CHAPTER VI
CONCLUSIONS AND SUGGESTIONS

As is evident from data and analysis from above discussion, there are several issues that need to be addressed for effective implementation of the RTE Act. Some of these can be resolved through legal recourse or policy changes; others will need to be addressed as the Act is rolled out. While the ultimate responsibility of providing education rests with the Government, as enshrined in the Constitution, it is evident that the Government’s efforts alone will not be sufficient to provide good quality education to all. There are several pilot initiatives that have been taken up by nonstate players. These initiatives are improving certain aspects of education at some of the places where they are being implemented. The formulation of the RTE Act has provided an opportunity to converge different efforts by using it with the National Policy on Education 1992 as the backdrop.

Education is one of the important social institutions which trained new born human beings to adapt and adjust in the society. The right of all to education was indisputable without which an individual could not develop his personality. In modern societies the educational institution is considered the principal socialization agent outside the family, and it is also one of the most important social dividing mechanisms.

6.1 Findings:

Issues related to equality social justice, human rights and democracy remained a concerned for social commentators and researchers since many years; these people have often based their work on one theoretical framework or the other. The concept of natural rights was influential in shaping the concepts of human rights; especially post Second World War, as evidenced from the draft papers for the Universal Declaration of Human Rights (1948) which was adopted by the UN General Assembly Resolution 217 on 10 December, 1948 (UNHR). John Rawls (1971; 2001) has argued for a theory of social justice by utilizing some of the familiar devices of the social contract tradition.

Walzer (1983) suggested that every human society must educate its children, its new
and future members. Education according to Walzer is a program for social survival. And so it is always relative to the society for which it is designed. The purpose of education, according to Walzer, is to reproduce in each generation the type of characters that will sustain the constitution of society. In any civilized society, it could be argued that social cohesion will be better sustained by proving equal opportunity and allowing every citizenry to equally obtain, similar education, through an approach of inclusiveness. Education should be supportive of learners’ live so they can achieve their social capitals. The concept of social capital highlights the value of social relations and the role of cooperation amongst people in a given society as they cooperatively share collective, socio, political and economic burdens and benefits which will translate into progress and development of the society. The term ‘social capital’ is frequently used by different social scientists and scholars in different ways. It is a wide term, and that is why it can be defined accentuating different aspects depending on the perspective. It is the fruit of social relations, which consists of the expectative burdens and benefits derived from the equal treatment and cooperation between individuals and groups in a society. It arguably follows that education must appeal from school to society, and from conception of educational justice to a conception of social justice (Walzer, 1983).

It is needed to maintain an egalitarian society, as globalization brings learners with different physical, cultural and family backgrounds together. Also, since education also serves as an egalitarian business, Walzer (1983) rightly suggested that “when schools are exclusive, it is because they have been captured by the social elites, not because they are schools”. It may be good to begin to see educational equality as a form of welfare provision, where all children, conceived as future citizens, have the same needs to know, and where the ideas of membership is not allowed to hang on their caste, religion, creed, poverty, physical or mental ability but on their being human beings, who are interested in education.

This will sort out a one-sided and unequal balance of educational settings because of the dividing lines between inclusive and exclusive education settings, thereby, using
exclusion to reinforce inequality from schools to society.

The main point here is an assumption that the primary subjects of justice are identifiable with the society entering into contract, i.e. that is the parties in the social contract are basically formulating principles as though they will live under the contract. This leads to the principle of justice assumption that those entering into the social contract are doing so on the grounds of reasonable and foreseeable personal benefit to them. All these are closely connected to what has been called the Humean Circumstances of Justice so that if there were great disparities in physical and mental abilities between the contractors, then there is a likelihood that the one who enjoy more opportunity would probably benefit far more than those who enjoy less opportunity. This opportunity is based on socially, physically and psychologically constructed phenomenon.

Affirmative action refers to legislations or policies that take factors including ethnicity, race, colour, religion, ability, and gender, linguistic, cultural, or national origin, into consideration in order to benefit a group recognized as being underrepresented, stigmatized, excluded or marginalized, usually as a means to counter the effects of a history of discrimination, which that group had suffered from. The focus of such policies ranges from education, employment and property rights, to public contracting and other programs. For example in India the principle of affirmative action was the type of policy that was adopted since its independence, to increase the representation of women and ethnic or racial minorities in areas of employment, education, and property ownership, from which they had been historically and socially excluded. This has also influences an affirmative action to inclusive education/schooling through other principles, like, the human right, social justice, equality and democratic perspectives.

Nevertheless in the absence of social and legislative equality, the extent to which the strongest person from such section of the society can overcome his/her devalued status largely depends on mere luck. The different theories of education that have been most common in the national development context can roughly be grouped into
human capital theories and theories of consciousness-raising. The human capital theories attempt to prove that education (investment in human capital) will promote economic growth. This theory postulates the need for skilled technicians and professional experts in capitalist societies. Government agencies, private foundations, and international organizations such as the World Bank and the International Monetary Fund, were actively involved in the ideal of investing in human capital. There was a definite belief that investing in education and training, which was socialization to the capitalistic, technical society, would lead to economic growth and progress, especially in third world countries. Neo-Weberian and neo-Marxist theories of education have focused on the negative aspects of education, such as the reproduction and reinforcement of inequality of social structures and systems and educational wastage, i.e., dropping out of school or repeating classes - the "loss" of attained knowledge and skills in general. The Weberians have focused on how different status groups in society compete for wealth, power, and prestige where education is an important element in this competition. Education serves to reinforce the "status cultures" by defining "insiders" and "outsiders" of the dominant culture. The Marxists and others focus on the reproduction of inequality inherent in the educational system, and maintain that the educational system therefore is no more than one of the systems of domination of the ruling class. Thus, education is also an arena for political struggle. Class society is reproduced and reinforced on both the individual and collective level: class-based personality traits are reinforced as well as the whole culture and structure of the classes. Wider patterns of power, interests and control are reflected in the educational system and underlie the values that are taught. The educational system is part of the class structure which reproduces and reinforces class consciousness and social inequality. There is a focus on the waste and dysfunction of education, the inefficiency of the educational systems, and the inequalities of opportunities and results. This critical theoretical approach has been applied to many of the colonial systems where the educational system was controlled and managed by the colonial power and where an indigenous elite often was picked.
out to be educated. This elite was socialized into the colonial power's culture and consciousness and often internalized the colonial norms and values of domination. The Weberian and Marxist approaches also stress education as a very important socialization mechanism. They have focused on positive aspects of education, such as the teaching of class consciousness and the learning of cultural values and norms. The Marxist-inspired conscientization theory and program of Paolo Freire is one example. His theory and praxis is that learning how to read and write is part of learning how to "read" and interpret reality. He focuses on the inner aspects of education, how education is essential for the personal development of a human actor, for the ability to comprehend the structures and systems of action surrounding the actor. This theoretical approach also poses education as the key to escape a life situation of poverty and oppression. Previous research on education has, in line with these theories, primarily focused on the outcomes of education. For the human capital theorists especially, it was important to legitimate education as an essential part of national "development" and "progress."

If there was no child in the universe, there will be no humanity and without humanity there is not proper growth. Therefore, the future of the country would be in dark. Today's children are prospective leaders, wealth of nations, and future of the nations. All these are possible only when all the children of the nations are educated. Education is the key to success of the nation. Therefore, it is necessary to provide all the children free and compulsory education in early time. The literacy ratio of India is very low. Our Constitution framers were aware about the problem of illiteracy and compulsory education in India. So they framed Directive Principles of State Policy in Part IV under Article 45. After 2002, Right to Education become fundamental right. Now, Right to free and compulsory education become a fundamental right of every child between the ages of 6-14 years. The right of children to free and compulsory act, 2009 has been passed and came into force with effect from 1st April, 2010. According to the census of the 2011, India has child population of 422 millions of which 300 millions were in the school. It increases a compulsion to compel to pass
only but not at the rate and quality the Government desire. After making so many efforts the Rights to Education is still in the word of statute only. The Union and State Government has made many alternative schemes to send poor children to schools but their efforts make little improvement. In such a condition, it is found that defect is within the system, implementation and observation of the scheme as well as the Act. Therefore, the present researcher would conduct his research study on the topic entitled:

"Right to Free and Compulsory Education Act, 2009: A Critical Analysis of Right to Education with Special Reference to Human Rights Jurisprudence in India"

For the effective conduct of the proposed research study, the present researcher has set the following objectives:

1. To analyse the concept of Human Rights.
2. To understand the relationship between Right to Education and Human Rights.
3. To understand and analyse the International Instruments on Human Rights.
4. To understand the constitutional framework available for Right to Education in India.
5. To examine the impact of the Government policies related Right to Education.
6. To examine impact of landmark judgements on Right to Education.
8. To identify problems which affects the Right to Education.

In order to conduct the research study and for the achievement of the objectives, the present research has formulated the following hypothesis:

i. The definition of Human Rights is not possible jurisprudentially, what is possible is the identification of Human Rights.

ii. The Right to Education will increase the development of the country and help in overcoming the problems of unemployment and poverty.
iii. The Constitution of India provides guarantee to free and compulsory education between 6 to 14 years. It excludes the children below from their fundamental rights to nutrition, health and pre-primary education.

iv. The Government schools are supposed to provide good education but there are very few which actually doing so, the Government schools on the other hand face many problems in the form of scarcity of teacher, no school building, and lack of equipment etc.

v. The Government playing double game in relation to its responsibilities where there is financial question, where there is financial question the Union Government speak the language of concurrent and decentralised responsibilities while on the issues of the content, curriculum, minimum standard etc. it seeks exercise all the possible control on the state.

vi. The Union and State Government have many attractive scheme to send the children to school like, "Sarva Siksha Abhiyan", "Mid Day Meal", "Dress Distribution", "Scholarship" etc. but it make a little improvement.

vii. The lack of financial memorandum to compel the State to provide adequate fund.

