) and other such schemes are also not enchanting enough to impart basic education leave behind legal education.

It is this legal literacy which establishes a responsible civil society. Secondly, it clearly makes the subject assimilate the constitutional mechanism of the country. His rights and duties. The principles which he should follow. It is the most deadly weapon against the exploitation of the individual, society, sect or gender. Legal Literacy are the reins which control the Government in a country. People with better legal knowledge are not only advanced in their minds but also confident in their actions. Thus the objective of the Education Ministry and the Human Resource Development Ministry should focus on providing primary legal education to every practical citizen apart from the Civics lessons taught in schools. I do not support a particular stream of education nor I criticize any but I would leave you with a simple question to ponder "what counts in life is not the rocket propulsion or the gravitational field within a hollow sphere but what matters are the rights against exploitation and the claim to food security."

INTERNATIONAL LEGAL BASIS

The right to education is law in Article 26 of the Universal Declaration of Human Rights and Articles 200 and 14 of the International Covenant on Economic, Social and Cultural Rights. The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education and the

1981 Convention on the Elimination of All Forms of Discrimination Against Women. In Europe, Article 2 of the first Protocol of 20 March 1952 to the European Convention on Human Rights states that the right to education is recognized as a human right and is understood to establish an entitlement to education. According to the International Covenant on Economic, Social and Cultural Rights, the right to education includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education in particular by the progressive introduction of free higher education.

The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to these access to education provisions, the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. The European Court of Human Rights in Strasbourg has applied this norm for example in the Belgian linguistic case. Article 10 of the European Social Charter guarantees the right to vocational education.

Definition

Education narrowly refers to formal institutional instructions. Generally, international instruments use the term in this sense and the right to education, as protected by international human rights instruments, refers primarily to education in a narrow sense. The 1960 UNESCO Convention against Discrimination in Education defines education in Article 1(2) as: "all types and levels of education, (including) access to education, the standard and quality of education, and the conditions under which it is given."

In a wider sense education may describe "all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist". In this sense education refers to the transmission to a subsequent generation of those skills needed to perform tasks of daily living, and further passing on the social, cultural, spiritual and philosophical values of the particular community. The wider meaning of education has been recognised in Article 1(a) of UNESCO's 1974 *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms*. The article states that education implies:

- "The entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge."

The European Court of Human Rights has defined education in a narrow sense as "teaching or instructions... in particular to the transmission of knowledge and to intellectual development" and in a wider sense as "the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young."

Assessment of Fulfilment

The fulfilment of the right to education can be assessed using the 4 As framework, which asserts that for education to be a meaningful right it must be available, accessible, acceptable and adaptable. The 4 As framework was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, but is not necessarily the standard used in every international human rights instrument and hence not a generic guide to how the right to education is treated under national law.

The 4 As framework proposes that governments, as the prime duty-bearer, has to respect, protect and fulfil the right to education by making education available, accessible, acceptable and adaptable. The framework also places duties on other stakeholders in the education process: the child, which as the privileged subject of the right to education has the duty to comply with compulsory education requirements, the parents as the 'first educators', and professional educators, namely teachers.

The 4 As have been further elaborated as follows:

- *Availability*: Funded by governments, education is universal, free and compulsory. There should be proper infrastructure and facilities in place with adequate books and materials for students. Buildings should meet both safety and sanitation standards, such as having clean drinking water. Active recruitment, proper training and appropriate retention methods should ensure that enough qualified staff is available at each school.
- *Accessibility*: All children should have equal access to school services regardless of gender, race, religion, ethnicity or socio-economic status. Efforts should be made to ensure the inclusion of marginalized groups including children of refugees, the homeless or those with disabilities in short there should be universal access to education *i.e.*, access to all. There should be no forms of segregation or denial of access to any students. This includes ensuring that proper laws are in place against any child labour or exploitation to prevent children from obtaining primary or secondary education. Schools must be within a reasonable distance for children within the community, otherwise transportation should be provided to students, particularly those that might live in rural areas, to ensure ways to school are safe and convenient. Education should be affordable to all, with textbooks, supplies and uniforms provided to students at no additional costs.
- *Acceptability*: The quality of education provided should be free of discrimination, relevant and culturally appropriate for all students. Students should not be expected to conform to any specific religious or ideological views. Methods of teaching should be objective and unbiased and material available should reflect a wide array of ideas and beliefs. Health and safety should be emphasized within schools including the elimination of any forms of corporal punishment. Professionalism of staff and teachers should be maintained.

- *Adaptability*: Educational programmes should be flexible and able to adjust according to societal changes and the needs of the community. Observance of religious or cultural holidays should be respected by schools in order to accommodate students, along with providing adequate care to those students with disabilities.

A number of international NGOs and charities work to realise the right to education using a rights-based approach to development.

Historical Development

In Europe, before the Enlightenment of the eighteenth and nineteenth century, education was the responsibility of parents and the church. With the French and American Revolution education was established also as a public function. It was thought that the state, by assuming a more active role in the sphere of education, could help to make education available and accessible to all. Education had thus far been primarily available to the upper social classes and public education was perceived as a means of realising the egalitarian ideals underlining both revolutions. However, neither the American Declaration of Independence (1776) nor the French Declaration of the Rights of Man (1789) protected the right to education as the liberal concepts of human rights in the nineteenth century envisaged that parents retained the primary duty for providing education to their children. It was the states obligation to ensure that parents complied with this duty, and many states enacted legislation making school attendance compulsory. Furthermore child labour laws were enacted to limit the number of hours per day children could be employed, to ensure children would attend school. States also became involved in the legal regulation of curricula and established minimum educational standards.

In *On Liberty* John Stuart Mill wrote that an "education established and controlled by the State should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence." Liberal thinkers of the nineteenth century pointed to the dangers to too much state involvement in the sphere of education, but relied on state intervention to reduce the dominance of the church, and to protect the right to education of children against their own parents.

In the latter half of the nineteenth century, educational rights were included in domestic bills of rights. The 1849 *Paulskirchenverfassung*, the constitution of the German Empire, strongly influenced subsequent European constitutions and devoted Article 152 to 158 of its bill of rights to education.

The constitution recognised education as a function of the state, independent of the church. Remarkable at the time, the constitution proclaimed the right to free education for the poor, but the constitution did not explicitly require the state to set up educational institutions.

Instead the constitution protected the rights of citizens to found and operate schools and to provide home education. The constitution also provided for

freedom of science and teaching, and it guaranteed the right of everybody to choose a vocation and train for it. The nineteenth century also saw the development of socialist theory, which held that the primary task of the state was to ensure the economic and social well-being of the community through government intervention and regulation. Socialist theory recognised that individuals had claims to basic welfare services against the state and education was viewed as one of these welfare entitlements.

This was in contrast to liberal theory at the time, which regarded non-state actors as the prime providers of education. Socialist ideals were enshrined in the 1936 Soviet Constitution, which was the first constitution to recognise the right to education with a corresponding obligation of the state to provide such education.

The constitution guaranteed free and compulsory education at all levels, a system of state scholarships and vocational training in state enterprises.

Subsequently the right to education featured strongly in the constitutions of socialist states. As a political goal, right to education was declared in F. D. Roosevelt's 1944 speech on the Second Bill of Rights.

Implementation

International law does not protect the right to pre-primary education and international documents generally omit references to education at this level.

The Universal Declaration of Human Rights states that everyone has the right to education, hence the right applies to all individuals, although children are understood as the main beneficiaries.

The rights to education are separated into three levels:

- Primary (Elemental or Fundamental) Education. This shall be compulsory and free for any child regardless of their nationality, gender, place of birth, or any other discrimination. Upon ratifying the International Covenant on Economic, Social and Cultural Rights States must provide free primary education within two years.
- Secondary (or Elementary, Technical and Professional in the UDHR) Education must be generally available and accessible.
- Higher Education (at the University Level) should be provided according to capacity. That is, anyone who meets the necessary education standards should be able to go to university.

Both secondary and higher education shall be made accessible "by every appropriate means, and in particular by the progressive introduction of free education".

Compulsory Education

The realisation of the right to education on a national level may be achieved through compulsory education, or more specifically free compulsory primary education, as stated in both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

IMPORTANCE AND REGULATION OF LEGAL EDUCATION

Legal study promotes accuracy of the expression, facility in arguments and skill in interpreting the written words, as well as some understanding of social values. So 'Law act as the cementing material of society and an essential medium of social change. A well administered and socially relevant legal education is a sine qua non for a proper dispensation of justice. Giving legal education a human face would create cultured law abiding citizens who are able to serve as professionals and not merely as business men.

The quality and standard of legal education acquired at the law school is reflected through the standard of Bar and Bench and consequently affects the legal system. The primary focus of law school should be to identify the various skills that define a lawyer and then train and equip its students with requirements of the fast growing field of law. It is pivotal duty of everyone to know the law. Ignorance of law in not innocence but a sin which cannot be excused. Thus, legal education is imperative not only to produce good lawyers but also to create cultures law abiding citizens, who are inculcated with concepts of human values, legal ethics and human rights.

