CHAPTER III
RIGHT TO EDUCATION, 2009 AND CONSTITUTIONAL PROVISIONS AND GOVERNMENT POLICIES IN INDIA

3.1 Background and genesis:
India is a party to core international human rights treaties that place binding legal obligations on the Indian central and state governments. Those with particular relevance to universalization of elementary education are the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The international community has increasingly focused on achieving universal primary education (UPE) over the last few decades, particularly since the 1990 World Conference on Education. The second Millennium Development Goal (MDG) illustrates this push, urging for the fulfilment of education for all primary school-aged children by the target year, 2015. While the notion of achieving UPE is globally valued, the meaning of "education" is not universally understood. If education is a human right, what does it mean "to be educated"? While the international community seemingly assumes the definition, as reflected in the diverse range of actors calling for "universal primary education", cultures and religions differ between countries and across borders, and so, too, does the very concept of education. The 2000 United Nations Human Development Report found that "Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other fruitfully" (UNDP 2000). Despite their similarities, there are indeed differences to development and human rights objectives - differences which cannot be overlooked.

In the case of primary education, the way in which education is conceptualised differs between these two perspectives. The fact that there are varying definitions of education is not in itself problematic. What makes the impact of this diversity
noteworthy is the way in which the international community has attempted to merge together two contending definitions for education in support of the human rights-based approach to development. This is demonstrated in the advent of the MDGs and re-articulated within the Education for All (EFA) strategy. Indeed, the global community has focused efforts to work towards creating the reality of primary education. At the same time, the international community has been promoting the use of a "human rights-based approach to development" whereby development policies reflect and accentuate the need for human rights to be central to development. Consequently, what has emerged is a human rights-based approach to development which assumes education to be universally understood and implemented.

The EFA initiative is a strategy promoted by UNESCO, UNICEF, the World Bank, and many governments and civil society groups, working to promote the achievement of UPE. As such, EFA, in tandem with policies designed to meet its six main goals, can be viewed as a global education policy - an international strategy which sets out targets to be achieved in the education sector. First conceptualised at the first World Conference on Education in 1990 in Dakar, EFA bases its understanding of the need for education on the right to education conceptualised within the Universal Declaration of Human Rights (UDHR). Interestingly, at the time the UDHR was drafted, there was no common conception of "education" as it has been conceptualised at present, i.e. while drafters and signatories agreed that attaining a primary education should be a universal right, there was no consensus as to what that right would entail. In fact, despite its widespread use in EFA documents, they failed to develop a working definition of "primary education". In light of this lack of universal conception, the definition has been assumed. Of course, at its most general, the notion of "primary" indicates the level of education to be attained. In the broadest sense, primary education is the level of schooling between early childhood care and secondary school. Even a UNESCO working paper in 1956 identified the way in which the term is used "loosely" globally. Primary education is viewed as "fundamental education" - defined as a body of the most basic of skills needed by a
person to function in society. "It is fundamental in the sense that it gives knowledge and skills which are an essential condition for attaining a higher standard of living" (UNESCO 1956). Accepting that the definition of primary education includes a basic level of education is without contestation; however, it is in defining the purpose of education that the term is less obvious. At the time the UDHR was drafted, the most significant debate regarding the definition of primary education was between capitalist and socialist camps, demonstrating the ideological division central to the Cold War. Though the world is no longer separated by such bipolar extremes exhibited during this period, the division between socialist and human capitalist perceptions persists. In the education sector, this divergence is found in development and human rights understandings of education.

The common history of education and development initiatives formally began at the end of the 1950s when the end of the Second World War accompanied independence throughout the developing world. As former colonies transformed into newly-emerging states, education was merited for its help in creating social cohesion, a sense of nationalism and economic stability; educating children was assumed as a means for achieving these objectives. "Education is not a way to escape poverty - it is a way of fighting it," stated former Tanzanian President Julius Nyerere (UNESCO 2001).

Children are formally socialised to become active, participating citizens in their respective country. It is also argued that education achieves economic development by creating a more skilled, employable populace. At the most basic level, if children are attending school during the day, they are avoiding other destructive activities, including prostitution, child labour and warfare. Thus, education is regarded as a means for securing social and economic development. According to international development practitioners, the attainment of primary education can be tied to poverty reduction, as poorer households tend to have the least access to education. These disadvantaged households are often discouraged by lack of transportation to school,
high fees and operational costs and the need for children to attend to chores at home, particularly in agricultural setting.

In the education sector, the human rights-based approach maintains that education is a fundamental and inalienable human right to which all human beings are entitled. Seen from this perspective, the ability for a child to attend school becomes more than simply a beneficial opportunity - it becomes a legal requirement that all children can, and should, demand. The ability for children to demand their right to education also places onus on governments to provide the service to these citizens. At the same time it creates an environment in which the international community bears some responsibility for ensuring rights fulfilment, particularly in instances where governments themselves are not able to act effectively. For example, the United Nations Convention on the Rights of the Child (CRC) Article 24.4 begins, "States Parties undertake to promote and encourage international cooperation ..." Indeed by placing education within a human rights framework, the demands of children are recognised and the duties of both governments and international community at large are enforced.

Yet as enrollment rates were rising, the quality of education was simultaneously plummeting. Among the most common of criticisms was the issue that schools did not have the adequate human and monetary resources necessary to provide for the rapid influx to enrollment rates. A recent legislation requiring all primary school students to pay an additional amount for their desk and chair owing to great infrastructure needs illustrates infrastructure malfunctions which continue to hinder a child's ability to learn. At the same time, placing education within a human rights framework ensures that there is no discrimination. For example, the three groups most vulnerable to accessibility issues - the severely impoverished, girls and children with disabilities - are equally entitled to education. This pushes governments to work towards policies which effectively provide for all children, regardless of background (UNESCO 2007). And while development initiatives of the past have often been regarded as simply a "charity" or "do-gooder" agenda coming from philanthropic western aid agencies,
placing education within a human rights agenda gives obligation to donor actions (UNESCO 2007). With the UDHRs and the CRC both stipulating the need for the international community to ensure that all children receive an education, any work in the realm of education maintenance is necessary, not voluntary. Human rights framework is devoted first and foremost to ensuring that students are enrolled in school. The importance of measuring what happens following the achievement of that enrollment becomes minimised. Although quality is written in human rights conventions (i.e. the United Nations CRC) as a dimension of the right to education. The three indicators for determining the achievement of UPE as part of the MDGs are quantitative in nature - namely measuring net enrollment rates, grade five completion rates and literacy rates.

The three types of education systems are: (1) formal education, that is a structured form of learning (2) non-formal education, or a semi-structured, more flexible form of learning and (3) informal education, that being extracurricular education, including after-school development programmes.

International law provides for the right of everyone to education. Primary education shall be “compulsory and available free to all.” Secondary education shall be made generally available and accessible to all. In addition, for those who have not received or completed their primary education, “[f]undamental education shall be encouraged or intensified.” Governments also have an obligation to “[t]ake measures to encourage regular attendance at schools and the reduction of drop-out rates.”

International law prohibits discrimination on the basis of religion, ethnicity, social origin, or other status. Education should foster development of respect for a child’s “cultural identity, language and values.” According to the Committee on Economic, Social and Cultural Rights, the international expert body that monitors implementation of the ICESCR, prohibition against discrimination “is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education.” A government that fails to provide a significant number of individuals
“the most basic forms of education is, prima facie, failing to discharge its obligations” under the right to education.