The present study is a systematical investigation of the Right to free and compulsory education in India. After the selection and formulation of the research problem, the next step is to develop an overall plan or framework for the investigation. Design is specifically related to the research problem. Depending upon the purpose, the study is a descriptive and analytical study. In comparison to other types of study, descriptive study is more rigid and specific in design than any other methods of research design. The objective of a descriptive study is to describe some phenomenon. A descriptive study is much more structured. The information is gathered from a set of cases that are carefully selected to enable the researcher to make estimates of the precision and generalizability of the findings. Along with this the present study is also an attempt to decipher the cause and effect relationships of the right to free and compulsory
education in India proving that it is also analytical study. It is concerned mainly with control and accuracy of the study. The research work has been carried out with the collection of secondary data. Information thus collected will be analysed. Secondary data has been collected by literature survey such as primary laws, reference books, journals, reports, opinion of legal scholars and statistics available on the subject of research. The present study follows systematic procedures of scientific investigation, such as Introduction, review of literature, formulating the objective of the study, designing the method of data collection, collecting information, processing and analyzing the data and reporting the findings.

The present study is significant because at the national level, the study will provide baseline data regarding the socioeconomic condition of children in India. Further, it will help the legislature to make law on free and compulsory education. At the international level, the study ensures a deeper understanding on the concept of free and compulsory education for child. The study will further help in reflecting and development understanding of the administration of justice under Indian jurisprudence at International level. And, the study will be also useful to those who are engaged in generating and spreading knowledge. Further, it will be useful to those who are engaged in administration of justice. This study will help immensely to legal scholars, academicians, and students to further their knowledge of the relatively new and rapidly growing subject of free and compulsory education to children. This will also serve as a reference book to the students of law especially in India where is negligible contribution to this subject by Indian Legal Scholars.

Utility of Study in Present Context

This research work will help to formulate future policy as well as we will come to know that what is lacking in concern to Right to Education. This study will inspire students, legal scholars, academicians, teachers, NGO's and even legislature to take initiative in formulating and regulating socioeconomic and legal of children. This study will work as inspiring tools to authorities for making statutory provisions at national level for protection of right to free and compulsory education.
The present study consists of three parts, i.e., prefatory items, body of the report and terminal items.

The prefatory items begins with the certificate of the research supervisor followed by acknowledgements given by the researcher to his respected supervisor, chairperson and other persons whose help and support enabled the completion of the present study. And, also attach a note of gratitude to all respondents for providing their vital time and information for the present study. This is trailed by the item page and list of tables of the present study. The present study consisted of six chapters.

As a beginning of the body of the report, the first chapter entitled ‘Introduction’ provided a brief conceptual explanation of the term ‘Compulsory education for all’, various theoretical contributions on approaches to understand the intricacies of compulsory education for all. Review of pertinent literature preceded the problems to be investigated, followed by an explanation about the area of study. It is followed by objectives and hypothesis of the present study. Significance of the study is also presented. The first chapter concluded with the research methodology utilised in the present study.

The second chapter examines the concepts of Human Rights and Right to Education and also analysed in the context of substantive legal right to education under international law. The third chapter presented the constitutional provisions and policies for the right to education in India.

The fourth chapter provided insight on the discussions and analysis of different landmark judgements regarding free and compulsory education in India. The fifth chapter presented the various factors which affected and hindered the successfull of free and compulsory education for all the children.

The sixth chapter presented the analysis and main findings of the relationship between Right to Education and Human Rights. In addition, the final chapter also inferred the constitutional framework available for Right to Education in India and the impact of the Government policies related Right to Education.

The final section of the present study, i.e., terminal items included references.
consisted of an alphabetical list of the books, articles and other sources used in the present study.

Human Rights and Right to Education are mutually interdependent and also in the context of substantive legal right to education under international law. This means the rights created by inter-state agreements and customary international law which refers to the state obligations to respect, protect and fulfill the RtE as they emanate from this right when interpreted in accordance with the customary rules of treaty interpretation. Ideas of human dignity and the intrinsic value of human beings have a long tradition in Western thought, beginning with theories of natural rights and later including theories of social justice. The visions of these ideas are the same: the emancipation and freedom of human beings and the active and creative human actor. The values of equality and social justice are also a part of these visions, although there are differing conceptions of freedom and the means by which to attain freedom, social justice, and equality. This has resulted in two types of rights and two conventions as part of the UN system, one convention emphasizing the economic, social, and cultural aspects of freedom and equality, and another emphasizing the civil and political aspects of freedom and equality. The definition of human rights is twofold: they can be defined in terms of the external, objective world and in terms of the subjective and social world. Although human rights are not objective entities in themselves, they have objective aspects. In the objective world they can be defined as formal norms (laws) embodying a set of ideals. These ideals represent certain moral values regarding the human condition and social action. They are high ideals, and it is important to note that most human rights are not absolute normative aims but possibilities for creating a meaningful existence in the subjective and social world. Rights involve actions that limit or promote action of the Other toward the Self and duties limit or promote action of the Self towards the Other. In laying restrictions on all social actions, human rights protect both individuals and collectives against actions, at the same time as they impose duties and responsibilities on all actions. Not only can human rights be defined in terms of the external world of formal norms for social action, but they also
play an important existential role in the explanation of meaning in our existence. Using our moral sense is one mechanism for creating meaning; the moral sense in this context is a part of individual self-interpretation and expressed in the moral considerations implicit in social action. Human rights, embodying morality and thus expressions of the human moral sense, enable moral action. Intersubjectivity directs the moral sense and morality towards the Other and the social world and is fundamental to being a social human being. Human rights are thus not only a vital expression of a human need in the internal, subjective world but also of intersubjectivity in the social world. The principle of the human rights system is that all rights are to be held equally, but the reality of the implementation process necessitates a certain form of priority. The exceptions to this are the so-called "absolute rights," rights that have to be fulfilled in their totality as they are expressed. These are the right to life, freedom from torture and slavery, and the right to justice before the law. The practicability of a right is also used as an argument against the human rights system, especially against economic and social rights. They are regarded as too idealistic and unrealistic and therefore impossible to implement. This pertains especially to social and economic conditions of poverty in third world countries. The formulation of the right to education is highly idealistic, too idealistic to be implemented in poverty-stricken areas, some argue. One important aspect of human rights is that to have any meaning at all, the necessary conditions to exercise the right have to be there. The right is meaningless if it is impossible to implement or if it is irrelevant in its context. Here, the important point is that realizing a right is always dependent on the context in which it is to be implemented, and the realization of a right will therefore vary a great deal from context to context. The implementation of one right can also depend on the implementation of another right. Enforceability refers to the ability to implement a right, or the sanctioning of rights. The possibilities for effective sanctioning of rights via the human rights system are few and weak compared to traditional sanctioning institutions such as penal laws. The possibilities for sanctioning through the international community are first, the UN Human Rights
Committee, which evaluates reports on human rights conditions; second, the system of reporting on human rights by commissions, states, or individuals; and third, international courts. The right to education brings in a slightly different relationship. This is the relationship between state, parents, and child. The right to education focuses principally on primary education, which basically should be undertaken during childhood and which is essential for further education. Although human rights are for all individual human beings, adults are the principal actors who work to secure human rights, and children thus depend on adults for the promotion of children's rights. The question then becomes what relationship is there between parents and the state concerning the rights of the child? According to human rights principles, the state has the responsibility for rights implementation, but parents in many societies have a primary responsibility for the rights of the child. In those societies where this is not so, the question is still relevant, only here it will be the relationship between the state and a larger family or community. Both the state and the family can fail to fulfill their responsibilities for the child. Therefore, evaluating this right also raises questions concerning the relationship between the state, the family, and the child. How much responsibility should parents be given and how much responsibility should the state be allowed in order to secure the rights of the child? The evaluation of the implementation of the right to education requires first an examination of the educational tradition in its context in order to see whether it is meaningful to speak of such a right. Next, it is also essential to investigate whether the state takes responsibility for implementing the right through legislation, political policies, and programs. Along with this, it becomes necessary to investigate the equality and justice dimensions of education and the priority put on education related to other rights fulfillment and also within the educational system. Last, one would have to determine whether education has been placed in a hierarchy of rights implementation. Human rights are the rights of each and every individual, simply as a human being. To make the realization and protection of these rights dependent on such arbitrary features as place of birth or the nationality of one's parents seems morally unjustifiable. Even it if
is admitted that states are, and are likely to remain, the primary focus of whatever international order we have—that is, even if we allow that state-centrism is an international political fact to which even human rights norms must bend—it seems inappropriate to allow any of the fundamental structures of international order to interfere actively with the universal realization of human rights. Perhaps Article 28 reflects a glimmer of such concerns. In general, however, state-centrism is overwhelmingly dominant in the International Bill of Human Rights. The fifth and final anomalous right in this group is the right to nationality, another right found in the Declaration (Article 15) but not the Covenants. In a world structured around sovereign states, the right to nationality is an essential minimum guarantee of membership in some society, and thus in the society of states. The right to nationality, along with the right to enter one's own country, assures that there is at least one place from which each person cannot be excluded. In a world of states, the stateless person is everywhere an outsider: as human beings, the stateless are entitled to all human rights, but no state takes responsibility to protect their rights, nor do they necessarily have the right to live in any country of the world.