The constitution of India basically laid down the duty of imparting education on the stated by putting the matter pertaining to education in List II of the 7th schedule. But it now forms part of List III, giving concurrent legislative power to the Union of the States. Legal profession along with the medical and other professions also falls under List III. However, the union is empowered to co-ordinate and determines standards in institutions for higher education or research and scientific and technical institutions besides having exclusive power, *inter alia*, pertaining to educational institutions of national importance, professional, vocational or technical training and promotion of special studies or research.

Empowered by the Constitution to legislate in respect of legal profession, parliament enacted the Advocates Act, 1961, which brought uniformity in the system of legal practitioners in the form of Advocates and provided for setting of the Bar Council of India and State Bar Council in the States. Under clause (h) of sub-section (1) of Sec. 7 of the Advocates Act, 1961 the Bar Council of India has power to fix a minimum academic standard as a pre-condition for commencement of a studies in law. Under clause (i) of sub-sec (1) of Sec. 7, the Bar council of India is also empowered "to recognize Universities whose degree in law shall be taken as a qualification for enrollment as an advocate and for that purpose to visit and inspect Universities". The act thus confers on the Bar council power to prescribe standards of legal education and recognition of law degree for enrolment of persons as Advocated. However, for promoting legal education and for laying down standards of legal education, the universities and State Bar Councils must be effectively consulted. The University Grants Commission has in the course of time evinced interest in improving legal education and has taken various steps towards that end, through adequate funding, creating of senior posts and other means.

LEGAL SURVEY AND LAW REFORM

The Constitution of India does not provide explicit protection for the right to know. In 1982, however, the Supreme Court ruled that access to information held by public bodies was implicit in the general guarantee of freedom of speech and expression, protected by Article 19 of the Constitution, and that secrecy was "an exception justified only where the strictest requirement of public interest so demands". Despite this clear ruling, it was some time before right to information legislation was adopted. A national Freedom of Information Act, 2002, was passed in December 2002, after many years of public debate and after right to information laws had been passed in a number of Indian States. The law was weak and subjected to widespread criticism, and it never came into force due to the failure of the government to notify it in the Official Gazette. A concerted campaign by civil society, along with a change in government in 2004, lead to the adoption of the Right to Information Act, 2005 (RTI Law), which received Presidential assent in June of that year.

In accordance with its own provisions, the Law was phased in but all provisions were in force by October 2005. The difference between the two laws is perhaps signalled by their names, the latter using a term which is far more popular in India, particularly among those who had campaigned for the law, namely the right to information. The 2005 Law is significantly more progressive than its earlier counterpart. Important differences include a far more developed regime of proactive publication, the addition of an independent oversight body, the inclusion of strong promotional measures and a much narrower regime of exceptions. There are, at the same time, still weaknesses with the Law, such as the near total exclusion from its ambit of various intelligence and security bodies.

The Indian RTI Law is binding on both the national and state governments and this duality is reflected in a number of provisions. The Law provides, for example, for the appointment of both Central and State Public Information Officers, as well as the establishment of both Central and State Information Commissioners, the latter to be established in every state. The initial indications are that implementation of the Law has been positive, although there are also persistent reports of bureaucratic resistance.

A survey conducted by civil society after two years indicated three main problems with implementation: low levels of awareness about the Law among both citizens and officials; poor political and administrative will to implement the Law; and a lack of support from government for information commissions. At the same time, there were a number of positive findings, including that the Law is being used by a range of actors - from remote villagers to urban elites - and for a wide range of purposes - not only as an anti-corruption measure but also to solve personal problems and to address broad social and policy issues.

Of particular interest was the fact that the Law was being used as a mechanism to address grievances. Indeed, the government has frequently responded to requests by resolving the underlying grievance within the 30-day period for responding to requests for information, so as to remove the motivation for pursuing the latter.

THE RIGHT OF ACCESS

Section 3 of the RTI Law states that, subject to its provisions, all citizens shall have the right to information. The right to information is defined in section 2(j) as the right to information accessible under the Law. Although rather a roundabout way of putting it, this is nevertheless a guarantee of the right to access information held by public bodies.

The Law does not include a statement of its purpose, although the full title of the Law refers to it as setting out a practical regime for realising the right to access information held by public bodies in order to promote transparency and accountability. The preamble, furthermore, recognises that transparency and an informed citizenry are vital to democracy, to controlling corruption and to ensuring public accountability. It also recognises that access to information is likely to conflict with other public interests and the need to "harmonise these conflicting interests while preserving the paramountcy of the democratic ideal". Taken together, these are a strong and balanced statement of the importance of the right to information which provides a good interpretive background to the Law. Information is defined in section 2(f) of the RTI Law broadly to include any material in any form, including information relating to any private body which can be accessed by a public body under any other law.

This last appears to be somewhat limited and would presumably not apply, for example, to information which a public body could access under a contract, a not uncommon situation in the modern world of contracting out services. However, it does at least cover all information held directly by public bodies. A long list of examples of possible forms of recording information - including memos, e-mails, advices, logbooks, electronically held data and even samples - is provided. A record is separately defined in section 2(i) as any document or manuscript, microfilm or facsimile, reproduction or any material produced by a computer. This is distinctly narrower than the definition of information - for example it would not appear to include samples - but since the primary right of access as defined by the Law applies to information, this should not limit the right of access in practice.

A public body is defined in section 2(h) as any "authority or body or institution of self-government" established by or under the constitution, any law passed by either the parliament or a state legislature, or any notification made by government, and includes any body owned, controlled or substantially financed by government, including a non-governmental organisation. This is again a broad definition, although it does not, as some right to information laws do, include private bodies undertaking public functions without public funding. The right of access is limited in scope to citizens. Section 1(2) of the Law also includes a geographic limitation, whereby it extends to the whole of India, apart from the State of Jammu and Kashmir. There are particular constitutional reasons for this; it is, nevertheless, a significant limitation, although Jammu and Kashmir does have its own right to information law, the Jammu and Kashmir Right to Information Act, 2004.

PROCEDURAL GUARANTEES

Requests shall, pursuant to section 6, be made in writing or through electronic means in English, Hindi or the local official language to the appropriate information officer. Where a request cannot be made in writing for any reason, presumably including illiteracy, the information officer shall render all reasonable assistance to the applicant to reduce it to writing. Pursuant to section 5(3) of the Law, information officers are generally required to render 'reasonable assistance' to applicants. Information officers are also required to provide assistance to the 'sensorily disabled' to enable them to access information, including by inspection. No reasons are required to be given for a request and an innovative supporting rule provides that no personal details may be demanded other than those required for purposes of contacting the applicant. A response must be provided to a request as soon as possible and in any case within thirty days, although actual provision of the information may be conditional upon payment of a fee. Where the information concerns the life or liberty of a person, a response must be provided within 48 hours.

A failure to respond within these timelines is a deemed refusal of the request. The inclusion of a shorter timeline for information concerning life or liberty is a positive measure found in only a few right to information laws. Where a request concerns information which is either held by another public body or which more closely concerns the work of that body, the information officer shall transfer the request to that body and inform the applicant immediately. Where an information officer intends to disclose information which relates to or has been provided by a third party and treated as confidential by that third party, he or she shall, within five days of receipt of the request, given written notice of the intent to disclose to the third party, along with an opportunity to provide a representation on the matter within 10 days. The timelines established in section 7 do not apply in such cases and, instead, a response must be provided within 40 days. Where a request is accepted, the applicant shall be informed about any fee to be levied, along with the calculations upon which it is based, his or her right to challenge the assessed fee and the details of how to do this. Where a request has been rejected, the applicant must be informed about the reasons for the rejection and how to lodge an appeal against that decision.

Interestingly, where access has been granted to only part of a record, far more detailed notice is required to be given regarding that part of the request which has been refused, including not only the reasons for the decision, but also any findings on material questions of fact, and the name and designation of the person who made the disclosure decision. Information should normally be provided in the form specified by the applicant, unless this would disproportionately divert the resources of the public body or be detrimental to the preservation or safety of the record. Section 2(j) specifies a number of forms of access, including directly inspecting work or records, taking notes or certified copies, taking certified samples and obtaining information in other recorded forms, including electronically or through a printout. The inclusion of a right to

inspect works and to take certified samples is a particular innovation of the Indian RTI Law, motivated at least in part by a desire to address situations where substandard work or materials have been employed in public works projects.

Access may be made conditional upon the payment of a fee, including for information provided in electronic format, provided that the fee shall be 'reasonable'. No fee may be levied on those below the poverty line. A progressive rule which should help to ensure timely provision of information is that no fee may be charged where a public body fails to respect the established timelines. The government may make regulations concerning the fee to be charged. Such regulations have been made at the central and all state levels, as well as by some courts. The central rules provide for an application fee for requests of ₹ 10, ₹ 2 for each page of A4 or letter size photocopying, the actual cost of samples or models, and ₹ 50 for a diskette. The first hour of inspection shall be free and a fee of

₹ 5 SHALL BE CHARGED FOR EACH SUBSEQUENT HOUR. DUTY TO PUBLISH

The Indian RTI Law includes very broad obligations of proactive or routine publication. Every public body must, within 120 days of the Law coming into force and thereafter updated annually, publish the a range of information, including the following: particulars of their organisation, functions and duties; the powers and duties of employees; the procedures followed in decision-making processes; any norms which it has adopted to undertake its functions; its rules, regulations, instructions and manuals; the categories of documents it holds and which are in electronic form; public consultation arrangements relating to the formulation or implementation of policy; a description of all boards, councils, committees and other bodies, and whether their meetings or minutes are open; a directory of all employees and their wages; the budget allocated to each of its agencies and particulars of all plans, proposed expenditures and reports on disbursements made; information about the execution of subsidy programmes and the beneficiaries; particulars of the recipients of concessions, permits or other authorisations; facilities for citizens to obtain information; the contact details of all information officers; and such other information as may be prescribed.