Upholding the rights of children to education also means promoting and protecting other rights, such as the restrictions on child labor, and protections for minorities and displaced persons. Communities and families that are dependent on child labor are less able to ensure their children get a proper education. The ICESCR requires governments to protect “children and young persons . . . from economic and social exploitation.” The CRC obliges governments to “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” The convention directs states to implement these protections through appropriate legislative, administrative, social, and educational measures. In complying to this, India’s domestic laws ban children under 14 years of age working in hazardous industries and processes. The UN Declaration on the Rights of Indigenous Peoples provides that governments should ensure that indigenous children have the right to all levels and forms of state education without discrimination. Governments, in consultation and cooperation with indigenous peoples, should “take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely . . . to interfere with the child’s education.” With respect to internally displaced persons, the UN Guiding Principles on Internal Displacement provides that the authorities shall ensure that displaced children receive education and that educational facilities shall be made available to them. The UN Child Rights Committee has stated that governments have an obligation to “monitor the availability of and access to quality services that contribute to young children’s survival and development.”

The right to education has been recognised in several international instruments, of which the three key international instruments are the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and the Convention on the Rights of the Child (CRC). While
some instruments uphold the right to ‘elementary education’, others use the phrase ‘primary education’. Article 26 of UDHR lays down that free education should be provided at least in the ‘elementary and fundamental stages’ and is compulsory. Article 13 of ICESCR and Article 28 of CRC provide inter alia that ‘primary education’ shall be free and compulsory. In its General Comment No. 13, the Committee on Economic, Social and Cultural Rights (the Committee) has tried to clarify and expand on the meaning of the phrase ‘primary education’. The Committee has stated that primary education is that which caters to the ‘basic learning needs of the children’. \(^{30}\) Ideally, any law implementing the fundamental right to education should off-set this exclusion. However, in the event that the law does not provide for a right to early childhood care and education, then the State should draw up concrete schemes (non-coercive rules) to ensure that early childhood care and education is provided. Currently, in India, the Integrated Child Development Scheme provides for early childhood care and education. However, the nature of pre-school education, the quality of the services, as well as its linkage with formal school education need to be examined in great detail.

Education in India is not a new phenomenon. Nevertheless, it has been often stated that education in India has been notorious for not being socially inclusive. Till the 19th century, it was largely considered a privilege restricted to persons at the higher end of the caste or class system. Even in the British colonial India education of the ‘Indian masses’ was largely neglected. In this context, the demand for Free and Compulsory Education (FCE) in India can be traced back to the early stages of the freedom struggle in British India. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy, in general, and in rural India, in particular. In the evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free

education for at least four years. This demand was indirectly acknowledged in the Commission’s recommendations on primary education. The Commission also recommended that schools should be open to all castes and classes.

The first law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education for boys and girls in the age groups of 7–12 years and 7–10 years respectively. The first documented use of the word right in the context of elementary education appears in a letter written by Rabindranath Tagore to the International League for the Rational Education of Children in 1908. In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Council, albeit unsuccessfully. The Legislative Council of Bombay was the first amongst the Provinces to adopt a law on compulsory education. Gradually, other Provinces followed suit as control over elementary education was transferred to Indian Ministers under the Government of India Act, 1919. However, even though Provincial Legislatures had greater control and autonomy in enacting laws, progress in universalising education was poor due to lack of control over resources.

In 1937, at the All India National Conference on Education held at Wardha, Gandhi mooted the idea of self-supporting ‘basic education’ for a period of seven years through vocational and manual training. The next landmark development in the history of FCE in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended FCE (Free & Compulsory Education) for eight years (6–14years’ age group).

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

Since independence, Government is striving to commit towards compulsory education for all. Reviewing the status of education in India, The Indian Education Commission
1964–1968, recommended ‘common school system’ with a view to eliminating inequality in access to education. Immediately thereafter, the National Policy on Education, 1968 was formed. The 1968 Policy was the first official document evidencing the Indian Government’s commitment towards elementary education. The Policy dealt with issues of equalisation of educational opportunity and required the common school system to be adopted in order to promote social cohesion. However, it was not supported by legal tools that could enforce such policy mandates. Interestingly, it even required that special schools should provide a proportion of free-studentships to prevent social segregation in schools. A second round of studies was conducted by the Ministry of Education in conjunction with the National Institute of Educational Planning and Administration, and this process contributed to the formation of the National Policy on Education (NPE), 1986. This policy, while re-affirming the goal of Universalisation of Elementary Education (UEE), did not recognise the ‘right to education’. The 1986 Policy is also severely criticised for having introduced non-formal education in India. The 1986 Policy was reviewed by the Acharya Ramamurti Committee in 1990, and this review process contributed to the revised National Policy on Education of 1992. The Acharya Ramamurti Committee recommended that the right to education should be included as a fundamental right in Part III of the Constitution. However, this recommendation was not implemented immediately.

As a follow up to the NPE, a number of programmes were initiated in India with a view to achieving UEE. These efforts were intensified in the 1980s and 1990s through several interventions such as Operation Blackboard (OBB), the Shiksha Karmi Project (SKP), the Andhra Pradesh Primary Education Project (APPEP), the Bihar Education Project (BEP), the UP Basic Education Project (UPBEP), Mahila Samakhya (MS), the Lok Jumbish Project (LJP), and Teacher Education, which put in place a decentralised system of teacher support through District Institutes of Education and Training (DIETs) and the District Primary Education Programme (DPEP). The latest is the Sarva Siksha Abhiyan (SSA), a centrally-sponsored scheme implemented in partnership with state governments for the UEE across the country.
Due to these initiatives, over the years there has been significant spatial and numerical expansion of elementary schools in the country. Today, access and enrollment at the primary stage of education have reached very close to universal levels. The number of out-of-school children at the elementary level has reduced significantly. The gender gap in elementary education has narrowed and the percentage of enrolled children belonging to scheduled castes and tribes has increased successively. Despite this, the goal of universal elementary education is yet to be achieved in the country.

There remains the unfinished agenda of universal education at the upper primary stage. The number of children—particularly those from disadvantaged groups and weaker sections—who drop out of school before completing upper primary education remains high. The quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education. With a view to address these issues, the RTE has been introduced to directly counter the problems of illiteracy, poor quality infrastructure and learning level in the elementary education sector. However, the road to the RTE Act has not been easy.

The exercise of consulting all stakeholders including the states and taking them on board has been time-consuming. The main provisions in the RTE Act include the responsibilities of appropriate government and local authorities towards establishing neighbourhood schools; sharing of financial and other responsibilities between the central and state governments; prohibition of capitation fee and screening procedure for admission; prohibition of detention, expulsion and corporal punishment; specification of norms and standards for schools including those related to the infrastructure and teachers; laying down of teacher qualifications and their duties; prohibition of deployment of teachers for non-educational purposes; and ensuring that curriculum and evaluation is in accordance with the Constitution of India and as per child-centred principles and values. Children with disabilities and those belonging to minority communities are also covered under the Act.

As per the RTE Act, 2009, every child has the right to full-time elementary education of satisfactory and equitable quality in a formal school that satisfies certain essential
norms and standards. The need to address inadequacies in retention, residual access, particularly of un-reached children, and the questions of quality are the most compelling reasons for the addition of Article 21A in the Constitution of India.

