

# Free and Compulsory Education

## Legislative Intervention

*The union government is preparing a Free and Compulsory Education Bill in order to make the 86th amendment to the Constitution that has made elementary education a fundamental right, statutorily enforceable. State governments may follow enacting their own legislation.*

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Since education is an important 'freedom', as theorised by Amartya Sen, the current efforts to formulate a bill for free and compulsory education in India, 57 years after attaining political freedom, can be regarded as the second freedom struggle. But this freedom struggle seems to be getting bitter.

The Directive Principle (Article 45) originally enshrined in the Constitution of India in 1950 – "The State shall endeavour to provide within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years" – could not effectively 'direct' the state to universalise elementary education. As a result, 52 years after India became Republic, the 86th amendment was made to the Constitution in 2002. But this amendment does not seem to 'amend' the approach of the state to provide universal elementary education, as the several provisions in the proposed draft bill for free and compulsory education allow continuation of the tokenism as an approach in providing education. While the need for a legislation to make the 86th amendment statutorily enforceable is widely felt, the proposed draft bill seems to be quite inadequate.

Due to the ineffectiveness of the Directive Principle, and given the policy approaches adopted by the government so far, the need for a comprehensive bill is indeed obvious. Further, the increasing lack of political will also stresses the need for a tough legislation. It is important that the bill comprehensively and unambiguously define the terms and the approaches with regard to certain key elements, leaving no scope for misinterpretation and

evasion and even dilution of responsibility by the state. Formulation of a well-designed and comprehensive bill by the union government may also make the need for separate bills by the state governments redundant. Or if the state governments still require such a bill for sociopolitical reasons, they may draw inspiration from such a bill formulated by the union government.

Until now elementary education in India is neither free nor compulsory. 'Free' education is defined to refer to only tuition fee-free education. The proposed bill goes a little bit forward, and states that free education should mean that no fees or charges of any kind are levied on students. This is an important, but only a marginal improvement. The bill also states that free education may include provision of textbooks, stationery, uniforms, public transport, school meal, etc. to the school children so that "freedom for the parent or guardian from liability to incur expenditure" is ensured, but "subject to rules made in this behalf". This only offers an opportunity for the government to disregard these provisions. It is important to recognise that textbooks, stationery etc. constitute an integral part of instruction, and not incentives. Further all these learning-instructional inputs and incentives are to be provided universally to all, rather than targeting them to some groups of students, as the externalities in terms of equity effects of universal provision of these incentives and others would be tremendous. The principles of ability to pay and the willingness to pay should not figure in designing free and compulsory education. It is necessary that the concept of free education is defined comprehensively to include all these and even the opportunity costs of children's education, which can be met

through financial scholarships. The draft bill does not seem to be referring to the scholarships at all.

Under the name of education, presently all forms of education are being allowed. The bill has to define that education means formal schooling, and not non-formal education, informal education, alternative education or education through education guarantee schools, etc. 'Transition schools' which are equivalent to education guarantee schools in terms of provision of teachers and other inputs, are also accorded a respectable and an equal place in the draft bill. Transition schools should at best be allowed as a very short term measure for two to three years; and thereafter there should be no place for such transition schools. It is important to realise that there is no substitute in the long term to a good quality formal school. Certainly there cannot be any place for open schooling or correspondence courses at elementary level of education.

The quality of education also needs to be clearly and unambiguously defined, so as to allow the system to have only fully qualified and properly trained and reasonably paid teachers and not para teachers (shikshakarmis, vidya volunteers, etc). The system of para teachers can create serious problems of quality in education, besides creating different kinds of inequalities and irritations among the teachers. But the draft bill provides for such teachers; it provides for 'instructor' who has passed only class X, and even class VIII in case of women, with training for a mere 30 days. Further, the draft bill proposes to have a pupil-teacher ratio of one teacher per 40 students in primary and upper primary classes, while several committees have recently argued for reduced number of students per every teacher on average. 1:25 may be a desirable teacher-pupil ratio. International evidence shows that high pupil-teacher ratios are inversely related to completion rates in primary schools. Certainly the current teacher-pupil ratio at upper primary level which is around 1:35, which also currently forms the guidelines for educational planning in India, is better than the level now proposed in the draft bill, and in this sense, the proposed pupil-teacher ratio at upper primary level seems to be a retrogressive measure. Quality dimensions should also include definition of normal schools so as to cover all-weather buildings, adequate classrooms and sufficient infrastructure, as essential pre-requisites, not as desirable ones. For example,

drinking water and toilet facilities are listed in the draft bill as 'desirable' norms, along with boundary wall or fencing, playground, child-friendly elements, sports equipment and arrangements for early childhood care! Nowadays it is increasingly well known that many children, particularly girl children drop out of schools due to the absence of toilet and drinking water facilities in schools. The National Sample Survey and the National Family and Health Survey results have shown that infrastructure facilities in schools have a significant influence on enrolment/non-enrolment and dropout rates in schools.

The draft bill refers to free and compulsory education from class I to class VIII only. As the threshold level of education to have an effect on development rises over the years, it would be desirable to include the whole school education (at least from class I to X, and preferably up to class XII). Also in many developing and developed countries, compulsory education does extend to 9 to 12 years of schooling. We can also take advantage of the integrated (or composite) school system from class I to X/XII or from Class VI to X/XII that we have, by covering the whole school system under the free and compulsory education bill. Unfortunately the draft bill is rather rigid in its outlook, and promises to provide nothing beyond elementary education. If a child completes grade VIII when he or she is 13 years of old, the draft bill prefers to exclude him or her immediately from free education, rather than allowing at least up to 14 years of age. Note that the original Directive Principle of the Constitution does allow it.