Public bodies must also publish all relevant facts when formulating policies or announcing decisions which affect the public, and provide reasons for administrative or quasijudicial decisions to those affected. Significantly, public bodies are also required to make a 'constant endeavour' to provide as much information proactively as possible, so as to minimise the need for the public to have recourse to requests to obtain information. Information shall be disseminated widely and in a manner which makes it easily accessible, to the extent possible electronically, taking into account cost effectiveness, local language and the most effective means of communication in the local area of dissemination. Information

covered by these rules shall be provided free, or at the cost of the medium or print cost price. These proactive publication rules are both extensive and progressive. The question of dissemination is a very important one and the Indian RTI Law addresses it well. The Law also recognises the interplay between the extent of proactive publication and the need to lodge requests. Modern communication technologies are such that public bodies are now able to make a great deal of information available proactively, ideally anything that might be the subject of a request which is not covered by an exception.

EXCEPTIONS

The main exceptions are set out in section 8 of the RTI Law, which provides for a comprehensive regime of protection for various public and private secrecy interests. Section 24 provides for the complete exclusion from the ambit of the RTI Law of a number of intelligence and security bodies, namely the 18 bodies listed in the Second Schedule, such as the Intelligence Bureau, the Narcotics Control Bureau and so on. The government may amend the Second Schedule by notification, which must be laid before Parliament. State governments may also specify intelligence and security bodies by notification in the Official Gazette, laid before the relevant state legislature.

The exclusion of these bodies from the ambit of the Law is unfortunate and unnecessary. At the same time, there is at least an exception to this, for information pertaining to allegations of corruption and human rights violations. Where information is sought from these bodies in respect of human rights allegations, it shall be provided only after the approval of the relevant Information Commission and, notwithstanding the timelines set out in section 7, within 45 days. No particular procedure is stipulated where the information relates to an allegation of corruption. The RTI Law, pursuant to section 22, explicitly overrides inconsistent provisions in other laws 'for the time being in force', and it specifically mentions the Official Secrets Act, 1923, as one such law. Most, but not all, of the exceptions do include a form of harm test. The Law also includes a strong public interest override whereby, when the public interest in disclosure outweighs the harm to the protected interest, the information should be disclosed notwithstanding not only the exceptions in the RTI Law but also anything in the Official Secrets Act. Not satisfied with this, the drafters also included specific public interest overrides for certain exceptions.

Section 10(1) provides for partial disclosure of a record where only part of it is covered by an exception. The Law also provides for historical disclosure, whereby the exceptions do not apply to information relating to any matter which took place 20 years prior to the request, although this does not apply to the exceptions in favour of sovereignty, security, strategic interests, relations with other States, the privileges of parliament and cabinet papers (section 8(3)). It would be far preferable if the historical limits did apply to these exceptions, which are among those which are more likely to be abused, increasing the importance of historical disclosure. The RTI Law establishes the following specific exceptions:

- Information the disclosure of which would prejudicially affect sovereignty or integrity, the security, strategic, scientific or economic interests of the country, or relations with a foreign State, or which would lead to incitement of an offence (section 8(1)(a));
- Information the publication of which has expressly been banned by a court or the disclosure of which would constitute contempt of court (section 8(1)(b));
- Information the disclosure of which would constitute a breach of the privilege of parliament or a state legislature (section 8(1)(c));
- Information, including trade secrets, the disclosure of which would harm the competitive position of a third party, unless the larger public interest warrants disclosure (sections 8(1)(d) and 11(1));
- Information available to a person in his fiduciary relationship, unless the larger public interests warrants disclosure (section 8(1)(e));
- Information received in confidence from a foreign government (section 8(1)(f));
- Information the disclosure of which would endanger the life or safety of any person, or identify a confidential source of information relating to law enforcement or security (section 8(1)(g));
- Information the disclosure of which would impede the investigation, apprehension or prosecution of offenders (section 8(1)(h));
- Cabinet papers, including records of the deliberations of the Council of Ministers, although these shall be made public after the decision has been taken "and the matter is complete, or over", subject to the other exceptions (section 8(1)(i));
- Personal information which has no relationship to any public activity or interest, or the disclosure of which would lead to an unwarranted invasion of privacy, unless the information officer or the appellate authority is satisfied that the larger public interest warrants disclosure or the information could not be denied to parliament (section 8(1)(j)); and
- Information the disclosure of which would involve an infringement of a copyright subsisting in a person other than the State (section 9).

These exceptions are largely consistent with those found in other right to information laws, apart from some, such as information the disclosure of which would incite to an offence and information available to a person in his or her fiduciary relationship. At the same time, the list of exceptions does not include a general exception in favour of the internal deliberations of public bodies, an exception which, although it can be important, has been roundly abused in many countries.

As noted, most include express or implied harm tests although, significantly, the exception relating to cabinet papers does not and the same is true of the exception for information received in confidence from a foreign government. The standard of harm stated is, however, very high, in most cases requiring that

the harm would in fact occur as a result of disclosure of the information. The exception in favour of personal information is strangely worded. The first part of it does not include a harm test, although it does not extend to information relating to public activities or interests, so that some personal information which does not constitute an invasion of privacy may be withheld. On the other hand, pursuant to the second part of the exception, information constituting an invasion of privacy which does relate to public activities should not be disclosed, unless this would serve the overall public interest. Some laws exempt only information which is properly private in nature, and exclude private information about public officials relating to their work. This seems a stronger formulation than that adopted in the Indian RTI Law although, in practice, this provision is being interpreted to require harm for both parts.

APPEALS

Pursuant to section 19 of the RTI Law, anyone, including a third party, who either does not receive a decision within the specified timeframe or who is aggrieved by a decision under the Law may, within 30 days, lodge an internal appeal with an officer who is senior in rank to the responsible information officer. A second appeal may be made within 90 days, or such further period as may be deemed appropriate, to the relevant Information Commission. The first appeal must be decided within 30 days, or an extended period of up to 45 days, with reasons for any extension to be given in writing. The onus of justifying any refusal to provide information shall be on the information officer who denied the request (section 19). The onus for complaints relating to other matters - such as excessive fees or undue delay - also lies on the information officer pursuant to section 20(1).

The scope of the right of appeal is outlined in section 18(1), which sets out the duty of the Information Commission to receive and enquire into complaints relating to: inability to submit a request, including because no information officer has been appointed; a refusal to disclose information; failure to respond to a request within the established timelines; the fee charged; allegations of provision of incomplete, misleading or false information; or any other matter relating to requesting or obtaining access to records. These are extremely broad grounds for complaint. In deciding an appeal an Information Commission may 'initiate an enquiry', in which case they have the same powers as a civil court trying a case under the Code of Civil Procedure, 1908, in respect of: summoning witnesses and compelling them to give evidence; requiring the production of documents, including any public record; receiving evidence on affidavit; and any other matter which may be prescribed (sections 18(2)-(3)). Information Commission decisions are binding. In deciding a matter, an Information Commission has wide remedial powers, including to: order the public body to take such steps as may be necessary to secure compliance with the Law by providing access, in a particular form, by appointing information officers, by publishing certain information, by making changes to its record management systems, by enhancing the provision of training

to its officials or by providing the Commission with an annual report; require the public body to compensate the complainant; or impose any other penalties provided for under the Law, for example to fine an information officer for obstructing access (sections 19(7)-(8)).

The RTI Law includes very detailed provisions regarding the appointment and independence of both Central and State Information Commissions. The Commission shall, pursuant to section 12, consist of a Chief Information Commissioner and up to ten Central Information Commissioners, appointed by the President upon the recommendation of a committee consisting of the Prime Minister, Leader of the Opposition and a Cabinet Minister appointed by the Prime Minister. Although this does prevent the governing party from totally dominating the decision, it is still a highly political approach, although the current Chief Information Commissioner, Wajahat Habibullah, has demonstrated independence in his approach to the position. Commissioners shall be "persons of eminence in public life, with wide knowledge and experience" in one of the fields listed. They may not be MPs or hold offices of profit or connected with any political party, or carry on any business or pursue any profession (section 12). This latter condition seems rather harsh and would preclude commissioners from pursuing, even part-time, their professions. Commissioners hold office for five years, non-renewable, and may not hold office after they reach the age of 65. Commissioners must swear the oath set out in the First Schedule, which affirms allegiance to the Constitution, to uphold the sovereignty and integrity of India, and to perform duties to the best of one's ability, without "fear or favour, affection or ill-will". The salaries of Commissioners are linked to those of their counterparts at the Election Commission, less any government pension they may be receiving.

