Chapter III

THE RIGHT TO EDUCATION IN INDEPENDENT INDIA: CONSTITUTIONAL, LEGISLATIVE, EXECUTIVE AND JUDICIAL RESPONSES

Constitutional Provisions

India gained independence from the British rule in 1947. Through the adoption of its new Constitution, India became a Federal Republic in 1950. While guaranteeing to its citizens a number of Human Rights, the Constitution of India distinguished between Fundamental Rights and Directive Principles of State Policy.\(^1\) This distinction between the two is set out in Article 37 of the Constitution, which declares that, while the Directive Principles are, “Fundamental in the governance of the country” and the State is duty bound to implement them, “They shall not be enforced in any Court”.\(^2\) There has been considerable debate over the impart of the wording of Article 37 but the mainstream understanding has been that the rights mentioned in the Directive Principles are to be implemented by the executive and legislative branches of the Indian State. They are not to be a subject matter of intervention by the Court.\(^3\) This has however been also disproved by the Supreme Court of India by incorporating a number of directions in the list of Fundamental Rights.\(^4\)

The recent judicial trends have cleared the picture that educating the children has been accepted as a national goal in India since independence. The founding fathers of India’s Constitution recognised the Right to Education as a

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1. Fundamental Rights are broadly speaking the Civil and Political Rights recognised in International Human Rights Law and also contained in part III of the Constitution and Directive Principles of the State Policy are consisting largely of Social, Economic and Cultural Rights articulated in Part IV of the Constitution.
4. The initiative of the Supreme Court of India in *Mohini Jain and Unnikrishnan* case has been reaffirmed in 86th Constitutional Amendment Act, 2002, makes the Right to Education a Fundamental Right.
crucial input for nation building. Article 45 of the Constitution, which falls within the Directive Principles, originally read that, “The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.\(^5\)

Besides, the Constitution of India has also recognised the significance of education for social transformation and committed to provide social justice to all.\(^6\) The Preamble itself affirms the determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation.\(^7\) The Right to Education forms the cornerstone of the fabric of social justice in order to materialise the provision of equality of opportunity. The objective specified in the Preamble contains the basic structure of the Constitution, which cannot be amended\(^8\) and the Preamble may be invoked to determine the ambit of Fundamental Rights and Directive Principles of State Policy.\(^9\) Article 15 (3) of the Part III while prohibits the discrimination on the grounds of religion, race, caste, colour, sex or place of birth, but enable the State to make special provisions for the welfare of women and children.\(^10\) Article 24 prohibits the employment of a child (below the age of fourteen years) in factories, mines or any hazardous work.\(^11\) Article 350-A provides the facility for instruction in mother tongue at primary stages.\(^12\) Besides these child specific Articles, many other Articles have also been incorporated in national Constitution which directly or indirectly associated with children, their development and educational status.

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8. Ibid., p. 1.
9. Ibid., p. 2.
There have been specific Amendments to the Constitution affecting the Right to Education, as can be seen in 42nd, 73rd, 74th and 86th Amendment Acts. These Amendments pertain to provisions to enable education being included in the Concurrent List, devolution of powers to Local Bodies and making Elementary Education a Fundamental Right formally.

The National Education Commission, Policies and Programmes on the Right to Education

The evolution of the new educational policy is the result of both constitutional provisions and the recommendations of various committees and commissions, particularly the Education Commission or Kothari Commission, which embodied a clear recognition of the importance of the reconstruction and development of Elementary Education in the educational system of India.

Education Commission (1964-66)

In view of the important role of education in the national development and in building up a truly democratic society, the Government considered it necessary to survey and examine the entire field of education in order to realise a well balanced, integrated and adequate system of national education capable of making a powerful contribution to all aspects of national life.\(^1\) To achieve these objectives speedily, the Government of India set up an Education Commission, in October, 1964 under the Chairmanship of Dr. D. S. Kothari, an eminent Indian scientist, to advice it, ‘on the national pattern of education and on the general principles and policies for the development of education at all stages and in all its aspects’.\(^2\)

The Commission began its task on October 2, 1964, and submitted its report on June 29, 1966 to the Union Education Minister.\(^3\) The unique feature of

\(\begin{align*}
13 & \text{ Ram Nath Sharma, Rajendra Kumar Sharma, } \textit{History of Education in India}, \text{ Atlantic Publishers and Distributors, New Delhi, 1996, p. 303.} \\
15 & \text{ Sunanda Gosh, } \textit{Education in Emerging Indian Society: the Challenges and Issues}, \text{ PHI Publication, New Delhi, 2009, p. 58.}
\end{align*}\)
Education Commission was not to limit its enquiry to specific sector or aspect of education but to have a comprehensive review of the whole educational system. Another unique feature of the Commission was its conviction that education is the most powerful instrument for the national development.\textsuperscript{16} According to the Commission, education was intended to increase productivity, develop social and national unity, consolidate democracy, modernise the country and develop social, moral and spiritual values. To achieve this, the main pillar of Indian education policy was to give free and compulsory education for all children up to the age of fourteen.\textsuperscript{17} In the foreword to the Report, the Commission wrote that the, “Indian education needs a drastic reconstruction, almost a revolution. We need to bring about major improvements in the effectiveness of Primary Education, to improve the quality of teachers at all levels and provide teachers in sufficient strength and to liquidate illiteracy.”\textsuperscript{18}

The Commission hoped that five per cent of the three to five and fifty per cent of five to six age groups will find place in nursery schools or classes by 1986. It recommends five years of good education for all children by 1975-76 and seven years of such education by 1985-86 and placed the highest priority for free and compulsory education up to the age of fourteen.\textsuperscript{19} The Commission had put forwarded many important recommendations relating availability, accessibility and quality of Primary Schools for every child without any discrimination such as the provisions for ‘common school system’, ‘neighborhood school system’, teacher’s training for improving the quality of education, child friendly curriculum and so on.


\textsuperscript{17} Marie Lall, “The Challenges for India’s Education System”, \textit{Asia Programme}, The Royal Institute of International Affairs, London, 2005. p. 2.


\textsuperscript{19} Arbinda Biswas, S.P. Agrawal, \textit{op. cit.}, pp. 352-53.
National Policy on Education (NPE, 1968)

Based on the Report and recommendations of the Education Commission (1964–1966), the Government of the Prime Minister, Indira Gandhi announced the first National Policy on Education in 1968, which called for a ‘radical restructuring’ and ‘equalise educational opportunities’ in order to achieve national integration and greater cultural and economic development.20 The policy called for fulfilling compulsory education for all children up to the age of fourteen as stipulated by the Constitution of India,21 and the better training and qualification of teachers.22

National Policy on Education (NPE, 1986)

Having announced that a new policy was in development in January, 1985, the Government of Prime Minister, Rajiv Gandhi introduced a new National Policy on Education in May, 1986.23 The new policy called for ‘special emphasis on the removal of disparities and to equalise educational opportunity’, especially for Indian women, Scheduled Tribes (STs) and the Scheduled Castes (SCs) Communities, Other Backward Classes (OBCs), minorities and disabled. To achieve these, the policy called for expanding scholarships, adult education, recruiting more teachers from the SCs, incentives for poor families to send their children to school regularly, development of new institutions and providing housing and services.24

The NPE, 1986, called for a ‘child-centered approach’25 through recognising the holistic nature of child development, viz., nutrition, health and social, mental, physical, moral and emotional development, Early Childhood Care and Education (ECCE) will receive high priority and be suitably integrated

21 Ibid., para 4.1, p. 39.
22 Ibid., para 4.2.
with the Integrated Child Development Services (ICDS), programme, wherever possible. Day-care centers will be provided as a support service for Universalisation of Primary Education (UPE), to enable girls engaged in taking care of siblings to attend school and as a support service for working women belonging to poorer sections.²⁶ NPE, 1986 has proposed a new thrust of Primary and Elementary Education. It emphasised three aspects in relation to Elementary Education:

- Universal access and enrolment;
- Universal retention of children up to fourteen years of age; and
- A substantial improvement in the quality of education to enable all children to achieve essential levels of learning.²⁷

In order to achieve these three objectives launched nationwide programme known as Operation Blackboard ²⁸(school facilities) and Non Formal Education.²⁹ The NPE also resolved that the “The New Education Policy will give the highest priority to solving the problem of children dropping out of school and will adopt an array of meticulously formulated strategies based on micro-planning, and applied at the grass roots level all over the country, to ensure children’s retention at school. This effort will be fully co-ordinated with the network of non-formal education. It shall be ensured that free and compulsory education of satisfactory quality is provided to all children up to fourteen years of age before we enter the twenty-first century. A national mission will be launched for the achievement of this goal.”³⁰ As a result a number of educational programmes and schemes were initiated nation wide.