Primary education can be negatively defined as what lies between pre-primary and secondary education. The content is further complicated by the use in several legal bases. The Universal Declaration on Human Rights (‘UDHR’) proclaims: Everyone has the right to education. Article 26 of the Universal Declaration and Article 13 of the International Covenant on Economic, Social and Cultural Rights recognize the right of everyone to education, including free and compulsory primary education and access to secondary, technical, and higher education on the basis of merit and, to the extent possible, without cost to the student. The right to attend schools not run by the state is also recognized. The Universal Declaration of Human Rights declares the right to education while the Covenant states further that the state is the main actor responsible for implementing this right. The criteria contained in the Covenant are nondiscrimination and equality across gender, race, ethnicity, and religion. However, these texts are universal and therefore general in their formulations. They leave room
for differing interpretations of what is meant by education; what are the types of
education included here, what are the possibilities and the limitations of this right; and
what are the problems connected with the implementation process. Schools are often
used as an instrument of social control rather than personal liberation, as a mechanism
to enforce intellectual conformity rather than foster creativity and autonomy.
Nonetheless, there is the potential for subversion in even highly coercive and
controlled systems of education, as is illustrated by the disproportionate
representation of the relatively well educated among political dissidents in North,
South, East, and West alike. No matter how controlled the curriculum, the skills
developed in educational institutions can be applied to the development of ideas other
than those sanctioned by the state. Beyond the liberating potential of education, right
to education is a key measure of national human rights performance because of its
links to other empowerment rights. Freedom of the press, and the political
empowerment for which it stands, is made far more significant by education;
education creates an audience capable of being informed and mobilized and is
absolutely essential to those who would write. Education similarly magnifies the
possibilities for and the impact of all the institutions and organizations in any society.
The right to education can be crucial to creating a private space for intellectual
autonomy, especially where schools not controlled by the state are easily accessible.
As discussed above, the potential for education to be used in criticism of the state can
be greatly enhanced when education is under the control of the family. Conversely,
education can be a way to strengthen and protect membership rights. This mutual
reinforcement is characteristic of all the empowerment rights. At minimum, the right
to education would guarantee to all access to the skills and knowledge needed for full
membership in society. For example, in the contemporary world one cannot fully
participate in society (or the types of participation available are seriously restricted) if
one is illiterate. More broadly, one's options are limited if one does not have access to
the cultural models, forms, examples, and information of the society: for example, the
accent and idiom, the cultural and historical points of reference, and the norms of
civility of the dominant or mainstream groups in society. In modern and modernizing societies, formal education is usually the standard way to acquire such essential skills and information. Education also increases one's opportunities to take part in the cultural life of a society, and to enjoy the benefits of scientific progress, important rights recognized in Article 15 of the International Covenant on Economic, Social and Cultural Rights. In fact, the link between education and these cultural rights is so close that in most instances the right to education, combined with family rights and the right to nondiscrimination, provides a reliable indicator of their status. Education can also make important contributions to social mobility and thus to combating class-based discrimination. In developing countries there is substantial evidence to show that even basic literacy contributes substantially to an individual's integration into a modern economy and to his or her ability to take advantage of the opportunities it offers. And in almost all countries, education is one of the few ways for a poor child to move rapidly up the social ladder. This is true even in countries with strong class or status hierarchies; even taking into account problems of differential access, education is likely to be one of the few resources available that will allow one to break into or through the hierarchy. Finally, education can be important even to the protection of survival rights. An effective health care system requires that people be aware of public health dangers. Disseminating information, for example, on methods for treating or avoiding parasite-infested water, is much easier and cheaper if the public is literate. Similarly, technical improvements in agricultural methods, which can increase food production, are more easily disseminated to the literate. As Frances Steward puts it, "education is an important factor in determining [basic needs satisfaction] at all income levels."

The international community is politically committed to the fulfillment of this promise by 2015 through Millennium Development Goals (‘MDGs’) and the Education for All (‘EFA’) campaign. The International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) was the first binding international agreement to recognize the right of everyone to education. It imposes a legal obligation on state
parties, requiring that “[p]rimary education shall be compulsory and available free to all”. The right to primary education (‘RtPE’) can be considered an economic right, a social right and a cultural right, but in many ways also as a civil and political right, since it is central to the full and effective realization of those rights. It therefore epitomizes the indivisibility and interdependence of all human rights.

Today the RtE is recognized in a number of international instruments regarding such diverse groups as women, children, refugees and migrants. In spite of the many legal bases and expressions of political will, the right, is for many children – especially in third world countries and during emergencies – an unfulfilled promise. Many studies has been propagated to analyze and detail specific state obligations during typical situations where the right is not fulfilled, thus untangling the situations where there is a clear and immediate right to a result, from those where the obligations are mainly those of conduct. Education is both a human right in itself and an indispensable means of realising other human rights. Education is essential for the development of human potential, the enjoyment of the full range of human rights and respect for the rights of others.

It is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Throughout the world, education is seen as one of the best financial investments that a State can make. The importance of education is not just practical. A well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence (UN Economic & Social Council, 1999).

The right to education straddles civil and political rights, and economic, social and cultural rights. The foundation of a truly democratic and just society can only be achieved by protecting and guaranteeing basic rights to all its citizens, regardless of gender, caste, creed or religious affiliation founded on a set of principles, which set out to protect the rights of children and guarantee opportunities for them to develop into responsible citizens. In modern society, Education for all emphasized because of
two reasons. First, for the citizen in a modern democracy there is no more important right than that which provides through education the opportunity to develop to the fullest his intellectual and moral potentials? Without such a right, established through law and supported by affirmative official actions, no individual or group can nowadays hope to realize the promises and fulfill the responsibilities of the democratic faith. Second, no other right has been so systematically denied to so many people for so long a time. Particularly excluded communities failed to receive the benefits of liberal schooling that we consider essential for free men in a free society. All the more glaring is that failure when we realize that the denial of equal access to the nation's educational resources was not accidental but purposive not piecemeal but calculated. The desirability, indeed, the necessity of free, universal, public instruction was recognized by many of our forebears. Education, they thought, should have three broad purposes: first, to equip the citizen to make wise, informed choices on matters of public policy and to exercise choices in terms of public interest; second, to further his moral and spiritual development by giving him effective access to the great store of knowledge concerning man's relation to man and man's relation to the universe: third, to make him an effective contributor to the material development of society through the acquisition of scientific, technical, and mechanical skills and their application in creative, productive endeavor. These, then, were the three central aims that informed development of the educational system. True enough, these were ideals, and there was always a gap between what was preached and what was practiced. Gradually, however, more and more citizens- women, immigrants, the socially handicapped, the poor-reaped the benefits of learning which before had been the privilege of the well-born and the well-bred. Group after group asserted effectively their claims against the educational monopoly of elites. Elite means those who are socially, economically and politically advantage populations. However, there were exceptions, the largest and most obvious one being the excluded. And, one of the great unfinished tasks dictated by those ideals was, and remains, according the excluded in any society those minimal opportunities for education generally available
to those of advantaged population and more fortunate circumstance. This is not to say, of course, that the least advantaged has been denied totally this basic human right; it is to insist that so many obstacles have been placed in their way that chances of becoming a full citizen, an effective choice-making individual, and a creative contributor to the material growth of our society are, even today, slim. And one can hardly avoid surprise that as many people as have, managed to wrest some learning from a society which, while it proclaimed the ideal of educational opportunity, developed concurrently an elaborate ideology and a set of socially, economically-sanctioned institutions for keeping away them permanently, in their uneducated place. However, changes, big and dramatic, and sometimes violent, are taking place. The lights and shadows are so many and so shifting that one has difficulty in getting a clear image of the contemporary race and education scene. Nonetheless, it can be emphasized that many of the events of recent years are culminations of certain gradual changes taking place over a long period of time, and further, that these changes will continue at an increased tempo. While it is essential to review these socio-historical developments as the context within which the happenings of the day might be seen more vividly.

Education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1981). These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to provide basic education for individuals who have not completed primary education. Furthermore, they affirm that the aim of education is to promote personal development, strengthen respect for human rights.
and freedoms, enable individuals to participate effectively in a free society, and pro-
mote understanding, friendship and tolerance. The right to education has long been re-
cognized as encompassing not only access to educational provision, but also the ob-
ligation to eliminate discrimination at all levels of the educational system, to set min-
imum standards and to improve quality. In addition, education is necessary for the ful-
fillment of any other civil, political, economic or social right.

and broadens the concept of the right to education, in particular through the obligation
to consider in its implementation the Convention’s four core principles: nondiscrimin-
ation; the best interests of the child; the right to life, survival and development of the
child to the maximum extent possible; and the right of children to express their views
in all matters affecting them and for their views to be given due weight in accordance
with their age and maturity. These underlying principles make clear a strong commit-
ment to ensuring that children are recognized as active agents in their own learning
and that education is designed to promote and respect their rights and needs. The
Convention elaborates an understanding of the right to education in terms of univer-
sality, participation, respect and inclusion. This approach is exemplified both in the
text itself and in its interpretation by the Committee on the Rights of the Child, the in-
ternational body established to monitor governments’ progress in implementing child
rights.

Beyond the formal obligations undertaken by governments in ratifying these human
rights treaties, a number of global conferences have affirmed the right to education.
Although lacking the legally binding force of the treaties, these conferences have in-
troduced an additional impetus for action, together with elaborated commitments and
time frames for their attainment. The World Conference on Education for All (1990)
set the goal of universal primary education for the year 2000, a goal not met but sub-
sequently reaffirmed for 2015 at the World Education Forum in 2000. More recently,
the ‘International Conference on the Right to Basic Education as a Fundamental Hu-
man Right and the Legal Framework for Its Financing’ (Jakarta, Indonesia, 2–4
December 2005) adopted the Jakarta Declaration. This emphasizes that the right to
education is an internationally recognized right in its interrelationship with the right to
development, and that the legal and constitutional protection of this right is indispens-
able to its full realization.

An increasing emphasis has been placed in recent years on rights-based approaches to
development. In part, this shift has been the result of growing recognition that needs-
based or service-delivery approaches have failed to substantially reduce poverty. One
significant limitation of these approaches has been that they are often undertaken by
authorities who may not be sensitive to the needs of the poor. It is also felt that com-
bining human rights, development and activism can be more effective than any single
approach.

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 govern-
ments, 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. Research indicates, for example, that
one additional year of schooling for 1,000 women help prevent two maternal deaths.
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 educa-
tion, which emphasizes quality, can encourage the development of school environ-
ments 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.

The UN Statement of Common Understanding elaborates what is understood to be a rights-based approach to development cooperation and development programming. It emphasizes that all programmes of development cooperation, policies and technical assistance should further the realization of human rights, and therefore that human rights principles and standards should guide all phases of the programming process.