3.2 Compulsory education to Right to Education:
The term ‘compulsory education’ tends to elicit different meanings and interpretation from different people. Most often, compulsory education is interpreted in terms of mandatory attendance requirements, or, as the first stage of education. Not very often, it is considered with the right to education mean, more or less, the same thing. The logic behind compulsory education is to protect children’s right to education because children have no way of asserting that right for themselves when through neglect or ignorance, no attention is paid to this need. Compulsory education is that which must be attended or undertaken by the law of a particular country or state. The legal requirement may be education from a certain starting age or it may be education up to a certain standard.31
Another meaning of the term tends to refer to the requirements from the children and government in relation to these stages, the requirement being that the children must attend school and that the government must provide these schools. Compulsory schooling puts a duty on the child to attend school and corresponding duty on the parents to send the child to school failing will invite state action. When compulsory education is perceived as a right, the focus shifts to ‘self assertion’. The UNESCO Yearbook of Education (1986) viewed compulsory education as a right. Thus, as a right it has shifted from being applied to the population as a passive subject, to now mainly applied to the state as an active subject such that: the compulsory nature of education refers not only to the child’s obligation to receive it but also to the state’s obligation to provide.32 Operationally, there is an important difference between compulsory education and compulsory schooling. Compulsory schooling requires compulsory attend-

ance at a public school, i.e. it refers to a specific process whereby education is to be translated. Compulsory education, on the other hand, refers only to the output, i.e. to the fact that learning must take place, giving little or no emphasis to where it takes place, as long as it is actually taking place.

The present state education acts in India, by and large, make education rather than schooling, compulsory. However, they make it a requirement for the child to attend an approved school, but, at the same time, schooling can be exempted if the child is shown to be acquiring the required education through some other means.

Emphasis on the output of education appears to have definite advantages in contexts where alternate modes of instruction are more appropriate. Increasingly, technological advances are making it possible for learning to take place through ‘distance’ or ‘open’ schooling modes. As all the educationists are aware, alternate modes of education have been used with advantage in the case of ‘difficult to reach populations’, and groups with a different culture or way of life- such as, for example, peripatetic teachers for nomadic populations; part time or flexible classes for children of certain groups with a different culture or way of life- such as, for example, fishermen; bridge courses for drop out children; distance education through post, radio and television for remote areas etc. Appropriate methodologies will need to be evolved to address the needs of slum children, street children and other urban out-of-school children. In opting for compulsory education over schooling, the emphasis will shift from getting the children into schools to the task of determining whether or not they are actually learning. With children’s learning being evaluated at definite stages, it may be possible to shift the activity in schools from the ritual aspects of marking the attendance of the teachers and the pupils to actual teaching and learning. On the other hand, there is the equally obvious danger of such provisions being misused by state agencies to avoid incurring the cost of providing schools.

It may be worth pointing out at this stage that in the Indian context and experience, it is compulsory schooling that may be needed, despite the obvious advantages of many areas stem from the non-provision of schooling facilities in the past and also the non-
enforcement of adequate standards of teaching and learning. A tighter law may be needed for some time in order to ensure at least the provision of minimum facilities and some efforts to ensure that children are freed from other work in order to get an education.

Whether or not, the right to education is a fundamental right, law can be, and have been made for compulsory education in India. Before the making of education a fundamental rights many states in India have already amend their existed acts for free and compulsory education. But the facts remains that they do not, by themselves, make education 'compulsory', but only 'enable' the 'local authorities' to choose to do so. To enable education to be made compulsory under these acts, a number of further actions are involved such as: i) Preparation of a scheme, by the specified authority to make education compulsory in an area; ii) obtaining Government approval for the scheme; and iii) Notification of a scheme of compulsion within the specified area. But many people including even educational administrators did not know that India. But awareness of the same has been grown since the constitutional amendment. After passing the scheme concerned administrators would further prepare lists of children who would be going to school and send notices to their parents and ascertain attendance status of each child, and, if necessary, use coercive measures to bring non-attending children to school.

Not much information can be found, however, to described the way in which compulsion was enforced. Even so, some idea can be gleaned from the Sargent Report of 1944, which candidly stated that, “It cannot be said that in any of these areas, even in the Punjab, compulsion is really effective. It can hardly be so where there is no organised system of trained officers to see that children attend school and the courts are disinclined to enforced the law”. The enforcement of these Acts necessitated the provisions of many facilities enabling conditions for children to make it to school, there seems little point in prosecuting those who could not send their wards to schools. During 60s there was declined and discouraged of compulsory education. Central Advisory Board of Education (CABE) in 1964 recommended that, “In regard to legisla-
tion or compulsion at the primary stage, the Board was of the view that whereas stat-
utory provisions may be necessary for such purposes as collection of fees, the really
effective method of achieving universality in education in this age group would be ex-
tension of facilities in areas not yet covered and use of persuasion incentives".\(^{33}\) This
led to the shift from introduction of universal free and compulsory education' to
'achievement of the goal of universal education'. But the state failed to make universal
elementary education a coherent project and successful one. Finally, the Supreme
Court in its landmark judgment\(^ {34}\) stepped in and stated, “In this context we feel con-
strained to say that the allocation of available funds in India discloses an inversion of
priorities”. It further added that can the state flout the said directions even after 44
years on the grounds that the article (article 45) merely calls upon it 'to endeavour to
provide' the same...? With this judgment, the tide was seen to turn in the direction of
amendment of the Constitution to give to children an unambiguous right to free and
compulsory education.

### 3.3 RTE-An Analysis:

For the first time in India, Right to Education was Constitutionally conceptualized
with the 86\(^{th}\) amendment Act, 2002 as:

[12th December, 2002.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as
follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution
(Eighty-sixth Amendment) Act, 2002.

(2) It shall come into force on such date as the Central Government may, by
notification in the Official Gazette, appoint.

2. Insertion of new article 21A.- After article 21 of the Constitution, the following

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\(^{33}\) Excerpt from proceedings of the 31\(^{st}\) meeting of the CABE, Bangalore, 1964.

\(^{34}\) Unni Krishnan J.P. vs. The State of Andhra Pradesh, 1993
article shall be inserted, namely:-Right to education.-
"21A. 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.".
3. Substitution of new article for article 45.- For article 45 of the Constitution, the following article shall be substituted, namely:-
Provision for early childhood care and education to children below the age of six years.
"45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.".
4. Amendment of article 51A.- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-
"(k) 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.".
As has already been stated, even prior to the RTE, the GoI’s efforts were towards universalisation of elementary education in the country. The SSA was the most prominent among all efforts initiated by the GoI before 2010 and was approved by the union cabinet in November 2000 as a centrally-sponsored scheme. The goals of the SSA are (a) enrollment of all children in schools, Education Guarantee Scheme (EGS) centres, alternate schools, ‘back-to-school’ camps, (b) retention of all children till the upper primary stage, (c) bridging of gender and social category gaps in enrollment, retention and learning, and (d) ensuring significant enhancement in the learning achievement levels of children at the primary and upper primary stages. There is little difference between the objectives of the RTE and those under the SSA. Yet, there are fundamental variations between the two. While the provisions under the SSA were not part of the fundamental rights enshrined in the Indian Constitution, the RTE provisions form an integral part. Under the RTE, ‘free education’ has been defined, and it states that no child, other than one who has been admitted by his or her parents to a school which is not supported by the appropriate government, shall be liable to pay any kind
of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

‘Compulsory education’ casts an obligation on the appropriate government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the age group of 6–14 years. With this, India has moved forward to a rights-based framework under the RTE Act that casts a legal obligation on the central and state governments to implement this fundamental right.