**Operation Black Board**

One of the key programmes proposed by the NPE, 1986 that is Operation Blackboard, was launched in 1987-1988 with the aim of providing basic physical

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facilities in all Elementary Schools. The use of the term ‘operation’ implied that there was urgency in the programme, which had a predetermined time frame about its implementation. And the term ‘blackboard’ symbolised physical facilities. Hence the concept of ‘Operation Blackboard’ implied the speedy creation of minimum essential physical facilities in schools both in terms of man and material.\(^{31}\) The Scheme was formulated with an assumption that the improvement in school’s environment would increase enrolment rate, retention rate, and achievement levels of Primary School children.\(^{32}\) There are three interrelated components of Operation Blackboard:

- Provision of at least two reasonably large rooms that are usable in all weathers, with a deep veranda along with separate toilet facilities for boys and girls;
- Provision of at least two teachers, as for as possible, one of them a woman, in every Primary School;
- Provision of essential teaching and learning materials.\(^{33}\)

During 1993-94, the Scheme was extended to cover Upper Primary Schools. The Scheme included providing three rooms for such schools and additional teacher for Upper Primary Schools and a third teacher for Primary Schools with enrolment of more than hundred children.\(^{34}\) The Government of India decided to cover the Operation Blackboard Scheme in a phased manner of over a period of three years. It was decided to cover all the Primary Schools run by the Government, Local Bodies and Panchayati Raj Institutions. It was also decided to cover twenty per cent of community development blocks and municipal areas in all States and Union Territories, during 1987-88, another

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\(^{33}\) NPE, 1986, *op. cit.*, para 5.7, p. 15.

thirty per cent during 1988-89 and the remaining fifty per cent during 1989-90.\textsuperscript{35} All the States and Union Territories were asked to conduct surveys of existing facilities as on 30\textsuperscript{th} September, 1986.\textsuperscript{36} However, due to a resource crunch, it could not be implemented in all blocks by 1989-90 and was therefore continued in 1990-1991 and 1991-92.\textsuperscript{37}

For the implementation of the Scheme the responsibility was shared by the Central Government, the State Government and the Local Government. The States had been fully responsible for the construction of the school buildings. It had been emphasised that inexpensive building designs be proposed taking into consideration the agro-climate conditions and utilising the locality available materials\textsuperscript{38}. The following classifications were given to State Governments regarding the construction of school buildings:

- Each of the room to be constructed should be thirty sq. meters in area and the depth of the veranda should be approximately nine to ten feet. Even if there are two rooms existed at the recommended area, new room should be constructed;
- To inculcate desired toilet habits among children, separate toilet for boys and girls should be constructed;
- It was suggested to keep the cost of the building low to utilise the local materials;
- It should be ensured that there is inbuilt space for storage equipments;
- It was suggested to construct well plastered blackboards on the rooms as well as at the both the ends of the veranda.\textsuperscript{39}

In regard to the construction of the school buildings envisaged under the Operation Blackboard, funds had been made from National Rural

\begin{flushleft}
36 \textit{Ibid.}
37 \textit{Ibid.}
\end{flushleft}
Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP), in addition to the normal budget provisions of the State Government.\textsuperscript{40} The funds were provided to States for procurement of Teaching Learning Equipments (TLE) and payment of salaries to teachers appointed under the Scheme of Operation Blackboard.\textsuperscript{41} Community participation had been sought for land for construction of school buildings. Local community, preferably Village Education Committee (VEC) undertook the responsibilities for repairs and maintenance of building and for fencing.\textsuperscript{42} Operation Backboard eliminated the disparities in education and facilities and helped to improve the quality in publicly funded schools. By March, 1992 the Scheme had covered 4.14 lakhs (seventy seven per cent) in 5385 schools.\textsuperscript{43}

**Non Formal Education with the Assistance of the NGOs and the Non Formal Education (NFE) Centres**

Since 1979-80, India has been running a programme of NFE for children in the six to fourteen age groups, who have remained outside the formal system due to various socio-economic constraints. The Scheme was expanded in 1986-87.\textsuperscript{44} This includes the drop-outs from formal schools, the children from habitations without schools, the working children, the children who have to remain at home to do domestic chores and the girls who are unable to attend formal schools for a variety of reasons.\textsuperscript{45} It visualises NFE as a child oriented system to meet the diverse need of comparatively deprived sections of the society. Decentralised community participation through Village Education Committees (VECs) in planning, running and overseeing the NFE programme.

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\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid.
\textsuperscript{43} C.P.S. Chauhan, \textit{op. cit.}, pp. 98-99.
has been considered crucial for its success. The programme is implemented through States/ Union Territories (UTs) Government as well as NGOs like the M. V. Foundation, Rishi Valley Experimental Project, Eklavya Foundation etc. The central assistance to States/ UTs is being provided on sharing basis between the Centre and the State Governments in the ratio of 60:40 for co-educational centre and for exclusive girl’s centre 90:10. NFE is designed to overcome the shortcomings of the formal schools and make education a joyful activity. The thrust was on ten educationally backward States and the emphasis was on establishing low cost NFE Centres in un-served habitations. Over two lakh such centres were established over the years but according to a Public Report on Basic Education (PROBE, 1999), the constant criticism was found regarding their non-performance. The Scheme was completely revised as Education Guarantee Scheme (EGS) and Alternative and Innovative Education (AIE) in 2000, under the Serva Siksha Abhiyan (SSA).

Restructuring and Reorganisation of Teacher Education

The decade starting from 1960 evidences a glaring recognition of the importance of professional development of teachers. The Kothari Commission (1964-66) in the earliest policy formulation on education emphasised the need for teacher education to be brought into mainstream academic life of the universities on the one hand and of school life and educational developments on the other. The National Policy on Education, 1986, stated that improvement in status and professional competence of teachers are the cornerstone of educational reconstruction. It emphasised the significance and the need for a

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47 Ibid., pp. 208-09.
49 EGS addresses the inaccessible habitation where there is no formal school within the radius of one km. and at least 15-25 children of 6-14 years of age group who are not going to school are available.
decentralised system for the professional preparation of teachers.\textsuperscript{51} This policy was put in place proactively by the Central Government in the Eighth Five Year Plan (1992-1997) with the establishment of District Institutes of Education and Training (DIETs), Institutes of Advanced Studies in Education (IASEs) and Colleges of Teacher Education (CTEs), through the Centrally Sponsored Scheme of Restructuring and Reorganisation of Teacher Education. In the ensuring decade of 1990, further decentralisation has led to the formation of Block Resource Centres (BRCs) and Cluster Resource Centres (CRCs).\textsuperscript{52}

The Centrally Sponsored Scheme of Restructuring and Reorganisation of Teacher Education aimed at providing academic resource support to elementary and secondary teachers through training, action research and experimentation, and developing institutional infrastructure for pre- and in-service training. Expansion of schooling facilities at primary and upper primary levels has posed exceptional challenges for teacher education. Untrained/under-qualified teachers have been appointed in large numbers at the primary stage, the most crucial stage of education. Teacher shortages, ‘para-teachers’, multi-age-grade schools characterise much of the school system. Besides, with the creation of BRCs and CRCs, the scope of activities of DIETs has substantially become more important. It is noteworthy that the Government of India has sanctioned 571 DIETs till August 2009 to improve the teacher’s proficiency.\textsuperscript{53}

The Scheme has been evaluated in all the States under the coordination of the National University of Educational Planning and Administration (NUEPA). The assessments have pointed out that these institutions still lack a vision and a sense of ownership by the States as these are seen essentially as a Central Government’s initiatives.\textsuperscript{54} The challenge also remains about the status of the

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\textsuperscript{52} Ibid., p. 143.