'Compulsion' may have to be clearly defined in such a way that the compulsion is adequately felt more by the government, to provide good quality schooling facilities for all, than by the parents. Provision of good quality accessible free schooling facilities, would eventually make compulsion on parents redundant, as families are found to be enthusiastic to send their children to good schools. There does exist huge demand for education, rather for good quality education, as the PROBE report has documented, even in rural remote areas, and even among the minority communities and even for girls education. This may be due to the total literacy campaigns and the efforts of the media and the non-government organisations, besides those of the government. Unless the demand is met by the supply of good quality education, the demand would evaporate, later raising the

need for measures for demand creation. Provision of accessible good quality public schooling facilities would justify making it truly compulsory on all to send their children to public schools and even to disregard the principle of individual choice altogether in case of elementary education, a social merit good.

Among all the components, the proposed draft bill seems to be least sensitive to growing inequalities in the education system. It does not discourage the growth of the fee-charging private school system; in fact, in several ways, through several clauses, the bill seems to be encouraging the growth of the dual system of elementary education – public education system (of poor quality) for the poor, and fee-charging private education (of better quality) for those who can afford. It may be noted that the size of the private sector is infinitesimally small in case of free and compulsory education even in market economies. At least as a long term goal, the bill may have to mention that the march will be towards a common school system of good quality to all.

It is also necessary that the bill unambiguously makes it clear that the state is firmly committed to the provision of

education as a fundamental right to all and that the government ensures a steady flow of adequate funds for the same. In this context it may be recalled that the Tapas Majumdar Committee had estimated in 1999 that making elementary education a fundamental right would involve an outlay of Rs 1,37,000 crore for a 10-year period; but the financial memorandum attached to the 86th amendment provided for only Rs 98,000 crore; and that even this amount is not being allocated. The needs of the system would be increasing, rather than falling. But the actual allocations do not seem to be matching the requirements. Further, given the fiscal situation of many state governments, it would be desirable, as recommended by the Tapas Majumdar Committee, for the union government to share the total additional responsibly of financing free and compulsory education, until the goal is achieved, rather than proposing a distribution of responsibilities between the union and the states in the ratio of 85:15 in the first five years, 75:25 in the next five years and 50:50 thereafter, as provided in the Sarva Shiksha Abhiyan.

A closely related aspect is the reference in the draft bill to public-private partnership in providing elementary education.

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Often, it is not any partnership, but as Katarina Tomasevski, special rapporteur to the Right to Education of the United Nations, describes (*Education Denied*, Zed Books, 2003), it is a 'business deal' between the public authorities and the private agencies. This seems to be the case in public-NGO partnerships as well.

Yet another aspect is the implementation authorities. The draft bill provides an elaborate structure of authorities starting from habitation level elementary education authority, including ward and hamlet level committees or authorities, local level authority, district level, state level and central level authorities. The provisions in the bill describe not a process and a model of decentralisation in a normative framework, but a mechanism of abdication of responsibilities by higher levels of authorities in favour of the lower levels; and not a method of devolution of powers and resources, but a mechanism of mobilisation of non-governmental resources. Authorities at every level are required to mobilise financial resources for free and compulsory elementary education. This may suggest that the whole mechanism can be viewed as one conceived to mobilise more financial resources from the community and correspondingly to reduce the financial responsibility of the state. Further this elaborate line of authorities parallels the already existing chain of school education committees, village/panchayat education committees, block/district/state/national education committees, etc, created following the 73rd and 74th amendments to the Constitution, and later developments including the launching of district primary education project, mostly funded by external agencies. All these structures have already sidelined the government's education machinery existing at block, district, state and union government levels.

Of all, two important aspects need to be underlined. First, the additional financial requirements of free and compulsory education seem to be huge. But the sum is not really so; for according to the Majumdar committee this averages to 0.7 per cent of national income on the assumption that the national income increases at a rate of 5 per cent. If the GNP is increasing at a rate of growth of about 8 per cent, as now realised, the proportion of national income additionally required for elementary education would be much less. The Tapas Majumdar Committee has clearly shown that good quality, equitable and efficient education is financially affordable

in India, and that allocation of the required resources is feasible, provided there is political will. Hence, lack of finances should not be cited as an excuse for ineffective functioning. As Amartya Sen stated, it is an utter unmitigated nonsense to say that India does not have money for education.

Second, it is also important to note that any provision of required resources for free and compulsory elementary education need and should not be at the cost of expansion of secondary and higher education. No valid case exists in favour of elementary education that goes at the same time against secondary and higher education. After all, the inter-sectoral linkages are too crucial to ignore. At least as a precautionary measure, the draft bill may have to mention this unambiguously.

Above all, the role of the state needs to be clearly, coherently and unambiguously defined and described in the bill. As a legal expert noted, the draft bill contains too many 'may's and the like, and a fewer number of 'shall's, which might lead one to doubt the seriousness of the government on the issue of free and compulsory elementary education. The bill has to recognise that there is no place for the private sector, that the role of the non-government organisations can at best be peripheral, that any effort to dilute the fundamental duty of the state in this task would go against the letter and spirit of the Constitution of India, and above all that there the state has no choice but to provide good quality education to all. **EPW**