The road-map for universalizing elementary education is derived from the definite time-frames mandated in the RTE Act; it prescribes a time-frame of three years for the establishment of neighbourhood schools, provision of school infrastructure with an all-weather building and basic facilities, and provision of teachers as per prescribed Pupil–Teacher Ratio (PTR) (30:1). Further, the RTE Act stipulates that all untrained teachers in the system must be trained within a period of five years from the date of enforcement of the Act.

The rest of the provisions are required to be implemented with immediate effect. The RTE Act has had considerable implications for the overall approach and implementation strategies of the SSA. With the enactment of the RTE, there was a need to review the interventions under the SSA and align its norms with the RTE mandate. Today, the SSA is the main implementation vehicle for the RTE Act, 2009: the Implementation Framework of the SSA has in fact been revised to coordinate with the provisions of the RTE Act. A comprehensive monitoring mechanism has also been put in place to ensure smooth implementation of the SSA. The major changes in the SSA norms effected by the executive committee of the SSA in January 2010 are:

(a) School to be established/ ensured within the limits of the neighbourhood as laid down by the state government pursuant to the RTE Act;

(b) All existing EGS centres that have been functioning for two years or more to be upgraded to regular schools, or closed down. No new EGS centres to be sanctioned from 2010–11 onwards;
(c) Special training to be carried out for age-appropriate enrollment of out-of-school and dropout children through residential and non-residential courses;

(d) School infrastructure norms to include libraries, including a one-time grant for books worth rupees 3,000 for primary schools and rupees 10,000 for upper primary schools;

(e) Ceiling on school repairs up to a maximum of 5 per cent of the existing schools for each district in a particular year, which inhibited the demand for repairs, removed;

(f) School grant to be utilised for play material and sports equipment, in addition to the existing provision for replacement of non-functional school equipment and other recurring costs such as consumables;

(g) Training norms to include training of resource persons, master trainers, and Block Resource Centre (BRC) and Cluster Resource Centre (CRC) coordinators for up to 10 days each year at 100 per person per day;

(h) Financial provisions for children with special needs increased from rupees 1,200 to rupees 3,000 per child per year, provided that at least rupees 1,000 per child will be used for the engagement of resource teachers;

(i) Community mobilisation provisions strengthened by raising the number of training days for community personnel from two to six, comprising three-day residential and three-day non-residential training. Financial limits for training also hiked, from rupees 30 to rupees 100 per day per person for residential training and rupees 50 per day per person for non-residential training;

(j) Management cost for districts with small annual plan and size increased from rupees 2 million per district to rupees 4 million subject to the overall ceiling of 6 per cent being maintained at the national level.

Funds that were given to states and union territories in 2010–11 and 2011–12 for the implementation of the revised SSA in keeping with the RTE Act amount released (Central Share) (NER States) during 2010–11 (in million) during 2011–12 (in million) are Rupees 196,363.5 and rupees 208,662.6 respectively.
TABLE 3.1 Status of Progress since 2006–07

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<td>Out-of-School Children (in million)</td>
<td>11.30</td>
<td>8.10</td>
<td>—(^b)</td>
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</table>

The primary school net enrollment ratio (NER) is the share of children of official primary school age that are enrolled in school; the NER cannot exceed 100 per cent. The gross enrollment ratio (GER) is the share of children of any age that are enrolled in primary school. In India, many children who are beyond primary level are still enrolled in the primary section and hence the GER exceeds 100 per cent.

Regarding the trend of enrollment, efforts to universalise elementary education gained momentum during the last few years as indicated in Table 3.1 enrollment in government schools at elementary level increased from 126 million children in 2006–07 to 130 million in 2010–11. In addition, another 17 million were enrolled in government-aided schools, and 42 million were attending private unaided schools in 2010–11.

The GER at primary level is high at 118.6 per cent; 2 and NER has improved significantly from 92.7 per cent in 2006–07 to 99.8 per cent in 2010–11. The GER at upper primary level has shown considerable improvement of 11.8 percentage points in the

\(^{35}\) Source: Ministry of Human Resource Development.

**Note**: a GER and NER mean gross and net enrollment ratios respectively.

NER = Enrolled children in the official school age group/Total number of children in the official school age group.

GER = Enrolled children of all ages/Total number of children in the official school age group.

\(^{b}\) Figures are not available.
four years between 2006 and 2009, and a further increase of 5.4 percentage points in 2010–11.

With the RTE stipulations with regard to the entry level at age 6, no detention and expulsion, an eight-year elementary education cycle, and maintenance of record of children, it is expected that the GER at both primary and upper primary levels is going to improve in the years to come.

Schooling Facilities
The country has witnessed substantial increase in the number of primary and upper primary schools. In the year 2009–10 there was an increase of more than 9.1 per cent in the number of schools in the country as compared to 2006–07. This went up by another 4.5 per cent in 2010–11.

enrollment — Gender
The percentage of girls out of the total number enrolled at primary and upper primary levels was 48 and 46.5 respectively in the year 2006–07; this increased to 48.4 and 48.3 at primary and upper primary levels respectively in 2010–11.

The annual average growth rate of enrollment for girls is considerably higher as compared to boys. Gender Parity Index (GPI) has also shown significant increase, particularly at the upper primary level. The primary level GPI improved marginally from 0.93 in 2006–07 to 0.94 in 2010–11. However, GPI at upper primary level increased from 0.87 in 2006–07 to 0.94 in 2010–11.

Decline in the percentage of out-of-school children has taken place across gender and all social categories; nonetheless Muslim, SC and ST children need greater and more focused attention. The percentage of out-of-school children aged 6–14 years has decreased from 6.94 per cent in 2005 to 4.28 per cent in 2009. This decrease is sharper in rural areas, where it drops from 7.08 per cent to 4.53 per cent as compared to urban areas where it has moved from 4.34 per cent to 3.18 per cent only.

Teachers in Position
There has been a substantial increase in the availability of teachers at elementary level in the past few years. The total number of teachers in government schools increased
from 3.6 million in 2006–07 to 3.9 million in 2009–10, and further to 4.19 million in 2010–11. This has resulted in the improvement of the PTR from 36:1 in 2006–07 to 32:1 in 2010–11 at the primary level and 29:1 at the upper primary level.

The norm prescribing 50 per cent of all teachers recruited under the SSA to be female has resulted in the increase in percentage of female teachers from 41.8 per cent in 2006–07 to 45.5 per cent in 2010–11.

The real challenge, however, lies in the imbalance in teacher deployment. The number of schools with adverse PTR remains high, though it has reduced from 46 per cent in primary and 34 per cent in upper primary schools in 2009–10 to 42.4 per cent and 31.3 per cent respectively in 2010–11. Even in states with an overall desirable PTR, there are many schools with adverse PTR. Moreover, 7.7 per cent single-teacher schools have an enrollment of more than 15 children functioning in the country. Although this is an improvement over 10.5 per cent single-teacher schools in 2006–07, there are large inter-state variations: Arunachal Pradesh (26.6 per cent), Assam (14.1 per cent), Madhya Pradesh (14.7 per cent), Manipur (10.1 per cent), Odisha (11.9 per cent), and Rajasthan (14.7 per cent). There is therefore an urgent need to fill up existing vacancies and rationalize teacher deployment.

Another challenge is the presence of teachers without professional qualifications notified by the NCTE as required under the RTE Act. As per the DISE 2010–11, there are about 0.8 million untrained teachers spread all over the country, but the majority are in the four states of Bihar (0.17 million), West Bengal (0.17 million), Uttar Pradesh (0.14 million), and Jharkhand (0.07 million), constituting about 68 per cent of total untrained teachers.