\textsuperscript{54} Ibid.
District Institutes of Educational Training (DIETs), at the district level. It has been observed that there are wide variations exist in the nature and effectiveness of these institutes among the States in which they were set up. In each of these States, the DIETs have developed in different ways and therefore vary in terms of infrastructure, expertise and activities.\textsuperscript{55} This issue become even more severe for many DIETs, for instance, the training which the Teacher Educators receive at the National Council of Educational Research and Training (NCERT), National University of Educational Planning and Administration (NUEPA), Regional Institute of Education (RIE) etc. are not sufficiently utilised.\textsuperscript{56}

\textbf{Community Mobilisation and Participation}

Many educational innovations after the NPE, 1986 are based on the strong foundation of community support and participation. When progress of different levels is discussed and analysed, within the Project, ‘people's acceptance and participation’ is used as an indicator.\textsuperscript{57} The Shiksha Karmi Project (SKP), The Lok Jumbish (LJ) and the foundation of Village Education Committees (VECs) are the result of community mobilisation and participation for achieving Universalisation of Elementary Education (UEE).

\textbf{Shiksha Karmi Project}

The Siksha Karmi Project was started in Rajasthan in 1987 with a collaboration of the Government of India, the Government of Rajasthan and the Swedish International Development Agency (SIDA). During the first phase, (July 1987-June 1994) the expenditure was upto ninety per cent paid by the SIDA and to ten per cent by the Government of Rajasthan. However, during the second phase (July 1994-March, 1998) expenditure was shared equally between the SIDA and the Government of Rajasthan.\textsuperscript{58} In the third phase the SIDA,

\begin{itemize}
\item \textsuperscript{56} Ibid.
\item \textsuperscript{57} School Education in Uttar Pradesh Status Issues and Future Perspectives, \textit{op. cit.}, pp. 68-69.
\item \textsuperscript{58} Ramesh Chandra, \textit{Encyclopaedia of Education in South Asia}, Vol. 3, Kalpaz Publication, Delhi, 2003, p. 86.
\end{itemize}
withdrew its support for the Project. Later the British Development Aid Agency (BDAA), agreed to support for this phase.\(^{59}\)

Shiksha Karmi which means ‘education worker’, seeks to address the problem of teacher absenteeism, poor enrolment, high drop out rates and inadequate access to education by training of local ‘para teachers’ in remote, economically backward and rural areas where formal Primary Schools are either non existent or dysfunctional.\(^{60}\) Active involvement of the local communities has been the most crucial part of the project. The Shiksha Karmi is one of the most successful Primary Education projects in India. The NGOs along with the community played a pivotal role in the implementation of the Shiksha Karmi Board (SKB) and the Village Education Committees (VECs), constituted for the purpose of monitoring the school environment, arrangement of facilities and infrastructure and increased enrolment of children through school mapping and mico-planing in Shiksha Karmi Schools.\(^{61}\) Evaluations of Shiksha Karmi Project have indicated the significant achievement in bringing the children especially girls in remote regions to schools, flexi schools and low cost hostels. Learning assessments have also been positive in dispelling the myth that under educated local youth will not be able to provide quality education.\(^{62}\)

**The Mahila Samakhya (MS)**

This programme was launched in 1988, in pursuance of the goals of the New Education Policy, 1986 and the Programme of Action as a concrete programme for the education and empowerment of women in rural areas, particularly of women from socially and economically marginalised groups. Provision of educational opportunities for women and girls has been an important part of the national endeavour in the field of education since Independence. Though these endeavours did yield significant results, that gender


\(^{60}\) Ramesh Chandra, *op. cit.*, p. 91.


disparities persist, more so in rural areas and among disadvantaged communities.\textsuperscript{63}

The National Policy on Education NPE, 1986, as revised in 1992 pointed out that, “The empowerment of women is possibly the most critical pre-condition for the participation of girls and women in the educational process”.\textsuperscript{64} Therefore, the empowerment of women is seen as a critical precondition for the participation of women and girls in the education process in MS programme. The principal strategy identified for ensuring women’s participation is through mobilising and organising them into Sanghas (Collectives).\textsuperscript{65} It was decided that the Programme would be implemented through autonomous registered societies set up at States under the broad guidance of the Education Minister and the Education Secretary of the concerned State. The Project was started as a Pilot Project in Karnataka, Gujarat and Uttar Pradesh in 1989.\textsuperscript{66} Then it was extended to Bihar, Jharkhand, Madhya Pradesh, Assam, Kerala, Andhra Pradesh and Uttaranchal.\textsuperscript{67} The MS coverage till November, 2008, across eighty-nine districts in nine States is currently being implemented in a total of 28480.\textsuperscript{68} Evaluation studies have pointed out effectiveness of the programme, in developing the demand for basic education and creating a gender just society.\textsuperscript{69}

\textbf{Bihar Education Project (BEP)}

The BEP was launched in 1991 with the express purpose of bringing about quantitative and qualitative improvement in the Elementary Education system in Bihar. The Project lays emphasis on the education of deprived sections


\textsuperscript{65} The predominant composition of the Mahila Sanghas is SC/ST women, women belonging to landless and marginalised families, who are engaged in wage labour. This is the very group that is most alienated from educational and other Government programmes and processes.


\textsuperscript{67} Ibid.


of society, such as SCs, STs and women. Participatory planning and implementation are crucial ingredients of the Project. A mid-term review highlighted certain major achievements such as:

(i) A strong Mahila Samakhya component;

(ii) Organisation of Village Education Committees (VECs) and community involvement in programme implementation at grassroots level; and

(iii) Non-formal education through NGOs. The review suggested:

- Consolidation of the programme in the existing seven districts,
- Establishing strong linkages between BEP and the education system in Bihar,
- Giving greater focus to the primary stage of classes I-V,
- Building better linkages with the activities in other States under DPEP and other programmes,
- Laying down more emphasis on the Minimum Level of Learning (MLLs) and teacher training and conducting periodic base line studies.

Looking at the success it had been decided to extend the Project to the second phase of two years duration. The total outlay for the second phase (1996-98) is estimated to be rupees 613 million to be shared between the UNICEF, the Government of India and the Government of Bihar as per the existing funding formula of 3:2:1. The total Project outlay for BEP was rupees 3006.