This last seems rather unfair as it would disadvantage those on government pensions compared to those who might be receiving other pensions. Section 14 addresses the question of removal of Commissioners from office. This may be effected by order of the President upon a decision of the Supreme Court that the Commissioner in question has been shown to have engaged in misbehaviour, including by profiting from his or her office, or to suffer from incapacity. A Commissioner may be suspended by the President while the Supreme Court reference is being decided. The President may also, by order, remove a Commissioner who: has been adjudged an insolvent; has been convicted of an offence which, in the opinion of the President, involves moral turpitude; engages in paid employment; is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind; or has acquired financial or other interests which are likely prejudicially to affect his or her functions as a commissioner. Taken together, these are very strong provisions, although the grounds for removal directly by the President are broad and inconsistent with the need for a Supreme Court reference in other cases.

Section 23 of the RTI Law purports to oust the jurisdiction of the courts in respect of any order made under it. The effect of this in practice, however, is

only that one may not approach a lower court for redress, since access to the High and Supreme Courts is constitutionally guaranteed and many right to information cases have already been decided by these courts.

SANCTIONS AND PROTECTIONS

The RTI Law includes a developed regime of sanctions. Pursuant to section 20, where an Information Commission is of the view that an information officer has, without reasonable cause, refused to accept a request, failed to provide information within the specified timelines, denied a request in bad faith, knowingly given incorrect, incomplete or misleading information, knowingly destroyed information which was the subject of a request, or obstructed in any manner access to information, it shall impose a penalty of ₹ 250/day until the information has been provided, up to a maximum of ₹ 25,000. Presumably, where the problem cannot be remedied, for example because the information has been destroyed, the maximum would apply automatically. Before imposing such a sanction, the Commission shall give the information officer a reasonable opportunity to be heard. The section states that the burden of proving that he or she acted 'reasonably and diligently' shall be on the information officer, although the offence only stipulates a lack of reasonable cause, and not a lack of diligence, as a constituent element. For persistent offenders, the Commission shall recommend disciplinary action.

The list of wrongs outlined in this section is extremely comprehensive. On the other hand, no legal proceeding shall lie against any person for any act done or intended to be done under the Law. The Law does not provide protection for whistleblowers.

LEGAL AID

- "Whatever standards a man chooses to set for himself, be they religious, moral, social or purely rational in origin, it is the law which prescribes and governs his rights and duties towards the other members of the community. This somewhat arbitrary collection of principles he has very largely to take as he finds and in a modern society it tends to be so diverse and complex that the help of an expert is often essential not merely to enforce or defend legal rights but to recognize, identify and define them."-Mathews and Outton

Legal aid as phrase which is acquired by usage and court decisions, a specific meaning of giving to person of limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters." Inability to consult or to be represented by a lawyer may amount to the same thing as being deprived of the security of law. "Rawls first principle of justice is that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all." Legal Aid is the method adopted to ensure that no one is debarred from professional advice and help because of lack of funds. "Thus, the provisions of legal aid to the poor are

based on humanitarian considerations and the main aim of these provisions is to help the povert-stricken people who are socially and economically backward."

Lord Denning while observing that Legal Aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said: "The greatest revolution in the law since the post-second World has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers' fees and expenses are paid for by the state: and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs-as it was-as such it is-and as it should be."

INTERNATIONAL STATUS

Over seven centuries ago, the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Magna Carta:

"To no one will we sell,
to no one will we deny
or delay right or justice."

"Thus on the green meadows of Runnymede was sown the constitutional seed of legal aid in the modern world which has travelled to all the continents as part of civilized jurisprudence." The international concern for human rights found expression, after the First World War in covenants of the League of Nations and further in the Declaration of Human Rights, the Conventions which followed specifically incorporated the concept of legal aid.

INDIA

"Humanism, which is the source and strength of legality, is writ large in the theme of legal services to the poor in that part of our planet where backwardness and indigence have struck the hardest blows through the legal process itself on the lowly and the lost." "Pre-British India had practiced "constitutional monarchy" and the days of the Hindu and Muslim rulers had witnessed unsophisticated methodology of dispensing justice to the poor, inexpensively and immediately. In short, justice to the citizens-high and low-has been an Indian creed of long ago."

"After Independence schemes of legal aid was developed under the aegis of Justice N.H. Bhagwati, then of Bombay High Court and Justice Trevore Harris of Calcutta High Court." The matter of legal aid was also referred to the Law Commission to make recommendations for making the legal aid programme an effective instrument for rendering social justice. Coming up with recommendation in its XIV report, under the leadership of leading jurist M.C. Setalvad, the Commission opined that free legal aid is a service which should be provided by the State to the poor. The State must, while accepting the obligation, make provision for funds to provide legal aid. The legal community must play a pivotal role in accepting the responsibility for the administration and working of the legal aid scheme.

It owes a moral and social obligation and therefore the Bar Association should take a step forward in rendering legal aid voluntarily. These would include

representation by lawyers at government expenses to accused persons in criminal proceedings, in jails, and appeals. "The Commission also recommended the substitution in Order XXXIII, Civil Procedure Code of the word 'pauper' with 'poor persons'." Acting on the recommendations of the Law Commission, the Government of India in 1960 prepared a national scheme of legal aid providing for legal aid in all courts including tribunals. It envisaged the establishment of committees at the State, District and Tehsil level. However due to the inability of States to implement the scheme because of lack of finances the scheme did not survive.

Meanwhile the judicial attitude towards legal aid was not very progressive. In Janardhan Reddy v. State of Hyderabad and Tara Singh v State of Punjab, the court, while taking a very restrictive interpretation of statutory provisions giving a person the right to lawyer, opined that this was, "a privilege given to accused and it is his duty to ask for a lawyer if he wants to engage one or get his relations to engage one for him. the only duty cast on the Magistrate is to afford him the necessary opportunity. "Even in capital punishment cases the early Supreme Court seemed relentless when it declared that "it cannot be laid down in every capital case where the accused is unrepresented the trial is vitiated." Thus it can be pointed out that newly Independent India was not clear about the broad perspective of its legal aid programme.

For again trying to revive the programme, the Government of India formed an expert committee, the Krishna Iyer Committee, in 1973 to see as to how the states should go about devising and elaborating the legal aid scheme. The committee came out with the most systematic and elaborate statement regarding establishment of legal aid committees in each district, at state level and at the Centre. It was also suggested that an autonomous corporation be set up, law clinics be established in Universities and lawyers be urged to help. The Government of India also appointed a committee on judicature under the chairmanship of Justice P.N. Bhagwati to effectively implement the legal aid scheme. It encouraged the concept of legal aid camps and Nyayalayas in rural areas. The committee in its report recommended the introduction of concept of legal aid in the Constitution of India. Accepting this recommendation in the 1976, Article 39-A was introduced in the Directive Principles of State Policy by 42nd Amendment of the Constitution. With the object of providing free legal aid, the Government of India had, by a resolution dated 26th September, 1980 appointed a Committee known as "Committee for Implementing Legal Aid Schemes" (CILAS) under the chairmanship of Chief. Justice P.N. Bhagwati to monitor and implement legal aid programmes on a uniform basis in all the States and Union Territories. 'CILAS' evolved a model scheme for legal aid programmes applicable throughout the country by which several legal aid and advice Boards were set up in the States and Union Territories. Although legal aid was recognized by the Courts as a fundamental right under Article 21 reversing their earlier stance, the scope and ambit of the right was not clear till this time.

The step was taken in Sunil Batra v. Delhi Administration, where the two situations in which a prisoner would be entitled for legal aid were given. First to seek justice from the prison authorities and second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only judicial proceedings but also proceedings before the prison authorities which were administrative in nature. The court has reiterated this again in Hussainara Khatoon v. State of Bihar and said: "it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. Free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure." The court invoked Article 39-A which provides for free legal aid and has interpreted Article 21 in the light of Article 39-A. The court upheld the right to free legal aid to be provided to the poor accused persons 'not in the permissive sense of Article 22(1) and its wider amplitude' but in the peremptory sense of article 21 confined to prison situations' Two years thereafter, in the case of Khatri v. State of Bihar, Justice P.N. Bhagwati while referring to the Supreme Court's mandate in the aforesaid Hossainara Khatun's case, made the following comments, in paragraph 4 of the said judgement: "It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State." In 1986, in another case of Sukhdas v. Union Territory of Arunachal Pradesh, Justice P.N. Bhagwati, while referring to the decision of Hossainara Khatun's case and some other cases had made the following observations in paragraph 6 of the said judgement:

"Now it is common knowledge that about 70 per cent of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty because magnifies the impact of the legal troubles and difficulties when they come. Moreover, of their ignorance and illiteracy, they cannot become self-reliant; they cannot even help themselves. The Law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programmes for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total

helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would be in these circumstances made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service, legal aid would become merely a paper promise and it would fail of its purpose."