School Infrastructure

Under the SSA, the country has seen massive infrastructure development at the school level. Apart from opening over 0.3 million new schools, the SSA has also provided basic facilities in existing schools. The average student–classroom ratio (SCR) which was 36 in 2006–07 has come down to 31 in 2010–11. There has been a considerable rise in the availability of basic facilities in schools, including increase in percentage of
schools having drinking water facility from 83.1 per cent in 2006–07 to 92.6 per cent in 2010–11. Girls’ toilets are now available in 57 per cent of schools as against 42.5 per cent in 2006–07. The percentage of schools with ramps for the differently-abled has increased from 26.61 per cent in 2006–07 to 50 per cent in 2010–11.

With regard to opening of schools, provision of school infrastructure and drinking water facilities, the overall cumulative performance is more than 85 per cent. An allocation of rupees 255.55 billion has been provided for the RTE-SSA programme for 2012–13. The target for 2012–13 is towards opening of 5,000 primary schools and 10,000 upper primary schools, recruiting 0.1 million teachers and construction of 0.1 million additional classrooms.

As mentioned above, substantial spatial and numerical expansion of primary and upper primary schools has been achieved with access and enrollment at the primary stage of education reaching near universal levels, gender gap in enrollment being narrowed and the percentage of enrolled SC/ST children being proportionate to their population.

Nonetheless, the agenda of universalizing education at the upper primary stage remains unfinished. The number of children — particularly children from disadvantaged groups and weaker sections — who drop out of school before completing upper primary education remains high, and the quality of learning achievement is not satisfactory even in the case of children who complete elementary education.

Despite the fact that there has been a huge increase in the investment and levels of physical and infrastructural progress in elementary education in the SSA regime, and in the post-RTE regime in particular, the main objective of ‘learning’ is not satisfactory. It is therefore imperative to look beyond the provision of infrastructure alone in the pursuit of improved learning levels. While there is no denying the fact that school buildings and teachers are important, it is equally, if not more, important to achieve the desired quality of education and learning level of a child who completes primary education. So far, the existing structure has not yielded full results in terms of learn-
ing outcomes. It is thus imperative to do something more over and above what is already there today. It might lead us to approach the problem a little differently. Learning level is directly and positively correlated to the quality of teaching. It also depends on a student’s ability to understand and follow the teaching method, including the language and methodology of the teacher. A more personal approach rather than a generalized one would work better, and it may well be the case that the local teacher’s personalized efforts even beyond school hours would yield better results. From the recent trends in the incidence of tuitions, it can be inferred that the rise in the number of private tuition is attributable to personalized efforts vis-à-vis the generalized approach in school. Teachers must also get requisite motivation through appropriate training on a continuous basis as well as financial incentives linked with the learning outcome of their students. To implement these practices there is a need to start a few pilots in select districts/profiles. Each pilot district/block could have a committee, flexible enough to experiment upon various policies including hiring local teachers (on need-basis). Depending upon need, this committee may advise and assist SMCs on the functioning of the school. This committee could remain directly responsible for the desired parameters including enrollment, learning outcomes, etc. In short, a model district/block needs to be developed for the purpose of achieving the objectives and mandates (with time-lines) of the RTE. Once proven to be successful, the model districts may be replicated throughout the country.

Till date, children who are below 6 years and above 14 years of age are not covered by the Act. With the possible restructuring of the ICDS and making all its services part of the National Food Security Bill, children up to 6 years of age may be covered, which may be difficult under the existing ICDS infrastructure. It is also necessary to make efforts to universalise secondary and higher secondary education so that the GERs at these levels are ensured. Unless adequate initiatives are undertaken proactively towards addressing these issues, it may be difficult to gain the full benefit of RTE implementation in the country. Implementation of the RTE primarily depends on the states’ effective participation.
Under the federal structure each state would need to work, on priority, towards the common goal of achieving universalisation of primary education.

A lot has already been achieved in fulfilling the RTE mandates. However, there are still gaps between the RTE mandates/targets and the actual implementation/achievements. Available reports have pointed out a number of shortcomings and suggested various policy interventions. If these suggestions are examined and adopted wherever necessary, the gaps would soon disappear.

Correspondingly, the Constitution of India, which came into force in January 1950, contains provisions for survival, development and protection of children. These are included both in Part III and Part IV of the Constitution pertaining to ‘Fundamental Rights’ and ‘Directive Principles of State Policy’. Being one of the world’s largest democracy, India has a federal system of government, with the States having their own democratically elected governments. The relative jurisdiction of the Central and State Governments over different matters has been indicated in the Seventh Schedule of the Constitution of India under the Union, State and Concurrent Lists. The survival, development and protection of children fall either in the Concurrent or in the State List. However, the implementation of schemes, including those of the Central Government, is carried out by the States. The 73rd and 74th constitutional amendments have recognised a third tier, below that of the State Government, viz., Panchayati Raj Institutions (PRIs), given them financial and administrative powers, and listed the subjects falling in their area of activities, a number of which relate to those services which have a direct bearing on children.

3.4 Major Constitutional Provisions and Policies:

In the Indian Constitution, prior to the 86th Amendment Act, 2002, three Articles in the Constitution had child as their specific focus. These were Article 24, 39 and 45 dealing with prohibition of children from being employed in factories, mines or hazardous employment; development and protection of the tender age of children; free and compulsory education. The followings are the provisions contained in the Consti-
tution in regards to direct and indirect education of the children in India. In the Fundamental Rights, Article 14 provides equality before the law or the equal protection of the laws within the territory of India. Article 15 prohibits discrimination, providing the State power for making special provision for women and children and also for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 17 abolished “Untouchability” and its practice in any form is forbidden. Article 19 provides freedom of speech and expression; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India. Article 21 stated no person shall be deprived of his life or personal liberty except according to procedure established by law, and Section A put State shall provide free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibited traffic in human beings and begar and other similar forms of forced labour are prohibited. Article 24 proscribed no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Among Directive Principles of State Policy, Article 39 the tender age of children are not abused… and not forced by economic necessity to enter avocations unsuited to their age or strength; that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood… protected against exploitation and against moral and material abandonment. Article 45 says States shall provide early childhood care and education for all children until they complete the age of six years. Article 46 laid out that State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes. Article 47 provides provisions for raising of the level of nutrition and the standard of living of its people and the improvement of public health. Article 51 defined that the State shall endeavour to foster respect for international law and treaty obligations, again Article 51A(k)
states that 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.

Just after independence, health, nutrition and education of children were identified as special areas of concern in the first five years plan the by government of India. Correspondingly, in 1953, the Central Social Welfare Board (CSWB) was constituted with the object especially of assisting voluntary agencies in organising welfare programmes for children, women and handicapped persons. The Board assisted 591 child welfare organisations during the First Five-Year Plan. Besides, in collaboration with State Governments, the Board setup State Welfare Boards throughout the country. In 1954, Welfare Extension Projects were started to reach children and women in rural areas through the creation of balwadis and mahila mandals. Special programmes were also taken up to meet the needs of delinquents, destitute, handicapped and other groups of children. For this, extensive training was provided to childcare functionaries engaged in carrying out different kinds of programmes for children. In addition, the Government of India passed the Protection of Civil Rights Act, 1955 and ratified the International Labour Organization (ILO) Convention No. 5 of 1919 on minimum age of work in industry.