The Lok Jumbish (LJ)

The Rajasthan Lok Jumbish (people’s movement for education for all) was launched in 1992 by the Government of India (GOI) and the Government of Rajasthan (GOR) with support from the Swedish International Development Agency (SIDA). Its main objective as stated in the 1990 Project Document,

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70 M.L. Dhawan, *op. cit.*, p. 204.
71 Ibid.
72 Ibid.
was ‘to develop, demonstrate, catalyse and transform the mainstream education system with the objective of ensuring that every child has access to basic education (Grades I to VIII) through mobilising the community.\textsuperscript{73} Intensive micro planning for community ownership, innovations for girl’s education, large scale involvement of the NGOs in project implement and the community led improvement of school facilities, are the special features of the Lok Jumbish.\textsuperscript{74} The activities of the LJ have been to include environment building, formation of village level bodies, and the improvement of school facilities and the other teaching-learning process in the schools.\textsuperscript{75} The seven guiding principles of the Lok Jumbish are:

- A process rather than a product approach;
- Partnerships;
- Decentralised functioning;
- Participatory learning;
- Integration with the mainstream education system;
- Flexibility of management; and
- Creating multiple levels of leadership committed to quality and mission mode.\textsuperscript{76}

Over the first four years of the Project from 1992-96, the enrolment rates in the LJ villages increased by twenty-four per cent. Enrolment of girls increased faster than that of boys.\textsuperscript{77} Study of Tata Institute of Social Science (TISS) shows its strength in gender equity in education.\textsuperscript{78} The Sehaj Siksha Kendras, Balika

\textsuperscript{73} Vimala Ramachandran, \textit{Lok Jumbish – Rajasthan People’s Movement for Education for All}, The World Bank, New Delhi, 2003, pp. 6-7.

\textsuperscript{74} R Govinda, \textit{Reaching the Unreached Through Participatory Planning: School Mapping in Lok Jumbish in India}, National University of Educational Planning and Administration (NUEPA), New Delhi, 1999, pp. 21-27.

\textsuperscript{75} Ibid.

\textsuperscript{76} Ibid.

\textsuperscript{77} Ramesh Chandra, \textit{op. cit.}, p. 99.

\textsuperscript{78} Amarjeet Sinha, \textit{op. cit.}, p. 269.
Sikshan Shivir and Kishori Munch (as part of the LJ Project), have been very successful in promoting girl’s education in all over the nation.\textsuperscript{79}

**Andhra Pradesh Primary Education Project (APPEP)**

The Project was started with an objective of improving Primary Education. Teachers training and school building construction are two major component of the Project.\textsuperscript{80} The APPEP practised in the south central State of Andhra Pradesh, with a female literacy of just thirty-four per cent adopts a two-pronged strategy of improving classroom transaction by training teachers and giving a fillip to school construction activities. The Project has trained 80,000 teachers in twenty three districts and more than 3,000 teaching centres have become operational. The Project was assisted by the Official Development Assistance (ODA) with an estimated outlay of rupees 1000 in the Eighth Five Year Plan.\textsuperscript{81}

After the BEP, the LJ and the APPEP another World Bank aided Project called, **Uttar Pradesh Basic Education Programme (UPBEP)** was launched by the Government of India in June, 1993 in Uttar Pradesh. The progress of the implementation of the Project is being discussed in detail in the chapter, based on educational programmes and policies in UP.

**District Primary Education Programme (DPEP)**

The centrally sponsored scheme of the District Primary Education Programme was launched in 1994, as a national initiative to revitalise the Primary Education system and to achieve the objective of Universalisation of Elementary Education (UEE) through district level interventions. With the assistance of World Bank and several International Organisations the DPEP had been initiated in forty two districts by 1994 of seven States of Assam, Haryana,
Madhya Pradesh, Karnataka, Maharashtra, Tamil Nadu and Kerala.\textsuperscript{82} Presently the DPEP is in operation in 273 districts spread over nineteen States.\textsuperscript{83} The DPEP adopts a holistic approach to universalise access, retention and improvement in learning achievement and to reduce disparities among several groups. The overall goal of the programme is the reconstruction of Primary Education system to operationalise the strategy of Universalisation of Elementary Education (UEE), as envisaged in 1986 through decentralised planning, management, disaggregated target setting, community mobilisation and population specific planning.\textsuperscript{84} The DPEP emphasised on:

1. Contextuality, i.e. giving primacy to local needs;
2. Reduction of existing gender and social disparities in educational access;
3. Provision of alternative schooling of comparable standards as to the disadvantaged groups;
4. Obtaining genuine community involvement in running of schools;
5. Empowerment and capacity building at local level;
6. Addressing access, retention and quality issues;
7. Devising an appropriate fund flow mechanism from centre to the states.\textsuperscript{85}

The DPEP is an attempt to initiate a process of planning from the grass-roots. Under this Scheme districts are categorised into three groups.\textsuperscript{86}

1. High literacy districts in which access and enrolment are almost universalised, need for education is high;
2. Districts in which total literacy campaigns have been successfully leading to an enhanced demand for Elementary Education;
3. Low literacy districts in which educational facilities are unsatisfactory and community awareness is also low.\textsuperscript{87}

\textsuperscript{83} Ibid.
\textsuperscript{84} Jagdish Chand, \textit{Education in India after Independence}, Asha Publishing House, Delhi, 2007, p. 80.
\textsuperscript{86} C.P.S. Chauhan, \textit{op. cit.}, p. 102.
Under the Scheme, districts identify their needs and formulate a plan. Each district is expected to undertake and complete studies specific to the area which one is to be emphasised in the plans. The problems of districts may vary. Some of them can be resolved at the district level while others require interventions at the State level. The basis for evolving such intervention strategies is the studies undertaken by them. In the year of 1993, all the DPEP districts have initiated several studies in the areas of learner achievement, teacher motivations, problems specific to deprived groups, textbooks and curriculum issues, gender issues and finance. These studies have come out with a number of strategies to improve the efficiency of the system.  

The programme has drawn inspiration from earlier national experiences and goals for the UEE, which is being made right from the independence but still remains elusive. The additional participation in Elementary Education has to come from social strata and regions which are more difficult to reach. Finally the DPEP has derived its basis from the National Policy on Education (NPE), 1986 para 7.4.6 Programme of Action (POA), 1992, which read as follows;

“Further effects would be made to develop district specific projects, with specific activities clearly defined responsibilities, time scheduled and specific targets. Each district project will be prepared within the major strategy frame work and will be tailored to the specific needs and possibilities in the districts. Apart from effective UEE the goals of each project will include the existing disparities in educational access, the provision of alternative systems of comparable standards to the disadvantaged groups, a substantial improvement in the quality of school facilities, obtaining a genuine quality involvement in the running of the school and building up local level capacity to ensure effective decentralisation of education planning.”

87  Ibid.  
The programme components of the DPEP include the construction of class-rooms and new schools, opening of Non Formal/Alternative Schooling Centres, appointment of new teachers, setting up early child-hood education centres strengthening of State Council of Educational Research and Training (SCERTs), District Institute of Educational Training (DIETs), setting up of Block Resource Centre (BRC), Cluster Resource Centre (CRC), teachers training, development of teaching –learning material, research based interventions, special interventions for promoting education of disadvantaged groups, girls, SCs/STs, etc. Initiatives for providing integrated education to disabled children and distance education for teacher’s training have also been incorporated in the DPEP. 90

The DPEP even goes beyond the conventional packages of opening new schools and appointing new teachers, as it addresses the issues of content, process, quality and equity in education. 91 Under the programme parameters, investment per district is limited to rupees forty crore over a project period of five to seven years. There is ceiling of 33.3 per cent on civil works component and six per cent on management cost. The remaining amount is required to be spent on quality improvement activities. 92 The programme is periodically reviewed through the mechanism of Joint Review Missions (JRM), Project Management Information System (PMIS), Educational Management Information System (EMIS), Programme Impact Studies etc., a midterm in depth review of DPEP phase first, second and third states have also been carried out by the joint Review Missions in 1997-98,1999-2000,2003-04,2004-05 and 2005-06. 93 The reviews and various evaluation studies of the programme have brought out

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significant increase in enrolment, improvement in learning achievement, reduction in repetition rate and dropouts.\textsuperscript{94}

**Mid-Day Meal Scheme (MDMS)**

Another centrally sponsored intervention is the MDMS. It was launched on August 15, 1995, with the aim to give a boost to Universalisation of Primary Education (UPE) by increasing enrolment, retention and attendance and simultaneously impacting on nutritional levels of students in primary classes.\textsuperscript{95}

Mid Day Meal (MDM) is playing an important role in improving the nutritional status of children, or at least eliminating ‘classroom hunger’.\textsuperscript{96} The MDMS can also play useful socialisation roles, especially in India’s class and caste–ridden society. Sharing meal with children from diverse caste and class background can help children to overcome traditional social prejudices.\textsuperscript{97} The objectives of the Scheme are;

- Improving the nutritional status of children in classes’ I-V in the Government, the Local Body, the Government aided schools, the Education Guarantee Scheme (EGS) and the Alternative Institute of Education (AIE) centres;

- Encouraging poor children, belonging to disadvantaged sections, to attend schools more regularly and help them to concentrate on classroom activities\textsuperscript{98};

- Providing nutritional support to children of primary stage in drought-effected areas during summer vacations.