It was in the above backdrop that he Parliament passed the Legal Services Authorities Act, 1987, which was published in the Gazette of India Extraordinary Part II, Section I No. 55 dated 12th October, 1987. Although the Act was passed in 1987, the provisions of the Act, except Chapter III, were enforced with effect from 9.11.1995 by the Central Government Notification S.O.893 (E) dated 9th November 1995. Chapter III, under the heading "State Legal Services Authorities" was enforced in different States under different Notifications in the years 1995-1998.

Legal Aid under Legal Services Authority Act, 1987

According to Section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. Section 2(1) (a) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per Section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority. Under The Legal Services Authorities Act, 1987 every citizen whose annual income does not exceed ₹ 9,000 is eligible for free legal aid in cases before subordinate courts and high courts. In cases before the Supreme Court, the limit is ₹ 12,000. This limit can be increased by the state governments. Limitation as to the income does not apply in the case of persons belonging to the scheduled castes, scheduled tribes, women, children, handicapped, *etc.* Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country.

TERMINATION

Thus we can find a paradigm shift in the approach of the Supreme Court towards the concept of legal aid from a 'duty of the accused to ask for a lawyer' to a 'fundamental right of an accused to seek free legal aid'. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law,

the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor. Thus it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. Because if the poor persons fail to enforce their rights, *etc.*, because of poverty, *etc.*, they may lose faith in the administration of justice and instead of knocking the door of law and Courts to seek justice, they may try to settle their disputes on the streets or to protect their rights through muscle power and in such condition there will be anarchy and complete dearth of the rule of law. Thus legal aid to the poor and weak person is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice.

Hence in this area we have a huge number of laws in the form of judgements as well as legislations but they have just proven to be a myth for the masses due to their ineffective implementation. Thus the need of the hour is that we need to focus on effective and proper implementation of the laws which we already possess instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen.

8

Adopting Rights Based Approach to Education

Needs-based development approaches to education have, to date, failed to achieve the Education for All goals. Because it is inclusive and provides a common language for partnership, a rights-based approach – although certainly not without tensions and challenges – has the potential to contribute to the attainment of the goals of governments, parents and children. Girls' right to education, for example, can be achieved more effectively if measures are also implemented to address their rights to freedom from discrimination, protection from exploitative labour, physical violence and sexual abuse, and access to an adequate standard of living. Equally, the right to education is instrumental in the realization of other rights. A rights-based approach can contribute significant added value:

It Promotes Social Cohesion, Integration and Stability: Human rights promote democracy and social progress. Even where children have access to school, a poor quality of education can contribute to disaffection.

A rights based approach to education, which emphasizes quality, can encourage the development of school environments in which children know their views are valued. It includes a focus on respect for families and the values of the society in which they are living.

It can also promote understanding of other cultures and peoples, contributing to intercultural dialogue and respect for the richness of cultural and linguistic diversity, and the right to participate in cultural life. In this way, it can serve to strengthen social cohesion.

IT BUILDS RESPECT FOR PEACE AND NON-VIOLENT CONFLICT RESOLUTION

A rights-based approach to education is founded on principles of peace and non-violent conflict resolution. In achieving this goal, schools and communities must create learning environments that eliminate all forms of physical, sexual or humiliating punishment by teachers and challenge all forms of bullying and aggression among students. In other words, they must promote and build a culture of non-violent conflict resolution. The lessons children learn from school-based experiences in this regard can have far reaching consequences for the wider society.

IT CONTRIBUTES TO POSITIVE SOCIAL TRANSFORMATION

A rights-based approach to education that embodies human rights education empowers children and other stakeholders and represents a major building block in efforts to achieve social transformation towards rights-respecting societies and social justice.

IT IS MORE COST EFFECTIVE AND SUSTAINABLE

Treating children with dignity and respect – and building inclusive, participatory and accountable education systems that respond directly to the expressed concerns of all stakeholders –will serve to improve educational outcomes. In too many schools, the failure to adapt to the needs of children, particularly working children, results in high levels of dropout and repeated grades. Children themselves cite violence and abuse, discriminatory attitudes, an irrelevant curriculum and poor teaching quality as major contributory factors in the inability to learn effectively and in subsequent dropout. In addition, health issues can diminish the ability of a child to commence and continue schooling, and for all children, especially girls, an inclusive education can reduce the risk of HIV infection. A rights-based approach is therefore not only cost-effective and economically beneficial but also more sustainable.

IT PRODUCES BETTER OUTCOMES FOR ECONOMIC DEVELOPMENT

A rights-based approach to education can be entirely consistent with the broader agenda of governments to produce an economically viable workforce. Measures to promote universal access to education and overcome discrimination against girls, children with disabilities, working children, children in rural communities, and minority and indigenous children will serve to widen the economic base of society, thus strengthening a country's economic capability.

IT BUILDS CAPACITY

By focusing on capacity-building and empowerment, a rights-based approach to education harnesses and develops the capacities of governments to fulfill their obligations and of individuals to claim their rights and entitlements.

ADOPTING A HUMAN RIGHTS-BASED APPROACH

Violence against women and girls is a human rights violation. As a human rights issue enshrined in the*Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and other international and regional human rights instruments, it should be recognized that this phenomenon violates the principle of equality between men and women and persists because of this inequality.

As such, approaching violence against women from a rights perspective requires that gender inequality is addressed as a root cause, and that women's rights and freedoms vis-à-vis CEDAW are upheld. States are obligated to promote and protect these human rights and all interventions should be designed and implemented with this understanding.

A human rights-based approach requires developing the capacities of 'duty-bearers', or those responsible for implementing the law (*e.g.*, justice, security/police, health and education personnel, among others) on human rights and gender and on what these mean and how they can be applied in the context of violence against women. In practical terms, examples include:

- Ensuring that health care providers uphold a woman's right to make her own decisions related to reporting abuse or taking legal or any other action.
- Ensuring that police understand that it is their duty (at the request of the woman) to intervene in domestic violence situations, even when it occurs in the privacy of a home.
- Ensuring that justice procedures (*e.g.,* the type of evidence that is/is not allowed in cases of sexual abuse; the statute of limitations for filing a case, *etc.*) take into account the gender-based nature of this crime and the fact that women survivors face stigma and discrimination that may deter them from reporting or filing a case right away.
- Ensuring women's safety, confidentiality and anonymity at all times.

A human rights-based approach also requires developing the capacities of 'rights holders' (*i.e.*, women and girls), so that they can avail themselves of the rights to which they are entitled. In practical terms, examples include:

- Ensuring services are available, accessible and known to women and girls.
- Implementing awareness-raising campaigns on zero tolerance for violence to reduce stigma and change attitudes that tolerate this human rights violation.
- Undertaking legal rights training for women and girls.
- Engaging with customary, traditional and religious leaders (who ascribe to human rights and gender equality) to reach underserved populations, such as the elderly, women with disabilities, immigrants and ethnic minorities, with whom they often have contact.

THE HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION: TOWARDS A COMMON UNDERSTANDING AMONG UN AGENCIES

The UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) was adopted by the United Nations Development Group (UNDG) in 2003. The purpose behind developing a common understanding was to ensure that UN agencies, funds and programmes apply a consistent Human Rights-Based Approach to common programming processes at global and regional levels, and especially at the country level in relation to the CCA and UNDAF. The United Nations is founded on the principles of peace, justice, freedom and human rights. The Universal Declaration of Human Rights recognizes human rights as the foundation of freedom, justice and peace. The unanimously adopted Vienna Declaration and Programme of Action states that democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. In the UN Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the UN system to mainstream human rights into their various activities and programmes within the framework of their respective mandates.

Since then a number of UN agencies have adopted a human rights-based approach to their development cooperation and have gained experiences in its operationalization. But each agency has tended to have its own interpretation of approach and how it should be operationalized. However, UN interagency collaboration at global and regional levels, and especially at the country level in relation to the CCA and UNDAF processes, requires a common understanding of this approach and its implications for development programming. What follows is an attempt to arrive at such an understanding on the basis of those aspects of the human rights-based approach that are common to the policy and practice of the UN bodies that participated in the Interagency Workshop on a Human Rights based Approach in the context of UN reform 3-5 May, 2003. This Statement of Common Understanding specifically refers to a human rights based approach to the development cooperation and development programming by UN agencies.

THE COMMON UNDERSTANDING

All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

A set of programme activities that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming. In a human rights-based approach to programming and development cooperation, the aim of all activities is to contribute directly to the realization of one or several human rights.

Human Rights principles guide programming in all sectors, such as: health, education, governance, nutrition, water and sanitation, HIV/AIDS, employment and labour relations and social and economic security. This includes all development cooperation directed towards the achievement of the Millennium Development Goals and the Millennium Declaration. Consequently, human rights standards and principles guide both the Common Country Assessment and the UN Development Assistance Framework.

Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.

Among these human rights principles are: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. These principles are explained below.

- *Universality and inalienability:* Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, "All human beings are born free and equal in dignity and rights".
- *Indivisibility:* Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- *Inter-dependence and Inter-relatedness:* The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.
- *Equality and Non-discrimination:* All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

- *Participation and Inclusion:* Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
- *Accountability and Rule of Law:* States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of 'rights-holders' to claim their rights.