The following elements are necessary, specific and unique to a rights-based approach and can be used for policy and programming in the education sector:

i. Assessment and analysis identify the claims of human rights in education and the corresponding obligations of governments, as well as the immediate, underlying and structural causes of the non-realization of rights.

ii. Programmes assess the capacity of individuals to claim their rights and of governments to fulfill their obligations. Strategies are then developed to build those capacities.

iii. Programmes monitor and evaluate both the outcomes and processes, guided by human rights standards and principles.

iv. Programming is informed by the recommendations of international human rights bodies and mechanisms.

In addition, many elements of good programming practice are essential within a rights-based approach. Overall, then, the required steps are:

i. Situation assessment and analysis.

ii. Assessing capacity for implementation.

iii. Programme planning, design and implementation.
iv. Monitoring and evaluation.

A rights-based approach to education policy and programming places a particular focus on assessing the capacity of both rights holders to claim their rights and governments and public authorities to fulfill their obligations. The process should involve plans and activities to increase the capacity of individuals to support the implementation of education priorities. In order to claim rights, people need to know what their rights are and how they are being addressed, how decisions are made and by whom, and what mechanisms, if any, exist to seek redress in cases of violations. If teachers are persistently absent or fail to teach, parents and the community need to know that their children have the right to education and that they should join together to demand the resolution of such problems. They need opportunities for access to policymakers and the media. They may also need support in analysing how their rights are being denied and how to argue their case for change. Efforts also need to be made to build opportunities for children to claim their rights. There is a growing body of tools and strategies for promoting children’s access to the media, policymakers and politicians, as well as evidence of the capacity for effective child advocacy.

Empowering rights holders to claim their rights requires a range of strategies, including information, advocacy, capacity-building, parent networking, peer support and technical assistance. Assessment of the capacities of government and public authorities to meet their obligations with regard to educational rights is necessary to measure the implementation of any educational policy and programme.

The analysis will indicate the strategies necessary to achieve change. For example, in order to assess parents’ capacities to fulfill their obligation to send their children to school, States need to analyse the real costs associated with schooling. The absence of school fees may be insufficient to eliminate the economic burden on parents; school uniforms, equipment and transportation, as well as the loss of domestic support or the earnings of a child, need to be included in the analysis when developing policies aimed at universal education. In situations of crisis, conflict and transition, the obstacles are likely to be particularly acute. However, it is possible to build capacity
and commitment to sustain or restore access to education even in war-torn environments.

A rights-based approach to monitoring and evaluating education has implications, beyond those that would be addressed as good development practice, for both the process by which it is undertaken and the outcomes it seeks to measure. In terms of process, there is a need for greater transparency of information about education provision. In addition, children and their communities need to be actively engaged as partners and involved in design, analysis, sharing of information and documentation. Their involvement empowers them and improves the quality of the information. Such monitoring and evaluation frameworks will help capture both the qualitative and quantitative indicators in respect of realizing the rights-based approach to education.

A rights-based approach to programming is not a magic wand. It does not provide simple solutions to challenges that have proved intractable for many years. While providing a principled framework and a methodology for its application, it can also expose tensions, real or apparent, between different rights, among rights holders, and between rights and responsibilities.

In its General Comment on the aims of education, the Committee on the Rights of the Child emphasized that the overarching aim must be to promote, support and protect “the human dignity innate in every child and his or her equal and inalienable rights” while taking into account the child’s developmental needs and diverse evolving capacities. This is to be achieved through the holistic development of the full potential of the child, including a respect for human rights, an enhanced sense of identity and affiliation, and socialization with others and with the environment.

In practice, however, there are competing agendas for the aims of education systems for different stakeholders. For the State it is to develop the economic workforce and potential future wealth; and to promote social cohesion, integration and a sense of national identity. A rights-based understanding of education moves beyond the more traditional model of schooling, which has defined the education agenda very much from
the perspective of the government by emphasizing training, human capital investment, and containment of young people and their socialization.

And, for the parents, it is to equip their children for a successful life, and hence expect it to provide their children with the knowledge, skills and confidence that will help them gain employment and achieve economic success. They also look to schools to transmit their values, culture and language – in other words, they seek in the education system the reinforcement and promotion of their own beliefs and practices which are worth.

A third constituency is the most neglected section in the spectrum of education, i.e. the child, for whom the goal is acquiring the capacities through which to fulfill her or his aspirations. Education also provides the opportunity for emotional development and friendship outside the family. It is the route through which economically and socially marginalized children can escape poverty and participate fully in their communities. It also plays a vital role in safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, and protecting the environment.

There are, then, significant and sometimes competing expectations of the education system – from governments that are providing the legal and administrative framework and funding, from parents responsible for their children’s upbringing and from children themselves as rights holders. Some expectations are common to all: economic success, reinforcement of values and social standing. However, the fact that governments are concerned with the wider society and parents with their individual child can and does create significant tensions in the education agenda. These tensions are acknowledged in international human rights law, which introduces the right of parents to educate their children according to their beliefs. It reflects the need to limit a government’s power to impose its economic, political and religious agenda on children.

The UN Convention on the Rights of the Child introduces an additional perspective. It imposes limits not only on the state but also on parents. It insists that children’s best interests must be a primary consideration in all matters affecting them, that their
views must be given serious consideration and that the child’s evolving capacities must be respected. In other words, the Convention affects the right of parents to freedom of choice in their child’s education; parental rights to choose their children’s education are not absolute and are seen to decline as children grow older. The rationale behind parental choice is not to legitimize a denial of their child’s rights. Rather, it is to prevent any state monopoly of education and to protect educational pluralism. In the case of conflict between a parental choice and the best interests of the child, however, the child should always be the priority.

The right to education thus involves these three principal players: the state, the parent and the child. There is a triangular relationship between them, and in the development of rights-based education it is important to bear in mind that their differing objectives need to be reconciled. In addition, other actors with a significant contribution and responsibility include teachers, the local community, policymakers, the media and the private sector.

Human rights are not contingent on the exercise of responsibility. They are innate and universal. There is no requirement on the part of a child, for example, that she or he demonstrate a responsible attitude in order to ‘earn’ an entitlement to education. Nevertheless, there is a direct and complex relationship between rights and responsibilities, rooted in the reciprocal and mutual nature of human rights. All children have a right to learn. This means they are entitled to an effective learning environment in multiple spaces, not just the school setting and at the primary level. It also implies that they have responsibilities to ensure their behaviour does not deny that right to other children. All children are entitled to express their views and have them given due weight. This involves listening as well as talking. It requires that children play a part in the creation of constructive spaces that promote mutual respect. And as teachers have responsibilities for children’s rights, so children, too, have responsibilities towards teachers. The same principles of mutual respect apply between children and adults. The right to protection from violence extends to both children and adults, and places a responsibility on children to avoid the use of aggression or physical violence.
While teachers bear responsibility for preparing lessons, teaching, grading work, maintaining positive classroom discipline and creating opportunities for children to express views, so children carry responsibilities for undertaking their work, collaborating with other children, keeping the classroom in order and, so far as it is within their means, arriving regularly and on time.

One of the most effective means of promoting children’s understanding of the reciprocal basis of rights is to create an environment where their own rights are respected. Through this experience, they develop the capacities to exercise responsibility.

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 interconnected, 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. To ensure quality education in line with the aims of education elaborated by the Committee on the Rights of the Child (2001), 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 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.

States have obligations to establish the legislative and policy framework, together with sufficient resources, to fulfill the right to education for every child. Each child must therefore be provided with an available school place or learning opportunity, together with appropriately qualified teachers and adequate and appropriate resources and equipment. The level of provision of primary education must be consistent with the numbers of children entitled to receive it. All learning environments must be both physically and economically accessible for every child, including the most marginalized. It is important to recognize that a school that is accessible to one child may not be accessible to another. Schools must be within safe physical reach or accessible through technology (for example, access to a ‘distance learning’ programme). They must also be affordable to all.

Every nation shall have the provision of primary education of good quality and to improve 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, fostering equality 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 it enunciates.” 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.

Common guidance is provided in all the key human rights treaties for the development of the curriculum, indicating an underlying global consensus on the content and scope necessary for a rights-based education.

The curriculum must enable every child to acquire the core academic curriculum and basic cognitive skills, together with essential life skills that equip children to face life challenges, make well-balanced decisions and develop a healthy lifestyle, good social relationships, critical thinking and the capacity for non-violent conflict resolution. It must develop respect for human rights and fundamental freedoms, and promote respect for different cultures and values and for the natural environment. The Committee on the Rights of the Child stipulates that the curriculum, both in early childhood provision and in school, “must be of direct relevance to the child’s social, cultural, environmental and economic context, and to his or her present and future needs and take full account of the child’s evolving capacities”.

The way in which children are provided with the opportunity to learn is as important as what they learn. Traditional models of schooling that silence children and perceive them as passive recipients are not consistent with a rights-based approach to learning. Teaching and learning must involve a variety of interactive methodologies to create stimulating and participatory environments. Rather than simply transmitting knowledge, educators involved in creating or strengthening learning opportunities should
facilitate participatory learning. Learning environments should be child friendly and conducive to the optimum development of children’s capacities.

Assessment of learning achievement is vital. At the same time, a commitment to realizing children’s rights to their optimum capacities implies the need for sensitive and constructive methods of appraising and monitoring children’s’ work that take account of their differing abilities and do not discriminate against those with particular learning needs.

The obligation to give primacy to the best interests of children and to ensure their optimum development requires that learning environments are welcoming, gender sensitive, healthy, safe and protective.