\textsuperscript{94} Ibid., p. 226.
\textsuperscript{95} The official name of this scheme is National Programme of Nutritional Support for Primary Education but it is widely known as Mid Day Meal Scheme.
\textsuperscript{96} Kumar Rana, *The Possibilities of Mid Day Meal Programme in West Bengal*, Pratichi Trust, West Bengal, 2005, p. 22.
\textsuperscript{98} Fahimuddin, *Nutritional Support to Primary Education*, Anmol Publications, New Delhi, 2003, p. 35.
The Scheme was initially started in 2408 blocks and by the year 1997-98 the Scheme was introduced in all blocks of the country. It was further extended in 2002 to cover not only children in classes I-V of the Government, the Government aided and the Local Body Schools but also children studying in the EGS and the AIE centres. The central assistance under the Scheme consisted of free supply of food grains at hundred grams per child, per school per day, and subsidy for transportation of food grains up to maximum of rupees fifty per quintal. In September 2004 the Scheme was revised to provide cooked mid-day meal with 300 and eighth to twelve grams of protection to all children studying in class I-V. Today the MDMS provides a cooked meal to approximately 120 million school children, making it the largest school feeding programme in the world. In addition to free supply of food grains, the revised Scheme provided central assistance for:

- Cooking cost at rupees one per child per school day;
- Transport subsidy was raised from the earlier maximum of rupees fifty per cent per quintal to rupees hundred per quintal for special category states, and rupees seventy five per quintal for other states;
- Management, monitoring and evaluation costs at twenty per cent of the cost of food grains, transport subsidy and cooking assistance;
- Provision of mid day meal during summer vacation in drought effected areas.

In July 2006, the Scheme was further revised to provide assistance for cooking cost at the rate of rupees 1.8 per child/school day for States. In the

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99 India 2008: A Reference Annual, op. cit., p. 221.
101 Things began to change after November 28, 2001, when SC order in the Right to Food case directed that all states to provide ‘cooked meals’ case refers to a public interest litigation officially known as People’s Union for Civil Liberties v. Union of India and Others.
North Eastern Region, provided the NER States contribute rupees 0.20 per child/school day, and rupees 1.50 per child/school day for other States and the Union Territories (UTs), provided that these States and UTs contribute rupees 0.50 per child/school day. In October 2007, the Scheme has been further revised to cover children in upper primary (classes VI to VIII) initially in 3479 Educationally Backwards Blocks (EBBs). Around 1.7 crore upper primary children are expected to be included by this expansion of the Scheme. The programme was extended to all areas across the country from 2008-09. The calorific value of a mid-day meal at upper primary stage has been fixed at a minimum of 700 calories and twenty grams of protein by providing 150 grams of food grains (rice/wheat) per child/school day.

However, the consumption of mid-day meals in the Primary Schools appears to be heavily under recorded in the National Sample Survey data so it is hard to verify the real impact of MDMS on school attendance, but what is encouraging is the increase in the enrolments of girls. The independent studies show that Mid Day Meal Scheme has made positive intervention in the Universalisation of Primary Education by increasing enrolment and attendance. The increase has been more marked with respect to girls and children belonging to SC/ST categories. It has also points out that MDMS has contributed to reduction in teacher absenteeism and the narrowing of social distances but unable to ruled out the stable form of caste prejudices and social discriminations. As the evidences shows some upper caste parents send their children with packed food or asked them to come home for lunch.

105 Ibid., p. 82.
106 Reetika Khera, op. cit., p. 89.
Most of the studies such as Lok Adhikar Network Study (LANS) 2002, the Centre for Equity Studies (CES) Survey in 2003, and the Samaj Pragati Sahyog (SPS) Survey in 2005 recorded a thirty six, nineteen and thirty eight percent increase respectively.\textsuperscript{109} Similarly there is a greater impact on the enrolment of children from disadvantaged families; SCs, STs and the poor.\textsuperscript{110} Many of these studies also hint at an improvement in attendance rates as well as retention rates. However, since both are difficult to measure, the evidence remains inconclusive.\textsuperscript{111} Since, it covered 9.53 laks Primary Schools/sections and EGS/AIE and 1194 crore children by 2004-05.\textsuperscript{112} The then Finance Minister, has announced in the union budget 2007-08 that the mid-day meal Scheme will be started in upper primary classes in 3420 seven Educationally Backward Blocks (EBBS) in 2007-08.\textsuperscript{113}

**Sarva Shiksha Abhiyan (SSA)**

The Government of India has launched a new programme in 2001, as a result of the emphasis given on Elementary Education in Ninth Five Year Plan (1997-2002), known as Sarva Shiksha Abhiyan to achieve the goal of UEE of satisfactory quality by 2010 with the Central and State Governments in partnership with the community. The SSA is a historic stride towards achieving the long cherished goal of UEE through a time bound integrated approach. The SSA, which promises to change the face of the Elementary Education sector of the country, aims to provide useful and quality Elementary Education to all children in the six to fourteen age group by 2010\textsuperscript{114}. On the whole, the SSA is an effort to recognise the need for improving the performance of the school system.

\textsuperscript{109} Reetika Kher, Economic and Political Weekly, *op. cit.*, p. 4745.
\textsuperscript{110} Indian Institute of Dalit Studies conducted a survey in Aandhra Pradesh, Bihar, Rajasthan, Tamil Nadu and Uttar Pradesh (531 villages, 30 districts in April to June in 2003), in Reetika Kher, Economic and Political Weekly, *op. cit.*, p. 4744.
\textsuperscript{111} Dreze Jean, “Diversity in Equality”, *Hindustan Times* (New Delhi), July 15th, 2003
\textsuperscript{112} Ibid.
\textsuperscript{113} India 2008: A Reference Annual, *op. cit.*, p. 225.
\textsuperscript{114} Ramesh Chandra, *op. cit.*, p. 221.
and to provide community owned quality Elementary Education in mission mode. It also envisages bridging of gender and social gaps.\textsuperscript{115}

**Objectives of SSA**

- All children in school, through the regular schools, Education Guarantee Centres (EGCs), Alternate Schools (ASs) and to School camp by 2003;
- All children complete five years of Primary Schooling by 2007;
- All children complete eighth years of schooling by 2010;
- Focus on Elementary Education of satisfactory quality with emphasis on education for life;
- Bridge all gender and social category gaps at Primary Education by 2007 and at Elementary Education level by 2010;
- Universal retention by 2010.\textsuperscript{116}

The Programme covers the entire country with special focus on educational needs of girls, SCs/STs, minority and the other children of the weaker sections in difficult circumstances. The Programme seeks to open new schools in those places which do not have schooling facilities and strengthen existing school infrastructure through provision of additional class rooms, toilets, drinking water, maintenance grant and school improvement grant. A number of initiatives, including distribution of free textbooks benefit these children under the Programme. The SSA also seeks to provide computer education even in the rural areas\textsuperscript{117}.

The assistance under the Programme of Sarva Shiksha Abhiyan was on 85:15 sharing arrangement during the Ninth Five Year Plan, 75:25 sharing arrangement during the Tenth Plan (2002-2007), and 50:50 sharing thereafter.