In a HRBA human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty- bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.

IMPLICATIONS OF A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT PROGRAMMING OF UN AGENCIES

Experience has shown that the use of a human rights-based approach requires the use of good programming practices. However, the application of "good programming practices" does not by itself constitute a human rights-based approach, and requires additional elements.

The following elements are necessary, specific, and unique to a human rights-based approach:

- Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.
- Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
- Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

Other elements of good programming practices that are also essential under a HRBA, include:

- People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
- Participation is both a means and a goal.

- Strategies are empowering, not disempowering.
- Both outcomes and processes are monitored and evaluated.
- Analysis includes all stakeholders.
- Programmes focus on marginalized, disadvantaged, and excluded groups.
- The development process is locally owned.
- Programmes aim to reduce disparity.
- Both top-down and bottom-up approaches are used in synergy.
- Situation analysis is used to identity immediate, underlying, and basic causes of development problems.
- Measurable goals and targets are important in programming.
- Strategic partnerships are developed and sustained.

NGOS, UN AGENCIES, DONOR AGENCIES AND SPECIFIC PROGRAMMES

NGOS INVOLVEMENT

NGOs that have implemented rights-based approach to development have done so with four main principles to follow. These principles are human rights-based approach design of their programmes, education about rights-based approach, rights to participation, and accountability. Human rights-based approach design of their programmes begins with analysis of the unfulfilled human rights. It then commits programmes and funds to fulfill these missing human rights. The design of these programmes also stresses that the donations are not a gift but rather that the people are finally receiving the human rights treatment they deserve. Education of human rights and the programmes that are being implemented is important. The education is to inform the beneficiaries of their human rights as well as the ways in which NGOs and other organizations are attempting to increase their human rights. Education is also to inform the governments, international organizations and donor agencies that are dealing with human rights their roles and responsibilities. Then there is the principle of rights to participation. This deals with the idea that beneficiaries should be included when implementing programmes on their behalf. Organizations should include the beneficiaries to help empower. Then there is the principle of accountability which is designed to have standards of human rights and development. It is also designed for NGOs, international organizations, donor agencies and governments to be held to a higher standard of responsibility.

Amnesty International and Human Rights Watch are two NGOs that have been involved traditionally with advocacy in relation to human rights. These NGOs have expanded to from traditional political rights to expand to ESC rights, which includes economic and social rights as well.

Oxfam is an NGO that has adopted the rights-based approach to development. Oxfam vowed to continue to provide relief while also addressing the structural causes of poverty and injustice. This approach combines poverty,

human rights, development and trade all within the same realm. Oxfam focuses a broad approach to the causes of poverty and injustice. This NGO also would like to put economic and social justice at the top of the world agenda.

The shift towards a rights-based approach to development forced Oxfam to reexamine its funding, a deeper examination into the state's role as a duty bearer, and using civil society as a vehicle for citizens to empowered to stand up for their rights. Oxfam also had to evaluate their development practices and business model.

There has been a shift from focusing upon civil human rights to human rights of social and economic areas. There are many NGOs that are now focusing upon the ESC (economic and social rights) while creating and implementing programmes. Human Rights Watch is one of these NGOs that has implemented a focus on ESC rights. These rights focus on alleviating poverty and implementing equal social and economic rights in all levels of society.

NGOs that have implemented these ESC rights are focusing much of their attention on increasing the standard of living to be healthy and safe. This includes ideas of water rights in areas that lack clean drinking water and health rights that include availability of medicine and doctors. This would increase the impoverished peoples' standard of living by increasing basic living needs and access.

INTERNATIONAL DEVELOPMENT AGENCIES INVOLVEMENT

Beginning in the late 1990s when rights-based approach to development began to be a popular discourse many aid donor agencies began to support this view towards development. Their intentions are to implement support for programmes to incorporate both development and human rights in an interdisciplinary fashion.

Major donor agencies that have adopted the rights-based approach to development include UNICEF, UNDP (United Nations Development Programme), UNFPA, ILO, Swedish Sida, Norwegian NOrad, British DFID, and the Australian aid agency. Other UN programmes have also adopted the rights-based approach to development. This new development framework leads to moral legitimacy and social justice. UNDP The United Nations Development Programme began in the late 1990s to raise awareness about this new rights-based approach viewpoint to development. UNDP specifically focused upon the interactions of social and economic rights. Their focus was to help develop policy decisions related to social and economic rights in association with development. In 2000UNDP published "Human Rights and Human Development" a document that provided their intentions and strategies based on their implementation of rights-based approach to development. UNDP was also present at UN- sponsored conferences in relation to rights-based approach to development that included the UN Millennium Summit. UNDP also provides tools for governments and donor agencies to support the rights-based approach to development. *Celestine Nyamu-Musembi and Andrea Cornwall (2004). "What*

is the Rights Based Approach all about? Perspectives from International Development Agencies". Institute of Development Studies. Retrieved July 10, 2012.

UNICEF is another donor agency that has implemented the rights-based approach to development and its ideas. UNICEF has a more narrow focus on women's and children's rights. However, it has still implemented rights-based approach strategies with the programmes UNICEF is helping to fund.

APPLICATION OF RIGHTS-BASED APPROACH IN NGOS

NGOs transitioning to rights-based approach have to redefine missions, test new methodologies, reallocate funding, and train staff. To do this there are a few steps NGOs have to take in developing programmes and campaigns around rights-based approach.

First, NGOs need to create programme ideas. These are created based on an analysis of rights within a certain country. The analysis is necessary to identify and give priority to the most deprived in society. It is then the goal of a rights-based approach to empower those people. This step also identifies and reviews the capacity of the duty-bearers. It also tries to understand the relationship between the rights holders and the duty bearers.

The next step is to educate both the rights holders and the duty bearers by articulating the rights of citizens and duty of the government. This is an important step so both parties are knowledgeable about their individual rights, responsibilities, and roles in society. This enables effective communication necessary between rights holders and duty bearers.

After an extensive situation analysis, a project or programme is developed. The programme needs to address human right deficits related to certain groups, communities, or countries facing abuses or discrimination. Baselines and benchmarks are set, which create transparency and accountability in the project. Goals are also created during this step in order to analyze the program's effectiveness in a human rights context at the end of the project. Finally, NGOs encourage control over the project by the affected peoples, utilizing the Right to Participate principle.

To determine the effectiveness of a project, it is essential all inputs, outputs, goals, and outcomes are assessed through ahuman rights lens. The results should then be organized in a logframe, to show the clear results of the project.

CRITICISM

This new development theory of rights-based approach has been met with positive feedback as well as criticism. There are thoughts that incorporating the language of human rights with development is just a change of terminology and doesn't change the programmes being implemented. The ability for a state to implement public policy has been hindered due to the need to comply with economic and social rights (ESC rights). Development practices without combining them with human rights has been more effective in implementing

and monitoring programmes. Therefore, the need to combine human rights with development is not necessary for the beneficiaries. While there still is more positive feedback when dealing with rights-based approach to development there are still criticisms surrounding the focus on combining human rights with development. These criticisms stem from the idea that changing the terminology will not increase NGOs' productivity or even necessarily the NGOs' programmes that are being implemented. Just by stating that the government and corporations should now be responsible for development as an issue of human rights does not mean that any changes in procedures will occur.

Another criticism that has been brought up is that there have been many NGOs that have combined the ideas of human rights along with development before the term "rights-based approach to development" was coined. There has been a natural linkage between development and rights and there has frequently been pressure on states and governments to be involved with issues of human rights as well as development. Therefore, in many cases, changing the terminology will not increase the effectiveness of the state.

There have been other criticisms of the rights-based approach to development because the ideas and theories have not been narrowed. Rights-based approach is a vague term that doesn't clearly represent a set of ideas. There is a multiplicity of explanations about rights-based approach that poses problems when discussing how NGOs, donor agencies or UN programmes will try to implement these ideas into their programmes.

One example of implementation is within the realm of Gender and Development. Women's rights have long been fighting for equal rights and by implementing rights-based approach to development it changes some of the ways women's equal rights were being implemented effectively into society.

There have been two main paths relating to inequalities of gender; these include human rights organizations that focus on women's equal rights and organizations focused on gender and development. By converging these two different ideas it can create problems with the experts and the way the programmes are being implemented.

There is also disparity between NGOs in the north and NGOs in the south between their viewpoints and ideas in which to implement programmes in relation to development and human rights separately. By trying to combine these two discourses across the globe can create problems of fragmentation of ideas and programmes. If fragmentation were to occur it would be the opposite intention of the NGOs that were trying to combine human rights and development into similar programmes.

OBLIGATIONS TO ENSURE THE RIGHT TO EDUCATION FOR CHILDREN

When governments across the region ratified the Convention on the Rights of the Child, they undertook to take all necessary measures to ensure that children's rights are realized. This involves action to:

Fulfill the right to education by ensuring that education is available for all children and that positive measures are taken to enable children to beneût from it, such as by tackling poverty, adapting the curricula to the needs of all children or engaging parents to enable them to provide effective support to their children's education.