In 1956, the Suppression of Immoral Traffic in Women and Girls Act (SITA), Hindu Adoption and Maintenance Act, Hindu Minority and Guardianship Act, Women’s and Children’s Institutions (Licensing) Act and Young Persons (Harmful Publications) Act. was enacted in pursuance of Government of India’s ratification of the United Nations Convention. During the Plan period, existing health, nutrition and education services were further strengthened and expanded. In 1957, the National Bravery Award Scheme was instituted and 14 November, which also happens to be the birthday of our first Prime Minister, Pt. Jawaharlal Nehru was declared as Universal Children’s Day.

At the international level, the United Nations General Assembly adopted the Declaration of the Rights of the Child on 20 November, 1959. Prior to this, in 1948, the United Nations General Assembly had adopted the Universal Declaration of Human
Rights (UDHR). The UDHR contains three specific references about children and their rights. Article 25 states that “Motherhood and childhood are entitled to special care and assistance”, and adds that “All children, whether born in or out of wedlock, shall enjoy the same social protection”. In Article 26, which deals with the right to education, provision is made to ensure that “Parents have a prior right to choose the kind of education that shall be given to their children”. Thus, when the UDHR was adopted, it was assumed that children’s rights had been taken care of on the whole. In the Third plan a significant achievement was the establishment of the Department of Social Security in June 1964, so as to give concerted attention to the problems and needs of children. This Department was later renamed as the Department of Social Welfare in January 1966, and was finally elevated to the status of an independent Ministry of Social Welfare in August 1979. To counter poor levels of nutrition, Applied Nutrition Programme was introduced in 1963. Later, in the year 1965, Food and Nutrition Board was set-up in the Department of Food. Recognizing the need to rectify the existent imbalance of educational facilities at the primary, middle and high school levels and the fact that the State was unable to fulfill its constitutional obligation of providing free and compulsory education to all children within a period of ten years, the Third Plan set-up an Education Commission under the chairmanship of Dr. D.S. Kothari to find out possible solutions. A Committee on Child Care was also constituted whose recommendations gave way to a comprehensive Scheme of Family and Child Welfare in 1967 thereby providing integrated services to pre-school children in villages and basic training to women in craft, health education, nutrition and child care. The recommendations of the Kothari Commission led to the formulation of the National Education Policy in 1968 which in a way gave fillip to the efforts being made in the education sector. In 1974, the National Policy for Children was adopted. The Policy Resolution recognised children as the nation’s supremely important asset and declared that it is the responsibility of the State to nurture them. It further emphasised that it shall be the duty of the State to “provide adequate services to children, both before and after birth and through the period of growth, to ensure their full phys-
ical, mental and social development.” Right to health being a basic human right, the Fourth Plan accorded high priority to Mother and Child Health Programme (MCH). The Special Nutrition Programme, Balwadi Nutrition Programme and Prophylaxis Scheme against Blindness due to Vitamin A Deficiency among Children were also introduced in 1970-71. The voluntary organisations too continued to work in partnership with the Government and some on their own. The scheme of Integrated Child Development Services (ICDS) was launched on 2 October 1975. Launching of the ICDS was a logical culmination of efforts pursued through the earlier four Five-Year Plans. In 1975, the Government ratified the ILO Convention No. 123 of 1965 relating to minimum age for underground work. The Minimum Needs Programme was also launched in order to enhance the capacity of families and communities. The ICDS scheme is considered to be one of the largest outreach programmes for children in the world. In the health sector, the Government of India signed the Alma Ata Declaration of 1978 and committed itself to the goal of ‘Health for All by 2000 A.D’.. The Expanded Programme of Immunisation was also introduced in 1978. In 1975, the Scheme of Crèches/Day Care Centres for Children of Working and Ailing Mothers was launched by the CSWB. In 1976, the Child Marriage Restraint Act of 1929 was amended and in 1978, the SITA enacted in 1956 was modified. In 1976, the Bonded Labour (System) Abolition Act was enacted.

Preventive and development services of domiciliary nature were accorded priority over institutional care for destitutes, delinquents and handicapped children. The problem of working children and their welfare simultaneously received attention of the planners for the first time during the Sixth Five-Year Plan and appropriate programmes were undertaken to improve the health, nutrition and educational status of working children. In 1981, the Central Child Labour Advisory Board was set-up to review implementation of existing laws concerning child labour. In 1982, the Scheme of Early Childhood Education was introduced as a strategy to reduce dropout rate and improve the rate of retention in schools. The Development of Women and Children in Rural Areas was another scheme that was introduced in the year 1982. Another im-
Important milestone in the Sixth Plan period was the formulation of the National Health Policy in the year 1983. The same year, the Government of India recognised the International Code on the Marketing of Breast Milk Substitutes that was adopted by the World Health Assembly and formulated the Indian National Code for Protection and Promotion of Breast Feeding. ICDS was used as a major nutrition intervention programme as well as a vehicle for promoting elementary education among children.

In the seventh five years plan, in order to give focused attention and direction to child development, a separate Department of Women and Child Development was set-up for the first time in the Ministry of Human Resource Development in September 1985. Its status was elevated to that of an independent Ministry of Women and Child Development in 2006 and issues concerning children that To deal effectively with the problem of neglected children and children in conflict with law, the Juvenile Justice Act, 1986 was legislated, repealing the then Children’s Act of 1960. To implement the provisions of the 1986 Act, a Scheme of Prevention and Control of Social Maladjustment was initiated in 1986-87.

The Government also enacted the Child Labour (Prohibition and Regulation) Act, 1986. In 1987, the National Policy on Child Labour was announced. National Child Labour Projects were started in areas where there was high concentration of child labour. Simultaneously, efforts were made to expand creche services for children of working women. The main thrust in the programmes for children who were handicapped was on prevention of disabilities and development of their functional skills. In 1985, the Scheme of District Rehabilitation Centres was introduced as a Pilot Project. In 1986, the Government further modified the SITA and also changed the name of the Act to Immoral Traffic (Prevention) Act to cover all persons, whether male or female, who were exploited sexually for commercial purposes. These apart, stringent punishments were prescribed for offences involving children. Another notable milestone of the Seventh Plan was setting up of a Central Adoption Resource Agency (CARA) in 1990 to deal with matters relating to adoption. Later, during the Eighth Five-Year Plan, the Government pioneered a Scheme of Assistance to Homes for Infants (Shishu
Greh) to Promote In-country Adoption. Under the MCH programme, efforts were made to reduce Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR). In the year 1985, the Universal Immunisation Programme was launched under the MCH programme to protect children from six major diseases which affected early childhood mortality and morbidity, viz., diphtheria, whooping cough, tetanus, polio, measles and childhood tuberculosis. In 1986-87, emphasis was laid on Oral Rehydration Therapy Programme to prevent diarrhoeal deaths among children. The National Diarrhoeal Disease Control Programme was made part of the MCH Programme. In the education sector, the strategies of the Seventh Plan underwent a change in the middle of the Plan period with the adoption of a new National Policy on Education (NPE) in 1986. Taking a holistic view, the NPE visualised education as a dynamic, cumulative, life-long process, providing diversity of learning opportunities to all segments of society. It’s main purpose was to fulfill the objective of “Education for All” by providing early childhood care and education, universalising elementary education through formal and non-formal methods, reducing wastage and involving the local community in the management of early education. As a result, new schemes were implemented like the District Primary Education Programme in 1986 and the Operation Black Board in 1987.