\textsuperscript{117} K.R. Gupta, Amita Gupta, *Concise Encyclopaedia of India*, Atlantic Publishers and Distributors, New Delhi, 2006, p. 578.
between the Central Government and the State Government. The funding pattern of SSA has been modified in a tapering off ratio between the Centre and the States. Starting with the ratio of 65:35 in the first two years of Eleventh Five Year Plan (2007-2011), it has become 50:50 in 2011-12. The strategy will be to close the infrastructure gaps as well as to improve the quality of learning in the Government and Government-aided schools in which more than eighty per cent of children study.\footnote{Ministry of Human Resource Development, \textit{Towards Expansion of Access, Equity and Improvement of Quality in Education: Overview of the Annual Report}, 2007-08, MHRD, Government of India, New Delhi, 2000, pp. 78-79.} The SSA is making significant progress in achieving the goal of UEE by making all the children in school, improving school infrastructure, bridging gender and social gap, providing education of satisfactory quality, ensuring enabling learning conditions, teacher requirement, development and training.\footnote{Ministry of Human Resource and Development \textit{10th Joint Review Mission of Sarva Shiksha Abhiyan}, MHRD, Government of India, New Delhi, 2009, pp.12-38.}

As a case of recent educational initiatives the two notable interventions to improve girls’ education have been adopted which known as the Kasturba Gandhi Balika Vidyalayas (KGBVs) and National Program for Education of Girls at Elementary Level (NPEGEL).\footnote{National University of Educational Planning and Administration, \textit{Status of Education in India: National Report}, Ministry of Human Resource Development, Government of India, New Delhi, 2009, p. 18.} The Cabinet Committee on Economic Affairs approved revision of the existing norms of SSA programme to conform with the RTE Act (Right of Children to Free and Compulsory Education Act), 2009. According to the Ministry of Human Resource Development (MHRD), the Sarva Shiksha Abhiyan (SSA) Programme, a major flagship programme of the Government of India to universalise Elementary Education in the country, will serve as the main vehicle for the implementation of the RTE Act.\footnote{\textit{Ibid.}}

The vision of the Government of India is follows:

(i) Revision of SSA norms, including provisions for teachers and classrooms, support for academic supervision, research, evaluation and monitoring,
opening of Kasturba Gandhi Balika Vidyalayas (KGBVs) to bring them in conformity with the provisions of the RTE Act and implementation of the combined RTE-SSA programme. New norms under SSA for uniforms, transportation costs and residential schools to implement the combined RTE-SSA programme have also been included.

(ii) Revision of the funding pattern for the combined RTE-SSA programme between the Centre and the States in the ratio of 65:35 for all States/UTs; in the case of eighth States of NER the existing sharing pattern of 90:10 would however be continue.¹²²

As a recent phase of the developmental programmes of Elementary Education the National Programme for Education of Girls at Elementary Education (NPEGEL), Kasturba Gandhi Balika Vidyalaya Scheme (KGBVS) and the Saakshar Bharat are being run by the Central Government in almost all the States of India.

The Judicial Responses Initiating the Right to Education

The Supreme Court of India seems to have felt compelled to provide redress to citizen disappointed with the efforts of the successive governments in securing constitutional goals. The failures of the executive and legislative branches of the Indian Government have opened the way of Court’s intervention, known to be Public Interest Litigation (PIL) Movement.¹²³ That is why many of the Socio-economic rights given under the Part IV of the Constitution of India are being shifted to Part III under the Chapter of Fundamental Rights and the Right to Education (class I-VIII) is one of them.

Judicial interpretations have also brought alive many an Article of the Constitution, which if read literally may seem to be a colourless Article of relevance to the Right to Education, for instance, is the wide interpretation given

to the words, ‘personal; liberty’. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, 1981, Justice Bhagwati observed:

“The Fundamental Right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings.”

In the 1990s, the Supreme Court has again an occasion to adjudicate the constitutional status of the Right to Education in the context of two Public Interest Litigation (PIL) cases – *Mohini Jain v. state of Karnataka* and *Unni Krishnan J.P. v. State of Andhra Pradesh*, which challenged the constitutionality of state legislation enacted to curb the exercise ‘capitation fees’ levied by private institutions on higher education. What is interesting is that both of these cases dealt with issues of higher education, but resulted ultimately in decisions affecting Primary Education and directly boost up the claim for the Right to Education in India the main ideas of the cases are mentioned below:

a) *Mohini Jain v. State of Karnataka*

In this case, while dealing with the constitutional status of the Right to Education, the Supreme Court referred, to the Preamble of the Constitution which: promises to secure to all citizens of India ‘justice –social, economic and political’, ‘liberty of thought, expression, belief, faith and worship’, provides for

125 AIR 1981 SC 745.
126 AIR 1992 SC 1858.
127 AIR 1993 SC 2178.
128 The case of Miss *Mohini Jain v. State of Karnataka* was related to the admission of her as she was selected for MMBS course but was asked to pay a tuition fee of rupees 60,000 per annum and a capitation fee of four and half lacks.
‘equality of status and of opportunity’, and assures the dignity of the individual. The Court also referred to the Articles 21\textsuperscript{129}, 38\textsuperscript{130}, 39(a)\textsuperscript{131}, 39(f)\textsuperscript{132}, 41\textsuperscript{133} and 45\textsuperscript{134} of the Constitution of India. After referring to the above given constitutional provisions, the Court observed that:

“The Right to Education has not as such been guaranteed as Fundamental Right under part III of the Constitution but reading the above quoted provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education to its citizens.”\textsuperscript{135}

The Court made it clear that:

“The dignity of man is inviolable. It is the duty of the state to respect and protect the same. It is primarily education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy percent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with this hope that Article 41 and 45 were brought in Chapter IV of the Constitution. An individual can not be assured of human dignity unless his personality is developed and the only way to that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises on, “Education shall be directed to the full development of the human personality…”\textsuperscript{136}

By mentioning of its earlier observation regarding Right to Life with human dignity and Directive Principles of State Policy in \textit{Bandhua Mukti Morcha v.}
Union of India\textsuperscript{137} the Court has given its final remark that the Right to Education flows directly from the Right to Life. It observed:

“The Right to Education flows directly from Right to Life. The Right to Life under Article 21 and the dignity of an individual can not be assured unless it is accompanied by the Right to Education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens”\textsuperscript{138} The Court continued to observe that the, “Right to Education, therefore, is concomitant to the Fundamental Rights enshrined under the Part III of the Constitution”\textsuperscript{139}

\textbf{b) Unnikrishan v. State of Andhra Pradesh}

The basic question that whether the Constitution of India guarantees a Fundamental Right to Education to its citizens or not came again for consideration before the Supreme Court in \textit{Unnikrishnasn v. State of A.P.}\textsuperscript{140} While addressing the question that whether life which means to live with dignity will take within its ambit education as well or not, the Court referred and reaffirmed the observations of \textit{Bandhua Mukti Morcha}\textsuperscript{141} and \textit{Mohini Jain} cases\textsuperscript{142} which declare that Right to Life is the compendious expression for all those rights. They are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to peruse. And that is why the Right to Education directly flows from Right to Life. The Right to Life under Article 21 and the dignity of an individual can not be assured unless it is accompanied by the Right to Education.\textsuperscript{143} Furthermore the Supreme Court expressed its frustration at the obvious neglect of Article 45 in the following words:

\begin{itemize}
  \item \textsuperscript{137} \textit{AIR} 1984 SC at 811-812.
  \item \textsuperscript{138} \textit{AIR} 1992 SC 1864.
  \item \textsuperscript{139} \textit{Ibid.}
  \item \textsuperscript{140} Writ petitions were filed by private educational institution engaged in imparting medical and engineering education calling in question the \textit{Mohini Jain} judgment.
  \item \textsuperscript{141} \textit{AIR} 1984(1) SC 802.
  \item \textsuperscript{142} \textit{AIR} 1992 SC 1858.
  \item \textsuperscript{143} M. Afzal Wani, \textit{Constitutionalism and Education Policy: A Study of the Rationale and Dimensions of Right to Education}, Metropolitan Books, New Delhi, 1999, p. 22.
\end{itemize}
“It is noteworthy that among the several Articles in Part IV, only Article 45 speaks of a time limit; no other Article does…does not the passage of 44 years more than the four times the period stipulated in Article 45 convert the obligation created by the Article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India disclosed an inversion of priorities indicated by the Constitution”.