States need to build partnerships with all key organizations and institutions that have an impact on the right to education. Collaboration, for example, is needed with non-governmental organizations, teacher unions, the private sector, traditional leaders and religious groups to enlist their support and expertise in building capacity to ensure the right of education for all children throughout the life cycle and in a wider range of learning spaces. Although the State has the primary obligation to provide education for all children, non-governmental organizations and other civil society partners make a vital contribution to education in many countries, mobilizing public demand and expanding participation. Recognition needs to be afforded to the role of the non-government education sector in creating additional learning spaces and opportunities that complement the school process and are linked to specific actions, for example, violence prevention, elimination of child labour, and promotion of peer-to-peer relationships and partnerships. At the same time, however, there may be a stigma attached to children who are not part of the formal education system and the qualifications it offers. Assessment of the contribution of the non-government sector is needed in order to explore how the systems can better complement each other and how to strengthen opportunities for children to transfer from that sector into government schools to allow them to take state examinations and certificates.
Educational rights – consistent with human rights principles as they pertain to access, quality and respect – need to be embedded in the legislative framework. They should be clearly acknowledged as entitlements for which governments are responsible and that individuals can claim and, if necessary, have enforced through the courts. Such legislation not only needs to take into account the international obligations that an individual State has in respect to fulfillment of that particular right via incorporation into domestic law, but it should also address the removal of direct and indirect barriers that impede access. In the context of the broader conducive political and economic environment, States need to develop specific education policies aimed at realizing the right to education for every child. Measures need to be introduced that address the provision of education throughout childhood, ensure the quality of that education and provide learning environments that are respectful of the human rights of children.

First and foremost, States must invest in the infrastructure to create learning environments and opportunities for the education of every child. Provision of schools, teachers, books and equipment is a fundamental prerequisite of education. But if the right of every child is to be realized, that provision needs to be sufficiently flexible and inclusive to address the learning needs of all children. It also needs to be sensitive to and respectful of the different circumstances of children, particularly the most marginalized. This will necessitate action to remove the multiple barriers that impede children’s access to education.

The right to an education that brings about their optimum development requires investment in children throughout their childhood. In terms of national policy and planning, a life-cycle approach based on the human rights of children necessitates action beyond the basic provision of universal access to primary education to include pre- and post-primary provision.

A free primary school place needs to be made available for every child entitled to it, including those in situations of risk. Mechanisms should also be developed to ensure availability of education for marginalized groups of children – for example, working children, children living on the street, children in rural communities and children in
institutions – either in schools in the local community or, where it is not possible for a child to leave the institution, in the institution itself.

Consideration needs to be given to ensure that schools are accessible to all children irrespective of age, disability, gender, caste, ethnicity or other factors. Consultation with different members of the community can be vital in identifying potential barriers to access. For example, it can be helpful to establish small multigrade or multi-age schools in remote rural areas. Satellite schools have been one approach to addressing the difficulties faced by young children, especially girls, traveling long distances to school. In Burkina Faso, a network of satellite schools has been developed that provides for the first three grades and allows the youngest children to gain their first experience of school close to their own villages. This system has achieved substantial benefits for children, with a retention rate of 95 per cent and significantly improved performance rates in writing, reading and arithmetic skills. Community learning centres can also provide an effective educational environment for young children who cannot travel to an early childhood centre or a school at a distance from home, or for out-of-school children.

Sufficient school facilities must be provided for all eligible children. From the outset, account needs to be taken of the specific access needs of all children, including those with disabilities. The physical design and resources available in school can serve as barriers to inclusion, and it is far harder to redress inaccessible design after schools have been built. Governments need to consult with the community in the design and construction of schools. The needs of children with different physical abilities, as well as the needs of both girls and boys, should be reflected in the design of all equipment and resources, as well as play and sports facilities in schools and surrounding community spaces. Schools must ensure that hygiene and sanitation facilities are appropriate for both boys and girls – clean water, proper toilet facilities and privacy, particularly for girls – and take account of any religious requirements. In addition, some children will require aids such as wheelchairs if they are to be able to attend school.
Schools are not accessible unless they have adequate educational materials. Appropriate measures need to be introduced to review the total equipment requirements. If all children are to have equal opportunities to learn, attention has to be paid to specific needs. Children with severe visual impairments, for example, will need Braille books and teachers trained to teach them to read. In addition, measures need to be taken to ensure that the whole curriculum is available in Braille and that it is published in time for each academic year. Children with severe hearing impairments will need teachers or assistants who can communicate in sign language. Children whose first language is not the school’s medium of instruction need materials in their own language, as well as access to bilingual teaching. Consideration should be given to whether such items as textbooks, notebooks, pencils, chalk and chalkboards are manufactured in the country and, if not, whether there are taxation and trade policies that will affect their availability. Attention also needs to be paid to whether the State needs capacity-building assistance to enable it to produce the items in the country.

Measures to remove the economic barriers to education need to be embedded in the annual action plans of national poverty reduction strategy papers. Some examples are the abolition of school fees and charges, and the provision of stipends and cash transfers.

Compulsory education cannot be implemented unless it is provided to all free of charge. The continuing imposition of fees has been challenged from both a human rights and a poverty-reduction perspective. Fees are common in primary education in many developing countries faced with resource constraints. Direct tuition fees and textbook charges are less common than community contributions, parent-teacher associations’ dues and compulsory uniforms. Both direct and indirect costs may prevent poorer children from exercising their right to education. In fact, experience from various countries shows that the abolition of fees has been successful in creating significant increases in enrolment and in improving equitable access to education.

However, the abolition of school fees and other charges is not a panacea. The consequent increased enrolment can lead to a reduction in quality due to overcrowding
and lack of textbooks and adequately trained teachers, leading in a few years to falling enrollment and higher drop-out rates. For some marginalized or vulnerable communities – for example, children in households affected by HIV/AIDS – abolition of fees alone is insufficient to overcome the barriers to education. Furthermore, abolition necessarily results in rising expenditures for governments that need to be budgeted for in terms of fee replacement and quality inputs. Finally, more rapid and efficient management and logistical measures are needed to address the surge in enrollment in a timely and sustained fashion.

Fees cannot simply be abolished without consideration of whether, and how, they should be replaced by an alternative source of income. When fees contribute to operational effectiveness, or even perceived quality, simply abolishing them without replacement can result in serious deterioration of the education system, as shown in a number of countries. Several strategies thus need to be put in place to address the challenges of fee abolition. First of all, the commitment to abolition needs to be integrated into wider education programmes and budgets and accompanied by careful planning. A phased-in approach can reduce the technical and financing challenges. Sources of revenue to replace the fees and increase quality inputs can come from shifting spending from other sectors, shifting cost recovery to higher educational levels, improving efficiency of education spending and donor support. Finally, targeted interventions, such as cash transfers, can play an important role in reaching the hard core of poor, excluded and vulnerable children.

The impact of sending a child to school may be the loss of his or her earnings or contribution to the domestic chores in the home. There is frequently a conflict between the financial needs of the family and the individual child’s right to education. Poor families will often need incentives or help to offset the associated costs of their child’s education. There is evidence of the efficacy of food-for-education programmes, as well as stipend and cash transfer schemes.

“UNESCO views inclusion as ‘a dynamic approach of responding positively to pupil diversity and of seeing individual differences not as problems, but as opportunities for
“Therefore, the move towards inclusion is not simply a technical or organizational change but also a movement with a clear philosophy. In order for inclusion to be implemented effectively, countries need to define a set of inclusive principles together with practical ideas to guide the transition towards policies addressing inclusion in education. The principles of inclusion that are set out in various international declarations can be used as a foundation. These then can be interpreted and adapted to the context of individual countries.”

Quality in education can only be achieved through the development of child friendly learning environments that are dedicated to a holistic approach to children’s development. This means addressing children’s multiple rights, using strategies that build links between the school and the family and community. Child-friendly learning environments seek not only to equip children with basic learning skills but also to enable them to take control of their lives and to promote justice, democracy, peace and tolerance. The child-friendly learning concept promotes child-seeking, child-centred, gender-sensitive, inclusive, community-involved, protective and healthy approaches to schooling and out-of-school education. These approaches are intended to increase the learning effectiveness, efficiency and reach of education systems and to enable all children to realize their right to learn. Child friendly schools have been applied in many settings around the world in formal and non-formal education, early child development and educational responses to emergencies.

The right to education also means learning for life. The curriculum must be aimed at ensuring that essential life skills like the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life, are learned by every child and that no child leaves school without being equipped to face the challenges he or she can expect to be confronted with in life.

The curriculum, textbooks and learning materials need to be appropriate for all students and seek to promote and respect diversity. States are required to provide an edu-
cation for all children on the basis of equality of opportunity. To achieve this objective, it is essential that all children are rendered visible in the curriculum and that no discrimination or prejudice is explicitly or implicitly reflected in it – whether on the basis of gender, ethnicity, class, caste, language, culture or religion. As noted earlier, the curriculum also needs to include alternative forms of communication for children with disabilities, particularly those who have severe hearing and visual impairments, such as learning of Braille, and orientation and mobility skills. Children who are not learning in their own language need appropriate assistance. The curriculum also needs to be developed with regard to children’s evolving capacities.

Measures are needed to introduce rights-based learning environments in which the role of teachers and parents is defined in terms of inspiring children’s confidence in what they can achieve through positive reinforcement, encouragement and active engagement in their own learning. Children need to be helped to acquire skills in analysing, investigating, creating and applying knowledge if they are to achieve their optimum potential. It is important to recognize that children have different aptitudes and abilities and cannot all learn at the same pace. Their capacities do not evolve uniformly with age; rather, their circumstances and individual experiences will affect their development. Different children will need differing levels of support, display differing levels of confidence and have differing capacities to support other children.

Classroom environments, and teaching and learning resources, need to enhance a participatory approach to learning, with appropriate tools and resources to reflect these differences. Expected learning outcomes should be established for each grade. However, it is not appropriate to punish or blame children who do not conform to these standards, which should be used to identify where additional support or encouragement is needed. Teachers need to acknowledge the differences between children and explore ways of capitalizing on the opportunities these provide. Children can work together in groups of mixed or the same ability. Older or more able students can be appointed as mentors to help those who have missed some schooling or need additional help. Evidence shows that these approaches benefit both more and less able children.
The Indian Constitution, originally, did not guarantee the right to education as a justiceable, legally enforceable right. It placed the right to education (Article 41), the provision of free and compulsory education for children until the age of fourteen (Article 45), special provisions for educating the economically and socially weaker sections of society (Article 46) among the ‘directive principles of State policy’ (‘DPSPs’) – i.e., aspirational, non-enforceable legislative goals that the Constitution exhorts the government to try and achieve. Over the years, however, the distinction between the Bill of Rights (Part III), and the DPSPs has been elided by the judiciary in many ways, and particularly as far as education is concerned. Some of the additions made in the Eighty-Sixth Amendment Act, 2002 are Art. 21A which says 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. Art. 45 (2) states ‘The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.’ Art. 51A (k) encapsulates ‘who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.’ Thus, the third chapter will consist of an analysis of the different provisions contain in the Indian Constitution on free and compulsory primary education for children.