Besides, the Scheme of Non-formal Education was revised. Few of the other important initiatives taken by the Government in selected areas especially in educationally backward States, were the Shiksha Karmi Project and Lok Jumbish Project in Rajasthan, Bihar Education Project and the Andhra Pradesh Primary Education Project. The NPE in its own way tried to provide scope for equal access to education to all, irrespective of class, caste, creed or gender. In addition, it envisaged a common educational structure like 10+2+3 and common core curriculum throughout the country. It also sought to remove disparities by catering to the needs of Scheduled Castes, Scheduled Tribes, the handicapped and other minority groups. To look into the problems of street children, the Ministry of Social Justice and Empowerment introduced the Integrated Programme for Street Children.
At the international level, the Convention on the Rights of the Child (CRC) was approved by the General Assembly of the United Nations on 20 November 1989 (the thirtieth anniversary of the adoption of the Declaration of the Rights of the Child). This Convention was formally opened for signature and ratification on 26 January 1990, and various nations vied to be the first to sign and ratify, a race that was won by Ghana when the Secretary General of the United Nations received that country’s instrument of ratification on 5 February 1990. The Government of India ratified the CRC on 11 December 1992. The CRC is “the most complete statement of child rights ever made”. It takes the ten principles of the 1959 Declaration of the Rights of the Child, and expands them to 54 articles, of which 41 relate specifically to the rights of children, covering almost every aspect of a child’s life. It is indeed an innovative document in overall human rights theory and practice. In fact, it is the first United Nations human rights instrument since the UDHR which brings together as inextricable elements of the life of an individual human being the full range of civil and political rights, and economic, social and cultural rights. It can do this because it treats children as complete individuals, rather than as elements in an economic or socio-political system. The Convention aims to create a balance between the rights of children and those of the parents or adults responsible for their survival, development and protection. This is achieved by according children the right to participate in decisions concerning them and their future. The focus in the Eighth Five-Year Plan (1992-97) was on human development through advocacy, mobilisation and community empowerment and it accorded high priority to survival and development of children. The ICDS continued to be the basic strategy for child survival and development focussing on areas predominantly inhabited by the tribal people, Scheduled Castes as well as drought-prone regions and urban slums.

During 1993-94, the National Crèche Fund (NCF) was set-up to meet the growing demand for creches. The NCF extended financial assistance for the opening of creches besides conversion of the existing Anganwadis-cum-Creches. Concerted efforts were simultaneously made to tackle the problem of social deviance, juvenile delinquency
and juvenile crime through preventive, correctional and rehabilitative services. On 15 August 1994, a programme to Eliminate Child Labour in Hazardous Employment by 2000 was announced. Prior to this, in Government of India joined the International Programme on Elimination of Child Labour launched by ILO. Subsequently, the National Authority for Elimination of Child Labour was constituted on 26 September 1994 to lay down policies and programmes for elimination of child labour.

In the “Health for All” strategy, health for underprivileged including children was promoted consistently. The Child Survival and Safe Motherhood (CSSM) programme was launched during the year 1992-93 to strengthen MCH services. Other measures promoted were: greater access for mothers to pre-natal care; training of midwives so that a larger percentage of births took place with the aid of trained attendants; and spreading of awareness in families about the special health and nutrition needs of pregnant women. With a view to regulate and prevent the misuse of modern pre-natal diagnostic techniques, particularly abortion of female foetuses, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was introduced. Prior to this, the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation and Production, Supply and Distribution), Act was formulated in 1992. This came into force on 1 August 1993. During the Eighth Five-Year Plan, the National AIDS Control Organisation was established under the Ministry of Health and Family Welfare to strengthen the management capacity for prevention and control of HIV/AIDS. In the year 1993, the National Nutrition Policy was adopted to combat the problem of malnutrition. The Pulse Polio Immunisation Programme was also started in the year 1995.

In the education sector, the main strategy for achieving the target of “Education for All by 2000 A.D.” was adoption of a decentralised approach to planning. In pursuance of the revised National Policy on Education, 1992 and the Programme of Action, various steps were taken to expand early childhood care and education activities, and universalise elementary education. An NGO Cell was specifically set-up in 1994 to facilitate networking with NGOs on varied issues concerning children. In the year 1994, District Primary Education Programme (DPEP) was launched as a centrally sponsored
scheme in 42 districts of seven States, with the aim of revitalizing and strengthening the existing system, tackling problem areas, developing innovative approaches with the district as a unit of planning.

In adopting a holistic approach, emphasis was laid on converting existent programmes and services, and encouraging community participation. The Eighth Plan specifically recognised the ‘Girl Child’ as an important target group, demanding attention of the Government for her development and to fight against the prevailing gender discrimination. The Eighth Plan marked the adoption of two National Plans of Action in 1992 – one for children and the other exclusively for the girl child. These Plans of Action committed themselves to achieve the goals pronounced in the 1990 World Summit on Survival, Protection and Development of Children. In conformity with these National Plans, many States prepared their own State Plan of Action for Children/for the Girl Child. Two separate Inter-Departmental Coordination Committees reviewed the progress of the implementation of these two Plans of Action at regular intervals. A few States also embarked upon specific schemes to improve the plight of the girl child. For example, Haryana instituted the ‘Apni Beti Apna Dhan’ Scheme, Tamil Nadu initiated the ‘Cradle Scheme’, Rajasthan introduced the ‘Raj Lakshmi Scheme’ and Madhya Pradesh the ‘Bhagyalakshmi’ Scheme.

In the Ninth Five-Year Plan (1997-2002), efforts were made to expedite effective implementation and achievement of the goals set in the two Plans of Action besides instituting a National Charter for Children to ensure that no child remains illiterate, hungry or lacks medical care. To ensure the ‘survival, protection and development’ of children, especially that of the girl child, the Ninth Plan concentrated on arresting the problem of declining sex-ratio as well as its other related problems of female foeticide and infanticide.

In order to fulfill the birth right of every child to ‘development’, especially of those belonging to the disadvantaged and deprived groups as well as those with special needs, the Ninth Plan continued to focus on three major areas of child development, viz. health, nutrition and education. In the field of ‘Health’, the scope of the erstwhile
programme of CSSM was further widened into a comprehensive programme of Reproductive and Child Health (RCH) that laid special emphasis on child survival and other related measures. Continued emphasis was laid on the ICDS. Under the Universal Immunisation Programme, significant achievements were made to arrest the problem of diphtheria, pertussis, neonatal tetanus, tuberculosis, poliomyelitis and measles. The special drive of Pulse Polio launched during 1995-96 was continued to eliminate the problem of poliomyelitis. All this had a definite impact in reducing the Infant Mortality Rate. The Government of India also committed to provide safe drinking water and sanitation facilities to every village to achieve the goal of ‘Health for All’.

In the field of ‘Nutrition’, children below the age of 6 years along with expectant and nursing mothers, received highest priority in line with the provisions of the National Nutrition Policy, 1993 and the National Plan of Action on Nutrition, 1995. Despite the shortfalls that were recorded in terms of feeding and funding by the State Governments, the coverage under Special Nutrition Programme reached 31.5 million children in the age group of 0-6 years.

In the field of ‘Education’, in consonance with the National Policy on Education as revised in 1992 and the Programme of Action, special thrust was given to the measures of Universal Primary Education. As a result of this, the country made impressive achievements whereby the number of schools increased four-fold from 2.31 lakh in 1950-51 to 9.88 lakh in 1999-2000, while the enrollment at the primary level jumped up by about six times from 19.2 million to 113.6 million. In 2001-02, the Sarva Shiksha Abhiyan (SSA) was launched with the aim of providing quality elementary education to all children in the 6-14 age group by 2010, besides bridging all gender and social category gaps at primary stage by 2007.