The Court pointed out that the rights enshrined in the Directive Principles are both important for governance and instrumental in construing the content of Fundamental Rights. The court interpreted that according to the constitutional provisions every child of country has a ‘Right to Free Education’ until the age of fourteen, and his Right to Education thereafter is subject to the limits of economic capacity and development of State.

The Unnikrishan and Its Immediate Consequences

The immediate effect of the decision was that any child below the age of fourteen who was denied of facilities for Primary Education could approach Court for a writ of mandamus directing the authorities to initiate appropriate measures. That has proved a powerful weapon for the members of civil society and Non Governmental Organisations (NGO’s) to utilise this decision as a strategic tool to push the executive and legislature towards serious action on Primary Education.

With the passage of time this issue has gained momentum and various NGO’s, independent actors and educationists have accelerated the movement for a Constitutional Amendment guaranteeing the Right to Education. In 1997, responding to the movement generated by such groups, the Central Government introduced the Constitution (Eighty Amendment) Bill, 1997, which sought to make the Right to Education a Fundamental Right. The Bill was referred to a Parliamentary Committee but due to a change of Central Government it could

144 AIR 1993 SC 2232.
145 Ibid., 2230.
146 Ibid., 2253.
not be passed and was reintroduced in National Democratic Alliance (NDA) Government as the Constitution (Ninety –third Amendment) Bill, 2001, and transformed as Constitution (Eighty-sixth Amendment) Act, 2002. The Constitution (Ninety third Amendment) Bill proposed three separate amendments to the text of the Constitution:

- The insertion of a new Article 21-A;
- An amendment to Article 45; and
- The insertion of a new clause (k) to Article 51-A.\(^{147}\)

The Bill proposed the following language for a new Article namely: Article 21-A that, “The State shall provide free and compulsory education to all the children of the age of six to fourteen years in such manners as the State may, by law, determine”.\(^{148}\) It further proposed that the previous language of Article 45 had to be omitted and a following new Article is substituted for the existing Article 45, “Provision for early childhood care and education to children below the age of six years: the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.\(^{149}\) In the Article 51-A of the Constitution an additional clause (k) was proposed that, “A parent or guardian shall provide opportunities for education to his child or, as the case may be, award between the age of six and fourteen years”.\(^{150}\)

**Critique and Reactions to Ninety third Amendment Bill**

These proposed amendments have been strongly criticised by the social activists, the educationists and the NGO’s for attempting to dilute the spirit of Article 45 by restricting the scope of the Right to Education to children between

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\(^{147}\) Article 51-A deals with the Fundamental Duties of Indian citizens.


the ages of six to fourteen instead of covering all children below the age of fourteen.\textsuperscript{151} There were the following criticisms of the provisions of the bill:

1. The bill seeks to make free and compulsory education a Fundamental Right only for the children to those between the age of six to fourteen years and not for the children between the ages of zero to six years. However, in the Unnikrishnan judgment, the Supreme Court had clearly held that every child below the age of fourteen years had a Fundamental Right to Primary Education. Therefore, the provision dilutes the judgment and can be termed regressive. In fact, the Right to Education should be extended to the group of eighteen years.

2. The provision for Early Childhood Care and Education (ECCE) for the age group of zero to six years has been inserted in the Directive Principles of the State Policy which are not compulsorily enforceable. It is widely recognised that the period from three to six years is crucial for the development of the child’s mental faculties. ECCE should also be the part of Fundamental Right to Education then only the Right to Education would be successful.

3. The Bill was also heavily criticised for its failure to allocate sufficient financial resources for the implementation of constitutional Right to Education. The financial memorandum of the Bill demands that a sum of rupees 9,800 crores would be provided over the next ten years for the purpose of implementation. It was criticised that even the expert body set up by the NDA Government itself in 1999, (the Tapas Majumdar Committee), had estimated that a sum of rupees 14,000 crores would be required over the next ten years to fully implement the Right to Education.\textsuperscript{152}


4. The Bill imposes an obligation to parents to send their children (between the ages of six and fourteen) to school by including it as a Fundamental Duty under Article 51-A. It has been apprehended that the Government would use this provision in transferring its primary obligation to provide education to the poor parents. Other noted that new Article 51-A (k) might be brought prosecution of parents from the lower economic strata as was done between 1951 and 1971. In replying to these questions in the Lower House of the Parliament, the Human Resource Minister, Dr. Murli Manohar Joshi, specifically assured the House that no prosecution would be brought under the Article 51-A(k).\footnote{Vijayashri Sripati, Arun Kumar Thiruvenkadam, “India: Constitutional Amendment Making the Right to Education a Fundamental Right”, International Journal of Constitutional Law, Vol. 2, No.1, 2004, pp.150 -151.}

5. The criticism was also brought to front on the language of a new Article 21-A which states, “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may by the law, determine. This discretion will enable the Government to justify cheap and –low cost alternatives in the name of education as the enjoyment of this right would depend upon the whims and fancies of Government."\footnote{T.K. Rajlakshmi, “Passing the Buck”, Frontline, Vol. 23, No. 19, 2006, p. 106.} That would be a jolt to right to quality education to all children without any discrimination. In addition to that the State can show its arbitrations in formulating the legislation relating to the Right to Education what was happened between the periods of 2002 to 2006.\footnote{Ibid.} The centre has tried to give back on its commitment to legislate a bill guaranteeing the Fundamental Right to Education. The Government has circulated a model bill under the title of ‘Model Right to Education Bill’, 2006 rather than passing legislation at the centre. It expects State Governments to draft their own law relating to free and compulsory education based on this model.\footnote{Ibid., p. 107.}
Right to Education Act (2009)

After much discussion and consultation Article 21-A was inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002, which provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right. Consequently, the Right of Children to Free and Compulsory Education Act, or Right to Education Act (RTE) has been enacted by the Indian Parliament on 4th August, 2009, describes the modalities of the provision of free and compulsory education for children between six and fourteen under Article 21-A of the Constitution of India. India became one of 135 countries to make education a Fundamental Right of every child when the act came into force on 1st April 2010157 by a speech by the Prime Minister. In his speech, Manmohan Singh, the Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education, an education that enables them to acquire the skills, knowledge, values and attitudes, necessary to become responsible and active citizens of India."158

Main Features of the Right to Education Act (2009)

The RTE Act is a detailed and comprehensive piece of legislation which includes provisions related to schools, teachers, curriculum, evaluation, access and specific division of duties and responsibilities of different stakeholders. Key features of the Act include:

1. Every child from six to fourteen years of age has a right to free and compulsory education in a neighbourhood school till completion of Elementary Education.159

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157 The Hindu (New Delhi), 1st April, 2010, also see The Hindu (New Delhi), 2nd April, 2010.
2. Private schools must take in a quarter of their class strength from `weaker sections and disadvantaged groups, sponsored by the Government.\textsuperscript{160}

3. All schools except private unaided schools are to be managed by School Management Committees with seventy five per cent parents and guardians as members.\textsuperscript{161}

4. All schools except Government schools are required to be recognised by meeting specified norms and standards within three years to avoid closure.\textsuperscript{162}

Thus the salient features of the Right of Children for Free and Compulsory Education Act (2009) provide that:

- Free and compulsory education to all children of India in the six to fourteen age group;
- No child shall be held back, expelled, or required to pass a board examination until completion of Elementary Education;
- A child above six years of age has not been admitted in any school or though admitted, could not complete his or her Elementary Education, then, he or she shall be admitted in a class appropriate to his or her age; provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed, provided further that a child so admitted to Elementary Education shall be entitled to free education till completion of Elementary Education even after fourteen years;
- Proof of age for admission: For the purposes of admission to Elementary Education. The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths

\textsuperscript{160} Ibid., Section 12, (1) (c), p. 5.
\textsuperscript{161} Ibid., Section 21, (1), p. 7.
\textsuperscript{162} Ibid., Section 19, (2), p. 2.
and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed;

- No child shall be denied admission in a school for lack of proof of age;
- A child who completes Elementary Education shall be awarded a certificate;
- Calls for a fixed student-teacher ratio;
- Will apply to all of India except Jammu and Kashmir;
- Provides for twenty five per cent reservations for economically disadvantaged communities in admission to class one in all private schools;
- Mandates improvement in quality of education;
- School teachers will need adequate professional degree within five years or else will lose job;
- School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
- Financial burden will be shared between the State and the Central Government.163

A Critique of the RTE Act (2009)

The RTE Act has been criticised by a diverse array of voices, including some of the best economists. Ministry of Human Resource and Development (MHRD) was perhaps keen to achieve this legislation in the first hundred days of the second term of the United Progressive Alliance (UPA) and chose to ignore many important difficulties of the Act. The most important difficulties are:

Inputs and Outcomes

The Act is excessively input-focused rather than outcomes-oriented. Even though better school facilities, books, uniforms and better qualified teachers are

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important, their significance in the Act has been overestimated in the light of inefficient, corrupt and unaccountable institutions of education.

**School Recognition**

The Act unfairly penalises private unrecognised schools for their payment of market wages for teachers rather than elevated civil service wages. It also penalises private schools for lacking the infrastructural facilities defined under a Schedule under the Act. These schools, which are extremely cost efficient, operate mostly in rural areas or urban slums, and provide essential educational services to the poor. Independent studies by Geeta Kingdon, James Tooley and Annual Status of Education Report (ASER), 2009 suggest that these schools provide similar if not better teaching services when compared to Government schools, while spending a much smaller amount. However, the Act requires Government action to shut down these schools over the coming three years. A better alternative would have been to find mechanisms through which public resources could have been infused into these schools. The exemption from these same recognition requirements for Government schools is the case of double standards with the public sector being exempted from the same ‘requirements’. 164

**School Management Committees (SMCs)**

By the Act, SMCs are to comprise of mostly parents, and are to be responsible for planning and managing the operations of Government and aided schools. SMCs will help increase the accountability of Government schools, but SMCs for Government schools need to be given greater powers over evaluation of teacher competencies and students learning assessment. Members of SMCs are required to volunteer their time and effort. This is an onerous burden for the poor. Payment of some compensation to members of SMCs could help increase

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the time and focus upon these. Turning to private but `aided’ schools, the new role of SMCs will lead to a breakdown of the existing management structures.165

Teachers

Teachers are the cornerstone of good quality education and need to be paid market-driven compensation. But the Government has gone too far by requiring high teacher salaries averaging close to rupees twenty thousand per month. These wages are clearly out of line, when compared with the market wage of a teacher, for most schools in most locations in the country. A better mechanism would have involved schools being allowed to design their own teacher salary packages and having autonomy to manage teachers. A major problem in India is the lack of incentive faced by teachers either in terms of carrot or stick. In the RTE Act, proper disciplinary channels for teachers have not been defined. Such disciplinary action is a must given that an average of twenty five percent teachers are absent from schools at any given point and almost half of those who are present are not engaged in teaching activity. School Management Committees need to be given this power to allow speedy disciplinary action at the local level. Performance based pay scales need to be considered as a way to improve teaching.166

Twenty Five Per cent Reservation in Private Schools

The Act and the Rules require all private schools (whether aided or not) to reserve at least twenty five percent of their seats for economically weaker and socially disadvantaged sections in the entry level class. These students will not pay tuition fees. Private schools will receive reimbursements from the Government calculated on the basis of per-child expenditure in Government schools. Greater clarity for successful implementation is needed on:

- How will `weaker and disadvantaged sections’ be defined and verified?
- How will the Government select these students for entry level class?

165 Ibid.
166 Ibid.
• Would the admission lottery be conducted by neighbourhood or by entire village/town/city? How would the supply-demand gaps in each neighbourhood be addressed?

• What will be the mechanism for reimbursement to private schools?

• How will the Government monitor the whole process? What type of external vigilance/social audit would be allowed or encouraged on the process?

• What would happen if some of these students need to change school in higher classes?  

Moreover, the method for calculation of per-child reimbursement expenditure (which is to exclude capital cost estimates) will yield an inadequate resource flow to private schools. It will be tantamount to a tax on private schools. Private schools will en dup charging more to the seventy five percent of students – who are paying tuitions – to make space for the twenty five percent of students they are forced to take. This will drive up tuition fees for private schools (while the Government schools continue to be tax payer funded and essentially free).  

The Act sets no deadline for the UEE from Classes I to VIII. Different deadlines have been given for different purposes, which are not mutually consistent and in the absence of any plan or resources required for achieving them, it is doubtful that they would be adhered to.  

The Right to Education Act should have covered the entire school education system including one or two years of Pre-Primary, Primary, Elementary and Secondary Education. The distinction between Pre-Primary, Elementary and Secondary Education may be valid from the pedagogic point of view, but this distinction becomes arbitrary when it comes to guaranteeing right of education universalising school education and ensuring its

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quality. There are strong reasons for providing free and compulsory education preferably for two years and at least for one year at the Pre-Primary level, and also for Universalising Secondary Education (USE). Depriving the children in the age-group, say, four to six, of free and compulsory education as the RTE Act, 2009 does, is totally arbitrary and a flagrant denial of human rights. Article 45 of the Indian Constitution directed the State to provide free and compulsory education up to the age of fourteen, which included children at the Pre-Primary level of education. The famous Unnikrishnan judgement, which regarded the Right to Education as a part of Right to Life, also covered children up to the age of fourteen. The Act should have provided for the Universalisation of Secondary Education also, that is, for children in the age-group of fifteen to eighteen. The definition of a child, according to the UN Convention on Child Rights, 1989, includes children up to the age of eighteen. India is a party to this Convention. Moreover, the Universalisation of Education at this level is also a logical consequence of universalising education upto to Class VIII because if Secondary Education is not universalised, then the children who complete Class VIII would have nowhere to go except dropping out. For, according to regulations in force in the country, a child has to pass Class XII for getting entry into any academic institution of higher or technical education which can qualify it for entering the job market.

Thus this Chapter in the separate sets of analysis focused on the important issues related with the Right to Education namely, the constitutional entitlements, legislative enactments, judicial interventions and the policy recommendations of governmentally appointed education commissions and committees. The evolution of educational policy based on the constitutional provisions and the recommendations of various commissions and committees on education and the consequent implementation of the policies has in particular incorporated new issues of attention which have often being ignored in the

170 Ibid., p. 16.
171 Ibid., p. 17.
development of education. The new issues are related with quality assurance and community engagements at the elementary level of education. Teacher education programme and the focus on harnessing the potential of information and communication technology for Elementary Education have reached greater focus. With increasing financial burden the public-private partnership and the increasing role of business sectors in Elementary Education is also being examined in detail, which may form an important educational agenda in the coming Twelfth Five Year Plan (2012-2017). The governmentally run schemes have in particular focus on increasing access, improving learning quality and bridging the gender disparity. Even now these are the three triangular issues that still run in high priority both at the Central Government and State levels.