Respect the right to education by avoiding any action that would serve to prevent children from accessing education, such as legislation that categorizes certain groups of children with disabilities as uneducable.

Protect the right to education by taking the necessary measures to remove the barriers to education posed by individuals or communities, such as cultural barriers to education or violence and abuse in the school environment.

A CONCEPTUAL FRAMEWORK FOR PROMOTING THE RIGHT TO EDUCATION

The development of a human rights-based approach to education requires a framework that addresses the right of access to education, the right to quality education and respect for human rights in education. These dimensions are interdependent and interlinked and a rights-based education necessitates the realization of all three.

The right to education requires a commitment to ensuring universal access, including taking all necessary measures to reach the most marginalized children. But getting children into schools is not enough; it is no guarantee of an education that enables individuals to achieve their economic and social objectives and to acquire the skills, knowledge, values and attitudes that bring about responsible and active citizenship. Achieving a quality education is also a challenge in industrialized nations. Recent studies show that large numbers of students in rich countries do not acquire the basic skills to be competent in today's world.

To ensure quality education in line with the Dakar Framework for Action (2002) and the aims of education elaborated by the Committee on the Rights of the Child, attention must be paid to the relevance of the curriculum, the role of teachers and the nature and ethos of the learning environment. A rights-based approach necessitates a commitment to recognizing and respecting the human rights of children while they are in school – including respect for their identity, agency and integrity. This will contribute to increased retention rates and also makes the process of education empowering, participatory, transparent and accountable. In addition, children will continue to be excluded from education unless measures are taken to address their rights to freedom from discrimination, to an adequate standard of living and to meaningful participation.

A quality education cannot be achieved without regard to children's right to health and well-being. Children cannot achieve their optimum development when they are subjected to humiliating punishment or physical abuse.

This conceptual framework highlights the need for a holistic approach to education, reflecting the universality and indivisibility of all human rights. The following paragraphs set out the central elements that therefore need to be addressed in each of the three dimensions mentioned above.

RIGHT OF ACCESS TO EDUCATION

The right of access to education comprises three elements: the provision of education throughout all stages of childhood and beyond, consistent with the Education for All goals; the provision of sufficient, accessible school places or learning opportunities; and equality of opportunity.

Obligations to ensure the right of access to education:

- Provide free and compulsory primary education.
- Develop forms of secondary education that are available and accessible to everyone, and introduce measures to provide free education and financial assistance in cases of need.
- Provide higher education that is accessible on the basis of capacity by every appropriate means.
- Provide accessible educational and vocational information and guidance.
- Introduce measures to encourage regular attendance and reduce drop-out rates.
- Provide education on the basis of equal opportunity.
- Ensure respect for the right to education without discrimination of any kind on any grounds.
- Ensure an inclusive education system at all levels.
- Provide reasonable accommodation and support measures to ensure that children with disabilities have effective access to and receive education in a manner conducive to achieving the fullest possible social integration.
- Ensure an adequate standard of living for physical, mental, spiritual, moral and social development.
- Provide protection and assistance to ensure respect for the rights of children who are refugees or seeking asylum.
- Provide protection from economic exploitation and work that interferes with education.

Sources: Article 26, Universal Declaration of Human Rights; articles 2, 22, 23, 27, 28 and 32, Convention on the Rights of the Child; article 13, International Covenant on Economic, Social and Cultural Rights; article 10, Convention on the Elimination of All Forms of Discrimination against Women; articles 4 and 5, UNESCO Convention against Discrimination in Education; article 24, Convention on the Rights of Persons with Disabilities (opened for signature 30 March 2007)

RIGHT TO QUALITY EDUCATION

The Dakar Framework for Action commits nations to the provision of primary education of good quality and to improving all aspects of educational quality. Although there is no single definition of 'quality', most attempts to define it incorporate two fundamental perspectives. First, cognitive development is a

primary objective of education, with the effectiveness of education measured against its success in achieving this objective. Second, education must promote creative and emotional development, supporting the objectives of peace, citizenship and security, foster ingequality and passing global and local cultural values down to future generations.

These perspectives have been integrated into the aims of education set out in the Convention on the Rights of the Child, which formulates a philosophy of respect for children as individuals, recognizing each child as "unique – in characteristics, interests, abilities and needs." It sets out a framework of obligations to provide education that promotes children's optimum development. Article 29 implies "the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based on the very principles itenunciates."34 Every child has a right to an education that empowers him or her by developing life skills, learning and other capacities, self-esteem and self-confidence. The provision of a quality education demands attention to the content of the curriculum, the nature of the teaching and the quality of the learning environment. It implies a need for the creation of flexible, effective and respectful learning environments that are responsive to the needs of all children.

Obligations to ensure right to quality education:

- Develop children's personalities, talents, and mental and physical abilities to their fullest potential.
- Promote respect for human rights and fundamental freedoms, and prepare children for are sponsible life in a spirit of peace, tolerance, equality and friendship.
- Promote respect for the child's, his or her parents' and others' cultural identity, language and values.
- Promote respect for the natural environment.
- Ensure the child's access to information from a diversity of sources.
- Ensure that the best interests of children are a primary consideration.
- Promote respect for the evolving capacities of children in the exercise of their rights.
- Respect the right of children to rest, leisure, play, recreation, and participation in arts and culture

Sources: Article 26, Universal Declaration of Human Rights; articles 3, 5, 6, 12, 17, 29, 31, Convention on the Rights of the Child; article 13, International Covenant on Economic, Social and Cultural Rights; and article 24, International Convention on the Rights of Persons with Disabilities (opened for signature 30 March 2007).

RIGHT TO RESPECT IN THE LEARNING ENVIRONMENT

Human rights are inalienable. In other words, they are inherent in each humanbeing. Accordingly, they must be respected in all learning environments.

The right to education must be understood as incorporating respect for children's identity, their right to express their views on all matters of concern to them, and their physical and personal integrity. Obligations to respect children's rights in the learning environment:

- Respect every child equally without discrimination on any grounds.
- Teach respect for human rights and fundamental freedoms, for difference and for life in a society where there is understanding, peace, tolerance, equality and friendship.
- Give primary consideration to the best interests of the child.
- Respect the evolving capacities of the child.
- Respect the right of children to express their views on all matters of concern to them and have those views given due weight in accordance with children's age and maturity.
- Recognize the right to freedom of expression, religion, conscience, thought and assembly.
- Respect the privacy of children.
- Take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's dignity and all other rights in the Convention on the Rights of the Child.
- Protect children from all forms of physical violence, injury or abuse, neglect or negligence, maltreatment or exploitation, including sexual abuse.

Sources: Articles 2, 3, 5, 12, 13, 14, 15, 16, 19, 28, 29, Convention on the Rights of the Child; articles 1, 2, Universal Declaration of Human Rights; articles 18, 19, 27, International Covenant of Civil and Political Rights.

RIGHTS-BASED APPROACH TO DEVELOPMENT

Rights-based approach to development is an approach to development promoted by many development agencies andnon-governmental organizations (NGOs) to achieve a positive transformation of power relations among the various development actors. This practice blurs the distinction between human rights and economic development. There are two stakeholder groups in rights-based development—the rights holders (who do not experience full rights) and the duty bearers (the institutions obligated to fulfill the holders' rights). Rights-based approaches aim at strengthening the capacity of duty bearers and empower the rights holders.

HISTORY

HUMAN RIGHTS INTO DEVELOPMENT DISCOURSE

Human rights came into global discourse after the United Nations passed the Universal Declaration of Human Rights in 1948. This was the first global

recognition that all humans are inherente United Nations endorsement of democracy had little to do with the UN's stance on development. Human rights became one of the major debates between the West and Communist states during the Cold War. Cold War dichotomy of right versus left defined power of the state and of the individual in aspects of society based on political affiliation. The end of the Cold War and the fall of the Soviet bloc left Western values and ideas, which remains one of the main ideologies of the world.

Human rights organizations such as Human Rights Watch and Amnesty International, used to focus primarily on documenting human rights violations on the civil and political level. No longer do these organizations focus solely on human rights violations, but also on social, economic, and cultural rights. The evolution of human rights organizations and development organizations and the western idea that rights are asserted through responsibilities, duties, transparency, trust, and accountability have led to the development of the rights-based approach. In 1993 the UN held the World Conference on Human Rights in Vienna; during this conference they developed the Vienna Declaration and Programme of Action, where they linked democracy, human rights, sustainability and development. This made the Cold War division of Civil and Political Rights and Economic Social and Cultural rights interdependent. This further led to the linkage betweenhuman rights and development and enabled policy makers and developers to incorporate a rights-based approach into their policies.

In 1997, the Secretary General to the United Nations called to mainstream human rights into all work of the United Nations. Then in 2003, various organizations and agencies met to develop a "Common Understanding" of a human rights-based approach. Giving six main principles:

- Universality and Inalienability
- Indivisibility
- Inter-Dependence and Inter-Relatedness
- Equality and Non-Discrimination
- Participation and Inclusion
- Accountability and Rule of Law

The United Nations developed this guide to address the significant changes occurring in the international development community with the adoption of human rights in development work. Since the UN published their standards and steps to a rights-based approach to development, many bilateral donor agencies, such as CIDA and DFID, and international NGOs such as CARE and Oxfam have taken similar steps.