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 spe-
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 was added to the Indian Constitution in 2002 with the passage of the 86th constitutional amendment. The Right of Children to Free and Compulsory Education Act (“Right to Education Act”) came into force on April 1, 2010. The Right to Education Act provides “a justiciable legal framework that entitles all children between 6-14 years to an education of reasonable quality, based on principles
of equity and non-discrimination.” It provides for a child-friendly learning environment and is funded through the Sarva Shiksha Abhiyan. The estimated budget allocation for the program for 2013-14 is approximately US$4.48 billion. Allocation per student at the all-India level under SSA has more than tripled from an average of US$26 in 2007-08 to US$77 in 2011-12, but the total allocation varies widely from state to state depending on the state’s own contribution to elementary education.

The responsibility for providing primary and secondary education lies with state governments and local authorities. Funding comes from both central and state governments. The relevant local authority is the panchayat (elected community council) at the village level; the zila parishad (local government body) at the district level; and municipal corporations in cities or towns. The Right to Education Act relies on school management committees (SMCs)—composed of parents, the head teacher, and a member of the local government—as a decentralized mechanism to improve schooling. It envisions active community involvement in the management and supervision of schools.

At the national level, the task of monitoring and grievance redress falls to an independent statutory body, the National Commission for Protection of Child Rights (NCPCR), under the Ministry of Women and Child Development. At the state level, the task is entrusted to state commissions for protection of child rights, where they exist. The commissions have the powers of a civil court.

The Right to Education Act laid down a three-year deadline for all states to meet most of the targets under the law, such as adequate infrastructure and increased appointment of teachers to meet the prescribed student-teacher ratios. While there has been significant progress, most states missed the deadline even in meeting basic infrastructural needs such as separate toilets for boys and girls, access to drinking water, and an adequate number of classrooms. According to one report by a collective of education rights groups, less than 10 percent of India’s government schools in 2012-13 were compliant with the Right to Education Act (RTE) in terms of infrastructure and teacher availability.
The same report concluded that adequate processes had not been put in place for tracking children’s attendance, mapping exclusion, and setting up “bridge” courses to enable children who drop out or start school at a later age to catch up to their peers and enroll in age-appropriate classes. While net enrollment in primary schools is now almost at 100 percent, regular attendance and retention is a major challenge, particularly when it comes to the country’s most vulnerable and marginalized communities.

Indian education specialists have criticized the government’s failure to allocate adequate financial resources to successfully implement the act. Despite making promises to allocate 6 percent of the national income to education as far back as 1968, successive governments have invested less than 4 percent.

Those who drafted the Constitution of India were in no doubt as to the central role of education in promoting equity and justice for all its citizens. On the issue of compulsory education, two features informed the debate and led to the following provisions regarding education being included: (a) It was decided that education should be available free of charge and that attendance in schools should be compulsory for a children up to the age of 14 years as incorporated in Article 45 of the directive principles of state policy. This was a farsighted provision in contrast to the view that education should only be universalised up to the primary level, i.e. about 10 years. Ambedkar emphasised the need to go beyond the primary school stage as he saw that in doing so, children would be relieved from the drudgery of work. This provision in Article 45 of the directive principles of state policy reinforces Article 24, which reads, "no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment." The Constitution also directs that children cannot be abused or forced to work and "to enter avocations unsuited to their age or strength" through Article 39 (e) and (f). By stating that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment", the Constitution's drafters underscored the significance of protecting children's rights in
the context of building a democratic India. Keeping in mind the need to combat the educational and economic disadvantage of scheduled castes and scheduled tribes along with other disadvantaged sections of society in the past, special emphasis was given to their needs in Article 46. This Article makes a commitment to protect these groups from social injustice and all forms of exploitation. All the above provisions indicate a clear commitment to giving Indian children in this freedom and dignity and recognising their essential contribution to building a democratic nation. (b) It was stipulated that the state should provide free and compulsory education to all children up to age of 14 within 10 years of independence, i.e. by the year 1960. This added a sense of urgency to the measure and is the only provision in the Constitution of India that has specified a time limit. Regrettably, reality has failed to match the vision of India's first legislators. There has been a gross violation of children's right to education in spite of it being clearly protected in the constitutional framework of India's polity and being an honourable and cherished goal of the Indian Constitution.

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

To ensure universal access to elementary education, in 2001 the government of India launched its most ambitious program, Sarva Shiksha Abhiyan, meaning “Education for All.” The program includes a variety of government initiatives, such as building new schools and additional classrooms, providing toilets and drinking water, and conducting regular teacher trainings.

When the program was started in 2001, 32 million children were not attending school. By government estimates, this number dropped to 2.2 million in 2013. The joint review conducted by the government and its development partners itself expressed con-
cern over the accuracy of the latest numbers of out-of-school children. The overall illiteracy rate came down from 35 percent to 26 percent between 2001 and 2011.

To address chronic child malnourishment and encourage school enrollment and attendance, the central government started the Mid-Day Meal scheme in 1995. Under this plan, every child enrolled in grades I to VIII in a government or government-aided school is provided free cooked lunch. Over the last decade, the scheme has been expanded to cover several types of schools beyond those run by the government, including recognized and unrecognized madrasas (Muslim religious schools) supported under the Sarva Shiksha Abhiyan. According to the government, the scheme covers about 120 million children and forms 32 percent of the total elementary education budget for 2013-14 at around $2.2 billion.

While the Mid-Day Meal scheme is largely successful in providing one meal a day to poor children, it has had less success in ensuring that children remain in the classrooms. A 2012 PAISA survey by the Accountability Initiative in two districts each of Uttar Pradesh and Bihar states found that only 60 percent of enrolled students received mid-day meals on a given day. The survey noted that the gap was likely a result of irregular attendance.

However, it also observed that school-level data on the number of meals served could be inflated. The survey collected student attendance data on the day of the survey and found that the number of meals served, as recorded in the Mid-Day Meal register, was actually higher than the number of students who attended school that day.

During the eleventh five-year plan (2007-2012), only 80 percent of the allocated funds were spent. There are huge state-wide variations in utilization of cooking cost allocations and government-supplied food grains.

As per its constitutional obligation under Article 21-A and as a process of International Obligations, 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 later, 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. ‘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.

After very much tardiness in the free and compulsory education policy, 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*.\(^5\)

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-vis Article 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

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\(^5\) (2012) 6 SCC 1
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

55 AIR 1997 SC 3011
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 Pradesh56 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,57 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,

56 (1993) 1 SCC 645
57 (1992) 3 SCC 666
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

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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.*

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59 AIR 1952 SC 196
Nathella Sampathu Chetty.\textsuperscript{60} This has in fact prompted the court, in Om Kumar v. Union of India,\textsuperscript{61} 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

\textsuperscript{60} AIR 1962 SC 316

\textsuperscript{61} 2000 (7) SCALE 524
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.

Despite the progress made through RTE, there remains a lot of ground to be covered for the establishment and functioning of a high-quality elementary education system. Primary research, with the input of various stakeholders in the education industry, indicates the following reasons for the low quality of elementary education in the past:

- Failure of the state to ensure free and compulsory equitable quality education to all, irrespective of gender, class, caste and social status
- Lack of community involvement and low level of awareness of the Government’s plans and programs
- Limited focus on learning outcomes.
- Lack of effective performance-monitoring systems
- Inadequate school infrastructure and shortage of quality teachers
- Poor coordination between planning and implementation
- Prevalence of child labor and absence of parents’ interest in school functioning
- Lack of accountability

**Lack of basic infrastructure facilities**

Infrastructure development is the key driver for providing universal elementary education to India’s children. According to the RTE Act, the following infrastructure facilities have to be made available to students by schools within a time frame of three years from the period of notification of the Act. All-weather school buildings should consist of:
• One-teacher classrooms and a head teacher-cum-office room with barrier-free access
• Separate toilets for boys and girls
• Safe and adequate drinking water facilities for all children
• A kitchen where the mid-day meal is cooked in the school
• Playground
• Arrangements for securing the school building by a boundary wall

Despite tremendous efforts being made on infrastructure development, some of the significant shortages in the provision of infrastructure facilities are highlighted below:
• Few classrooms available: According to the DISE Flash Statistics 2009–10 reports, there were only 3.6 classrooms per school on an average. Furthermore, almost 25% of the total enrolment in 2009–10 was in schools with a student:classroom ratio >60. The average number of classes in government schools was 3.8, and this figure for private schools was more than double (7.8).
• Lack of sanitation: Only 58% the schools had toilets for girls in 2009–10.
• Lack of computer facilities: Only 39% schools have electricity connection and only 16.65% have computer facilities.
• Lack of transport facilities and safety features: Most government schools do not provide transport facilities, and therefore, students living in rural areas or difficult terrains find it difficult to commute and drop out of school. Furthermore, in such schools, admission of girls is minimal. Almost 50% of the schools do not have boundary walls.

**Lack of trained teachers**

The RTE Act attaches immense importance to the role of teachers in improving elementary education by making available professionally trained teachers for the school system.62

• According to RTE rules, children have the right to at least one qualified and trained teacher for every 30 pupils. Currently, there is about one teacher for every 34 students. Around 1.2 million additional teachers need to be recruited to fill this gap.