Concerted efforts were made to eliminate all forms of discrimination and violations against the rights of the girl child. The Ninth Plan also provided special incentives to the mother and the girl child so that the birth of a girl child in a family was rejoiced. To this effect, in the year 1997, Balika Samriddhi Yojana (BSY) was launched whereby a special package consisting of Rs.500/- to the mother and annual scholar-
ship ranging from Rs.300/- to Rs.1,000/- for education of girl children from class 1 to 10 was provided to all those families living below the poverty line to ensure that all girl children went to schools.

The incentive of Rs.500/- to the mother on the delivery of a girl child was limited to two girl children only. Similar initiatives were also launched by other State Governments. In 1999, the BSY was reviewed and recast to make it more effective. In 1998, the Government with the support of UNICEF launched a special service for children called Childline. This is a free phone service that can be accessed by a child or anyone on his/her behalf simply by dialing the number 1098. At present, Childline is working in 68 cities through a network of NGOs which not only responds to the needs of children but also plays a major role in crises intervention, long term care and rehabilitation. Realizing the need for an effective service delivery to children in need of care and protection, a National Initiative for Child Protection was launched through the National Institute of Social Defence and Childline India Foundation. It aimed at building partnerships with the State Departments of Social/Child Welfare, Childline Service and allied systems for protection and promotion of children’s rights. In 1998, the Government of India instituted a Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children.

As per the commitment made by the Government of India to the CRC Committee, a Bill for setting up of a National Commission for Children to safeguard their rights was drafted in 2001. Prior to this, a Special Expert Committee chaired by Justice Shri V.R. Krishna Iyer prepared a Children’s Code Bill 2000. Along with the above, the two on-going direct feeding programmes of Special Nutrition as part of the ICDS and the National Programme for Nutrition Support to Primary Education have been streamlined and strengthened. Moreover, as a follow-up of the announcement made by the Prime Minister in his Independence Day Speech of 2001, a National Nutrition Mission was set-up in 2002 with an overall responsibility of reducing/eliminating both macro and micro nutritional deficiencies in the country. Recognising the increasing need for support services of creches/day care centres for the children of working/
ailing mothers, especially in the present day context where more and more women are coming out for employment both in the organised and unorganized sectors, the NCF has been further strengthened to provide a wide network of creches all over the country.

With regard to education, the Constitution (86th Amendment) Act was notified in December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years. The fact that Article 21A was added to the Constitution for recognising right to primary education implies that right to personal liberty guaranteed by Article 21 is now also the basis for a general right to education. Correspondingly, Article 45 of the Constitution has been substituted so as to provide for early childhood care and education for all children till they complete the age of 6 years. Article 51A was further modified by adding a clause – (k) – stating that it is the duty of the parents/guardians to provide opportunities for education to their children/ward between the age of six and fourteen years. Ever since education became a Fundamental Right, the Tenth Plan adopted a new approach towards achieving the goal of Universalisation of Elementary Education (UEE). As pointed out earlier since most of the programmes in the field of elementary education were disjointed in nature, Sarva Shiksha Abhiyan was launched in 2001-02 for providing comprehensive elementary education to all children. The SSA is seen as a major vehicle for achieving the goals of UEE in the Tenth Plan period. SSA is expected to solve the present problems of low rates of enrollment and retention, besides high drop-out rates, especially amongst the girl children belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Minorities. Through this programme, the Government aims to cover children who have never enrolled or those who have dropped-out without completing eight years of elementary schooling. In terms of pre-school education, the Early Child Care Education component of ICDS continues to be a significant input for providing a sound foundation for development as well as the first step in the education ladder.
Focussed attention is now being given to strengthening the early joyful period of play and learning in the young child’s life to ensure a harmonious transition from the family environment to the primary school.

In its quest to guarantee quality basic education throughout the country, the Government of India, in the year 2004, imposed an Education Cess @ 2 per cent on direct and indirect Central Taxes. At the international level, it adopted the Dakar Framework for Action on Education for All. The Framework identifies six goals, which includes, inter alia, progressive expansion of Early Childhood Care and Education, Universalization of Elementary Education by 2015, achieving Gender Equality in Education by 2015, and improvement in the quality of education.

Another very prominent legislation passed in the interest of children during the Tenth Five-Year Plan was the Goa Children’s Act, 2003. The Act ensures protection for children and the young against exploitation of all kinds and against moral and material abandonment. In 2003, the Government of India ratified the 1993 Convention for the Protection of Children and Cooperation for Inter-country Adoption (The Hague Convention). The Juvenile Justice Act of 2000 was also modified. This Act is now known as the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. The year 2006 has been especially significant as the Commission for Protection of Child Rights Bill, 2005 was passed by the Parliament though the Child Rights Commission is yet to be set up. This is a big achievement not only for the children of the country but also for the Government for it was able to fulfil its commitment made to the CRC Committee for setting-up a Child Rights Commission. The children and the people of the country would now have to wait and see how this Commission really functions.

At the international level, the UN General Assembly’s Special Session on Children was held in May 2002. Having accepted the Millennium Summit Declaration of 2000 known as Millenium Development Goals and in order to achieve the targets set by the UN General Assembly, the Ministry of Women and Child Development subsequently drew up a fresh National Plan of Action for Children in the year 2005 with a hope that
it would provide a roadmap for steps to be taken for bringing about improvement in the lives of Indian children.

3.5 Summary:
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 implementa-
tion of a human right. He points out that legislations, which go a long way towards ensuring enforceability of specific minimum entitlements, may also have the negative effect of giving restrictive or limited interpretations of the content of the concerned human right. Legislations may also give rise to policy inaction on the ground that specific legal rules have been complied with. For example, if a law lays down that the duty of the State is to ensure x, y, z, then the State will restrict its activities to ensuring x, y, z without looking beyond that framework. Therefore, while legislation is certainly a welcome development, it should not be treated as the only vehicle of implementing human rights. The legislation should also be supplemented by other non coercive rules for effective implementation of the human right.

This caveat needs to be taken into account during legislative processes and adequate safeguards need to be built into the law. While there cannot be a fool-proof mechanism of countering negative outcomes of law, the identifiable negative outcomes may be mitigated. For instance, governmental inaction could be countered through institutionalised periodic review of policy as well as law to ensure that progressive changes are made to both from time to time. In addition to such periodic review of policies, there should also be an institutionalised periodic review of the implementation of not only the policy but also the law. Furthermore, the quality of elementary education also depends on the quality of teaching staff, non-teaching staff, sensitivity and awareness of administrative staff in the various government departments. Therefore, training and developing the capacities of such personnel is a critical component of elementary education.

In particular, this caveat assumes great importance in the context of education in India because the fundamental right to education as enshrined in the Constitution is limited to the age group of 6–14 years. This not only excludes early childhood care and education but also excludes higher education. Internationally, the human right to education includes the right to education at all stages that are fundamental and basic, including the right to early childhood care and education.
The Right to Education 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 infrastruc-
tural 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 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.\textsuperscript{36}

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.\textsuperscript{37} The joint review conducted by the government and its development partners itself expressed concern 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. The variations among the states shall be discussed in detail in afterward chapter. The discussion of the RTE Act and Constitutional provisions and governmental policies shall be followed by the landmark cases of the apex court of the land in the next chapter.