TRANSITION AWAY FROM WELFARE MODEL

The welfare model has been rooted into Western developmental practices since the 20th century. In the welfare model, poverty is defined as the absence of a public good or knowledge. If the state or another vehicle, such as an NGO, provides the absent good, then poverty can be alleviated and development will occur. Billions of dollars have been poured into this approach, however despite

some achievements there has not been success with this model. The gap between the rich and poor is widening and according to the *World Development Report*, nearly half of the world's population live on less than $2 a day.

This model lacks a way to hold governments accountable for their actions or inaction. It fails to address governments' inability to fulfill their citizens' rights either because of funding or knowledge. It also constructs the poor as objects of charity, predetermining their roles in civic society.

Due to the failures of the welfare model, NGOs reevaluated and transitioned more towards a rights-based approach to development. In this model, instead of the poor being constructed as charity they would be constructed as actors or rights holders. The NGOs' role is to help the poor overcome obstacles blocking their rights and give governments the tools and training to provide these rights.

THEORIES

HUMAN RIGHTS

The inclusion of human rights into development discourse has also brought along a certain language of rights. This brings a moral resonance to development rhetoric and makes it hard to avoid in today's discourse. Rights are defined as entitlements that belong to all human beings regardless of race, ethnicity, or socio-economic class; all humans, therefore, are rights holders, and it is someone's duty to provide these rights. Who is responsible to give these rights, in other words the duty bearers, has been largely debated. In rights-based approach it is the person's government that assumes the duty bearer position, but most of the time the said government does not have the resources to fulfill this role. This is where the NGOs come and try to help these governments fulfill their roles and duties to their people by giving them resources. These resources can be monetary or more sustainable such as training to government officials.

Currently there is an under-fulfillment of human rights, which has been directly linked with poverty. Poverty includes the assessment of standard of living, health, and well being. These are social and economic human rights, which have just recently been included in development discourse. First generation rights, or civil and political rights, have dominated public policy in the past. However with poverty on the rise and public policy failing, social and economic rights are becoming increasingly important in development of policies.

Affluent or rich countries feel they should help the poor out of charity or humanity. Rights-based approach works to shift the paradigm away from charity and towards moral duty imposed on the world through the international consensus of human rights. NGOs are adopting the "full spectrum" of human rights into their development policies. Using human rights as their driving force they are using rhetoric to develop a modus operandi that made political human rights effective.

CAPACITY BUILDING

Capacity building is the ability of individuals, institutions, and societies to perform functions and solve problems. A goal of rights-based approach to development is to increase the capacity of both the duty bearers and the rights holders. Key principles to increase capacity are sought to build upon existing capacities, ensure national engagement and ownership, and adjust to countries' needs as development occurs. In this method, the duty bearers and the rights holders both have an active role in development.

The duty bearers are accountable for respecting, protecting, and fulfilling human rights; while the rights holders need to ask what they should do to help promote and defend their freedoms. This action keeps their governments accountable for creating sustainability.

Capacity building is an ongoing process, and is often intangible. This is why many nonprofit organizations have not been able to engage or transition more towards capacity building. Donors like to see tangible results or they like to see where their money is going. Also the success of nonprofit and NGOs is shown through tangible results, leading organizations more towards service delivery than capacity building.

INTERNATIONAL LAW

The international recognition of human rights has been largely debated; there is acknowledgment but not institutional enforcement. NGOs that use a rights-based approach in policy decisions have a large problem with gaining legal status or enforcement of the human rights they are defending. They rely on publicly criticizing countries who make these violations.

There have been many international legal documents developed by the United Nations on behalf of human rights issues that all members of the UN have to abide by.

- The Covenant on Economic, Social, and Cultural Rights (ICESCR)
- The Covenant on Civil and Political Rights (ICCPR)
- The Convention on Elimination of Racial Discrimination (CERD)
- The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW)
- The Convention on Rights of the Child (CRC)
- The Convention Against Torture (CAT)
- The Convention on Migrant Workers and Their Families (MWC)

Since the 1948 adoption of the Universal Declaration of Human Rights the international community has developed a legally binding framework for the protection of human rights. These legal documents have created norms and standards internationally.

SOCIAL CONTRACT THEORY

The social contract theory proclaims that rights such as life, liberty, and property belong to the individuals and not to society. These rights existed

before individuals entered civil society and by entering civil society, one is agreeing to a social contract. In this contract, the state has the right to enforce natural rights. The state breaks this contract if the rights of the people are broken or not secured. Today, social contracts come in the form of national constitutions, which provide rules explaining and protecting individual rights.

These rights are inherent, they are not granted by authority or any overriding principle. Human rights are recognized by all people making it universal and fundamental.

DOWNWARD ACCOUNTABILITY

Within the realm of rights-based approach there is a theoretical relation to downward accountability in relation todevelopment. This theory states what the rights are, who deserves the rights and what actors are responsible for ensuring these rights are secured. In development there is a focus on the responsibility of actors. Therefore, in relation to downward accountability it creates a power dynamic in development aid. NGDOs (non-governmental development organizations) focus on downward accountability to ensure the intended beneficiaries are being allowed their rights.

PRACTICE

Since the mid-1990s there has been a trend for NGOs and development donor agencies to combine the idea of development and human rights into the human rights-based approach to development. Although there has been an undertone of development within the association with human rights earlier than this time; it has been since the end of the 20th century when there were known links of combining development and human rights into the same efforts. This practice includes NGOs that are geared towards development as well as human rights. The donor agencies are now helping to fund this combination of human rights with development to become as effective as possible. Even human rights-based approach to development theories were involved with the Millennium Development Goals (MDGs). MDGs are the goals set forth by the UN member states to work for the alleviation of extreme poverty, fighting of disease, and other global problems.

There have been 3 growing trends in relation to NGOs and the rights-based approach to development that have been implemented into practice. The first trend is focusing attention onto a rights-based approach to development. The second trend is the joint advocacy by development NGOs and human rights NGOs to work together towards a common goal. The third trend is to expand the attention to economic and social rights as well. The Human Rights ideal imparts the international benchmark that states can have related and common ideas. To have internationally understood human rights allows NGOs, governments, and corporations to be held accountable for their actions. This change in focus on human rights-based approach to development challenges the market-dominated view that was popular during the 1980s into a view focused on the relationship between human rights and development.

These new trends have a significant impact and a possible paradigm shift. From looking at development as a gift turning to development as a human right puts the responsibility on the government. However, this is not just the home country, the responsibility of development resides in the hands of wealthy countries as well. To switch to a rights-based approach to development would then lead to using internationally agreed upon human rights as a responsibility of governments to provide. Within this theory development will no longer be viewed as a gift or a need, but rather a right that states and governments are held accountable for.

FUNDAMENTALS RIGHT TO EDUCATION IN INDIA

The fundamental right to education in India stands as a cornerstone of the nation's commitment to ensuring access to quality education for all children. This right, enshrined in Article 21-A of the Indian Constitution and further reinforced by the Right of Children to Free and Compulsory Education (RTE) Act, 2009, guarantees every child between the ages of 6 and 14 the right to free and compulsory education. The historical journey of this right reflects the nation's aspirations for social justice and equitable opportunities for all. The legal framework surrounding the right to education in India outlines the responsibilities of the state in providing free and quality education, including infrastructure development, teacher recruitment, and curriculum implementation. However, despite significant progress in expanding access to education, challenges remain in effectively implementing and ensuring the realization of this right. Issues such as inadequate infrastructure, teacher shortages, and socio-economic disparities continue to pose obstacles to universal education. Nevertheless, the right to education in India also presents opportunities for innovation and reform, with initiatives aimed at addressing these challenges and improving educational outcomes for all children. Through ongoing efforts and collective commitment, India strives to uphold the fundamental right to education as a cornerstone of social development and national progress. Exploring the legal and social dimensions, this book sheds light on the fundamental right to education in India and its implications for policy and practice.

Dr. Anil Kumar is associated with academics for more than 17 years. He holds the degree of M.A. from MGS University, Bikaner, and B.Ed. from Kota University, Kota, and M.Ed. from IGNOU, New Delhi and Doctor of Philosophy in Education from VBP University, Jaunpur (U.P.). He is supervising research work in the field of Education. At present he is working as Associate Professor, Faculty of Education, Tantia University, Sri Ganganagar (Rajasthan). He has been continuously involved in research work with a bulk of publication in renowned journals and attended various conferences and seminars and workshops to share and impart his knowledge and view. 06 Ph.D. Research Scholars have been awarded Ph.D. degree under his supervision. He has participated and presented papers in more than twenty (20) International/National Seminars and already three (03) books are published by him.

ACADEMIC UNIVERSITY PRESS

4378/4-B, Murarilal Street, Ansari Road, Daryaganj, New Delhi-110002
Phone : +91-11-23281685, 41043100, Fax: +91-11-23270680
E-Mail: academicuniversitypress@gmail.com

ISBN-978-93-6284-215-2