• Furthermore, today, around one out of five primary school teachers do not have the required minimum qualification to ensure children’s right to quality learning. Section 23(2) of the Act provides a time frame of five years to ensure that all the teachers in elementary schools are professionally trained. The Ministry of Human Resource Development has estimated that currently there are 0.67 million untrained teachers in India.

• The National Council for Technical Education has laid down the minimum qualifications for teachers in schools in 2001 on the basis of the National Council for Teacher Education Act and the RTE Act, according to which teachers appointed by the government or employing authority should be trained and have minimum qualifications for different levels of school education. Within the five-year period, all teachers need to acquire the academic and professional qualifications prescribed by the academic authority under the RTE Act. This is a difficult task.

**Schools operating without headmaster or teacher**

To ensure a good quality education in schools, a head master and teacher are required to maintain the required standard and quality of teaching. A headmaster is also needed for general administration of the school to ensure that quality education is imparted. Almost 40% of the primary schools, which had enrolled more than 150 students in 2009–10, have been operating without a head master or teacher. In the case of upper primary schools, almost 57% do not have a headmaster, in spite of enrollment figures of more than 100 students. Therefore, a large number of schools at the elementary level operate without a designated authority or head to ensure that the rules specified by the RTE Act are being implemented in the school.

**Teacher absenteeism**

A major challenge the Act faces is to address is the high level of absenteeism among teachers. While the average of teacher absenteeism is around 20% worldwide, India has the highest teacher absenteeism in the world at 25% (according to the UNESCO’s International Institute of Educational Planning study on corruption in education. The level of absenteeism among government primary school teachers ranges from
15%–40%, with higher rates in the case of the poorer states. Difficult access to schools (particularly in rural areas) is a major disincentive for getting suitable qualified teachers to provide education in such areas. Some of the other reasons identified include lack of basic toilet facilities, poor electricity supply, lack of well-established criteria for recruitment of teachers and lack of a uniform policy on promotion.

Teacher absenteeism impacts the quality of education and requirement of funds. It is a major drain on resources, causing wastage of 22.5% of the Government’s education funds.63

**Disparities**

There are wide disparities in enrolment of students at the upper primary level, as compared to the primary level. Furthermore, there are disparities among students by gender, caste and class, rich and poor, and rural and urban due to the socio-economic and cultural context.

Huge reduction in gross enrollment ratios at primary and upper primary level

There is a significant reduction in gross enrollment ratios (GERs) from the primary to upper primary level. In 2007–08, the GER at the primary level was 115%, and at the upper primary level, it was as low as 78%. This may be due to several factors, one of the major reasons for this difference being that children are not enrolled exactly at the official age specified by the state. Special efforts to enroll older children at primary schools cause changes in the age composition of school-going children. Low enrollment figures at the upper primary level can also be attributed to the fact that children have to move out to other schools after completion of their primary education (due to schools only offering education till the primary level) and be re-enrolled in a upper primary school.

**Gender bias**

 Discrimination against girls being enrolled in and attending schools is based on the

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wider social economic and cultural context, which sustains such gender inequalities. Historically, it has been seen that females have a disadvantage in enrollment for primary education because the opportunity cost of a girl child’s time is high as compared to boys, since girls spend more time on domestic chores. This has been the primary cause of fewer enrollments and high dropouts among girls. Although the gender parity index in education has improved considerably over the years, there are still certain sections of society where the problem prevails. Some of the facts highlighting the gender disparity in the country are detailed below:

- According to census 2011, the literacy rate for men is 82.14% and for women 65.46%.
- The gender gap is significantly larger in the case of scheduled castes and tribes as compared to the rest of the population. Rural girls belonging to disadvantaged communities are adversely affected due to the triple minus points of caste, class and sex, and therefore, form the bulk of the country’s illiterate population.

**Discrimination based on caste and class**

Members of scheduled castes and tribes have been historically disadvantaged economically, socially and educationally, and their participation in schools in terms of enrollment and retention has been low. By caste or tribe, the proportion of women who have never attended school is highest (44% for women belonging to scheduled tribes, 32% for those belonging to scheduled castes and 29% for those belonging to other backward classes). In recent years, the enrollment percentage figure for this group has improved, but the situation is still critical in certain regions of the country, with enrolment in classes I to VII/VIII standing at 20% for scheduled caste women at the national level.  

**Rural-urban disparity**

Although literacy rates have been on the rise in India over the last few decades, there is still a huge disparity between urban and rural literacy rates in terms of accessibility.

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64 “Elementary Education in India, Progress towards UEE,” DISE 2009-10.
and availability of elementary education. In 2011 the population of urban is 31.1 and literacy rate is 85.0 but the rural population consist of about 69% and literacy rate is 68.9%. Furthermore, a state-level analysis indicates that the states with a large rural population tend to witness low literacy rates, indicating that rural-urban disparity impacts literacy levels. Therefore, states with low literacy rates are the ones that also have a large rural population.

According to the Annual Status of Education Report (Rural) 2010 (a sample-based indicative report), only 56% of rural schools in India comply with RTE norms on the pupil-teacher ratio. This implies that about half of the country’s primary and upper primary schools will need many more teachers in coming years.

6.2 Need for Modifications in Other Constitutional and Legislative Provisions Related to Children Education:

The 86th Amendment to the Constitution, on the Fundamental Right to Education for the 6 to 14 years age group, has also led to the inclusion of an additional clause under article 51A that imposes a fundamental duty upon parents or guardians to provide opportunities for education of their children/wards between the ages of 6 and 14 years. The amendment has provoked agitation and criticism from all sections across the country. Their contention is that the State is abdicating its responsibility for the provision of free and compulsory quality education that must be accessible and appropriate, both socially as well as physically. In effect, it is penalising the poor parents twice – for being poor and for their inability to send their children to schools, the causes for which may be beyond their control. Lack of quality, appropriate and accessible education is one of the major reasons for children dropping-out of school. The other reasons, of course, are poverty and to some extent the need for elder children to look after their younger siblings. In the absence of a well drawn out plan to ameliorate poverty and lack of alternative childcare facilities for children who have been deliberately kept out in the amendment, the Government needs to rethink and reconsider its stand.
The Government has adopted a policy of affirmative action towards addressing issues of socially backward groups, such as the Scheduled Castes/Tribes and the Other Backward Classes as well as the girl child. Despite these, discrimination – overt and covert – occurs in various forms. The guiding principles underpinning the Constitution of India are equality before law, equal protection to all and non-discrimination. There is affinity between the standards set by the Constitution and the standards set by Article 2 of the CRC. Equality is a dynamic concept with many aspects and dimensions and therefore cannot be confined within traditional limits. Articles 14, 15, 17, 25-28, 29 and 30 of the Constitution aims to secure social and economic justice to all as well as remove all kinds of biases. Yet, children born in the categories of Scheduled Castes/Tribes and Backward Classes including religious minorities start life with severe handicaps.

Considering that these children account for a clear majority of India’s child population, it is necessary to look deeply into their problems from all angles rather than paying a lip-sympathy to them. India adopted a National Policy for Children in 1974, declaring children to be the nation’s most precious asset. From 1974 till date, there has been a gradual shift in approach towards its children from a needs-based to a rights based approach. However, India has yet to translate this change into actual programming, which remains largely ‘welfare’ oriented.

6.3 Suggestions for increasing the role of private sector (non-state) players:

The respondents were requested to share their views as to how the private sector (non-state) players can play an active role in operationalizing the RTE Act. Some of their suggestions are discussed below.

i. Sharing knowledge and skills

• Participation of the private sector can be in the form of sharing existing knowledge and skills. Areas such as leadership, management and teachers’ training are vital for improving the quality of education.

• The private sector can undertake capacity development of management,
organizational and leadership skills.

- DIETs and BRCs can be vitalized by extending them support in the areas of technology, research, training and career guidance.
- Private schools, with a good track record, can also adopt at least one school and help in transfer of knowledge.

ii. Corporate social responsibility

Globally, the concept of CSR has evolved and it is no more looked as an act of philanthropy, but as interventions to create shared value, where corporate organizations and communities work together to develop programs that benefit both. However, in India, there is still a strong element of philanthropy in CSR activities, more so in areas such as education. In the context of RTE, where education is viewed as a matter of right, there is an expectation that corporate participation should be philanthropic in nature. The suggestions given below reflect this.

- CSR programs should be need-based and not on the basis of the convenience of donor organizations. The amount allocated should be used professionally.
- CSR funds should only be used to fill gaps and not create parallel structures.
- Organizations should extend their support to schools to improve the quality of education imparted by developing low-cost teaching and learning material, providing infrastructure support to improve the learning environment and setting up support cells for children from disadvantaged sections of society.

iii. Public Private Partnerships

As mentioned earlier, the term PPP in education is yet to be accepted by civil society in our country, although it has been in existence in the form of aided schools for quite some time. Diverse views are expressed about PPP, reflecting the discomfort of civil society organizations and expectations of corporate organizations.

Civil society

- PPP in “socially good” sectors should be undertaken by the public sector. Private agencies can contribute to the process, but not take the lead.
- The private sector has a very limited presence in inaccessible areas. Therefore,
providing education should largely be the responsibility of the state.

• Participation of the private sector in education should not be open to all and partners need to be selected with caution. Only organizations with credibility should be considered. Once selected, they should be given the flexibility to plan implementation of good quality education in selected areas at the cost incurred by the Government. The Government can pilot this in the new schools that need to be set up. This will have a spillover effect on existing schools. Furthermore, parameters should be set to monitor the performance of schools run by private stakeholders.

• There should be mutually defined outputs and outcomes, as well as accountability at all levels, with the implementation of transparent and efficient procedures.

Corporate and private

• Partnership with the private sector is usually seen as a source of funding, only for infrastructure development or to meet shortage of teachers.

• If the aim of the RTE Act is to improve the quality of education imparted, the private sector can be encouraged to sign PPPs and take on municipal schools. The Government can reimburse corporate organizations the cost for running these schools. In other words, this would mean following the Charter School model, which has been working successfully in the US.

• There is a shortage of 2,00,000 secondary schools in India. These cannot be set up with government resources alone. Therefore, there is a need for encouraging the private sector to open schools in remote and difficult areas or where no public education institution exists. The cost incurred by the state to educate children in public schools should be provided to corporate organizations as an incentive, and there should be reasonable returns on investment. Furthermore, opportunities need to be created whereby private players can participate on a cost-neutral basis.

• There should be clarity of roles and the process should be transparent.

The focus of MoUs should be on child-based contracts rather than on infrastructure-based ones. These suggestions have been made from different perspectives, based on experiences and beliefs. What is significant is that while there are threads of
commonalities, which can be connected, there are also contentious areas, which can be resolved through sincere dialogue.

**Role of State**

Of all the concerns expressed about the state of education in the country, perhaps the most significant one relates to the quality of education imparted. The problem has been identified and there is a fair understanding of the problem areas. What is required at this stage is a collaborative effort to address these problems. The focus therefore needs to change from provision of services to solving problems.

The framework on quality developed by UNESCO provides a sound mandate for various stakeholders to collaborate on different components.

Components of quality⁶⁵

i. Healthy, well-nourished, and motivated students

ii. Well-motivated and professionally competent teachers

iii. Active learning techniques

iv. A relevant curriculum

v. Adequate, environmentally friendly and easily accessible facilities

vi. Healthy, safe and protective learning environments (the FRESH approach) which provides:

vii. Water and sanitation facilities

• Access to health and nutrition services (e.g., micronutrient or vitamin supplements, nutrition in school, trauma counseling, etc.)

• Policies and codes of conduct (e.g., against corporal punishment), which enhance the physical, psycho-social and emotional health of teachers and learners

• Health-related content and practices leading to new knowledge, attitudes, values and life skills

viii. Adequate evaluation of environments, processes and outcomes

ix. Participatory and school-based management

⁶⁵ UNESCO
x. Respect for and engagement with local communities and cultures

xi. Adequately and equitably financed educational institutions and programs

The primary responsibility for providing quality education to all children lies with the Government. Being a concurrent subject, the central and state governments both have a significant role to play. Private sector or non-state players can at best support state players in more effective implementation of the Act.

The fact that 28 states have already formulated rules is a step forward. Incentives of the Central Government in the form of mid-day meals, text books and scholarships have helped to improve enrolment of students. However, unless issues related to quality are addressed, these will not help in improving the standard of education imparted to students, which is so important for the development of the country.

The State’s responsibilities in effective implementation of RTE Act include the following:

• Quality standards for schools — setting up norms and standards for education:
  The norms outlined in the schedule of the Act have been found wanting by a number of educationists as far as quality standards are concerned. It is important to set standards for schools to enable the educational achievement of students.
  Not only is it important to set standards, schools have to be helped to achieve these standards and be held accountable if they are not able to do so. One of the suggestions made during the course of this research — to have separate wings for improving and monitoring the education system — is worth consideration.

• Teachers’ training institutes: At present, teachers’ training is mainly provided by private players and the quality of training in these institutes is not up to the mark in all institutes. While it is important to set up more such institutes, the Government also needs to step up the quality standards of existing teachers’ training institutes and enforce an effective regulatory system to ensure that effective teaching is not compromised.

• Adequate resource allocation: There has been an increase in the Government’s
resource allocation for the education sector. There are varied opinions about the adequacy of these resources. A common perception is that more effective utilization of available resources is required. Moreover, system improvement is needed to ensure timely disbursement of funds by the Central Government as well as reporting and effective utilization of funds by the states.

- Decentralization of school-monitoring system: The RTE Act lays down specific responsibilities for SMCs and local bodies. Both these bodies are required to monitor the working of schools. Their capacities need to be developed so that they are able to efficiently and effectively execute the specific roles and responsibilities entrusted to them.

- The Government recognizes the role of non-state players. However, their participation is currently limited to providing specific services such as mid-day meals, IT education, teachers’ training, etc. The State needs to play a facilitative and enabling role in getting all the non-state players to contribute to bringing about improvement in the education system. Moreover, as suggested earlier, districts should be made units for school-improvement programs.

- Various states are at different stages of implementing the RTE Act and additional support is required by those that are struggling to fill the gaps

**Role of non-state player**

We suggest a two-pronged strategy to address the issue of quality education –district intervention and pooling of resources among the non state players. This is based on our observation that efforts made by different stakeholders are dispersed and there is not enough collaboration between them, although as individual initiatives these are adding some value to the overall education sector. This is giving rise to significant duplication of efforts and there is no comprehensive approach to deal with existing gaps.

Making of district the unit for school improvement can be fruitfull. There are several successful initiatives in different pockets. Replication of these efforts in other pockets will take time. Moreover, it may not bring about significant improvement in the
overall education system. The planning unit for improving the education system should be the district. This would be in consonance with the district planning process, which is also being promoted by the Government. Different stakeholders need to work as a team at the district level to plan for the overall improvement of public school education as well as of private schools that have limited resources but offer good quality education. By complying with the norms and standards laid down in the Act and developing quality standards, resources, skills and knowledge can be pooled to bring all schools to an optimum level. Individual services or interventions may improve some aspects of education, but overall improvement in terms of infrastructure, pedagogy, community participation and governance are required to make this change sustainable.

- Non-state players collaborate to strengthen public education system

As mentioned earlier, the role played by each non-state player is unique, yet there is significant commonality in their work. There are non-state players in every district, conducting their respective activities. There is also an adequate number of organizations that wish to improve the education system, not only because of their belief in social objectives, but also because this is the need of the hour. It has been well documented that unless the young population is provided with employable skills, the demographic advantage that we have today will be lost. Therefore, it is in everyone’s interest to make a concerted effort and optimally utilize their resources to provide quality education to our youth.

It has also been seen that although there has been an increase in the number of private schools in the last few years, 93% of the total number of schools are still run by the Government. Therefore, to make a difference to the country’s education system, there has to be a strong focus on strengthening the public education system. To achieve this, there is a need for greater dialogue between state and non-state players, to identify points of convergence and also provide constructive feedback to the Government. Non-state players have different skill sets and can make a significant contribution in specific areas. A non-state organization, which has a strong presence in a district, can
take the lead in facilitating the convergence of the efforts of other non-state players, so that the unique contribution of each stakeholder is recognized.

**Strengths of non-state players**

- a. Organizations that can contribute financial resources to support activities related to education
- b. Organizations with no experience in education but which can provide support in technical areas, e.g., system strengthening and capacity development in soft skills
- c. Resource organizations with experience in education that can contribute to pedagogy, quality standards and teachers’ training initiatives
- d. Organizations with no experience in education, but can which offer services such as infrastructure development, maintenance and running hostels
- e. Service providers in specific areas of education — IT education, mid day meals, etc.
- f. Organizations with experience in education that are engaged in independent assessments, advocacy, etc.
- g. Organizations with no experience in education that have strong skills in community mobilization
- h. Corporate organizations with or without experience in education that wish to set up educational institutions

Pooling of available resources – financial support, skills, knowledge, support services – and demand for accountability will lead to comprehensive improvement of the school system. Some possible areas of intervention for the non state players to supplement the efforts of the Government are discussed below.

- Teachers’ training

One of the key drivers to improve the quality of education in the country is teachers. The quality of overall teachers’ training institutes has been criticized and there is a strong need to develop the skills of teachers. No holding back of students and no corporal punishment, as stated in the Act, will require a significant shift in teachers’
training programs. The current emphasis on rote learning and examinations has to change to enable teachers to undertake continuous evaluation of students. Training in skills such as anger management and positive reinforcement is required. Resource organizations, academic institutions and some private schools of repute should be engaged to impart pre-service and in-service training to teachers. Furthermore, to make this effort sustainable, DIETs and BRCs need to be strengthened. Another essential element is developing leadership skills among head teachers. There have been sporadic efforts to impart training to head teachers in some schools, but these need to be scaled up through the involvement of academic institutions, e.g., management institutions.

• Mainstreaming out-of-school children

While there has been an impressive improvement in enrolment of students, there are still a large number of students who are out of school. Getting them back to school will require the collective effort of the general public as well as the intervention of NGOs to support these children in being admitted to classes that are appropriate to their age. Here special mention needs to be made of differently abled children. The Act provides for special educators in schools for such children, but enabling their access to schools will require significant additional efforts.

• Capacity development of school management bodies

There is provision for school management committees in the Act. If executed effectively, it will help in bringing about greater accountability at the school level. These committees are best positioned to ensure that the Act is implemented effectively. The committees however require capacity development to understand their roles and responsibilities as well as a grievance redressal system. Skills such as budget tracking can help in ensuring that the budget allocated to a school is utilized effectively. The committees can also make sure that there are no barriers for children belonging to different social groups. NGOs can play a significant role to empower such committees. There is also a need for independent assessment of the education system on a continued basis, to ensure that the process of improvement in schools
continues to be dynamic.

• Setting up schools where required
Several foundations have come forward to set up schools. This will facilitate access to education, provided private players follow two principles — avoidance duplication and ensure sustainability. Since the Act specifies right to education for the age group 6–14 years (the elementary level), private players should set up schools for secondary level students in areas where there is a shortage of schools.

• Improved planning, monitoring and evaluation
There is significant scope to undertake more effective planning. The current process of district planning overlooks the specific requirements of schools. Moreover, given the spread of schools, it is a challenge to them effectively. Use of technology, and improvement of financial and performance management systems can help to improve school management. Therefore, professional organizations can support state governments to improve existing systems.

• Support innovations
Constant innovations are necessary to bring about qualitative improvement in the education system. These may be in the area of development of study material, educational aids and classroom transactions which make schooling an interesting experience for all students. There have been several innovations in the area of education, which should continue to be supported. Corporate foundations and INGOs can support such efforts.

• Evidence-based advocacy
Civil society organizations have played a significant role in raising awareness of education-related issues and bringing education into the discourse. It is important that these efforts continue, and at the same time, there is constructive involvement with the Government to bring about qualitative improvement in the education system.