

Some Thoughts On The Right To Education Legislation In India
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The Constitution (86th Amendment) Act of 2002 stipulates that all children in the age group of 6-14 years shall have a Fundamental Right to free and compulsory education, to be delivered by the State in such manner as it may determine through a law to be enacted in this behalf. Several versions of this law have been debated and discussed, the last introduced in the Rajya Sabha as the Right of Children to Free and Compulsory Education Bill, 2008. The Parliamentary Committee on Human Resource Development considered the Bill and made several suggestions to the Government. While it is understood that Cabinet had cleared the modified version of the Bill for passage in Parliament, the matter was not eventually taken up in the last session of the House.

When a new Government takes power at the Centre after the 2009 general elections, some of the issues it might wish to address in regard to this legislation could include the following:

- The present Bill is longer than the brief Chinese law and much shorter than the comprehensive British one. As a result, it does not provide enough flexibility to the States which is essential in our federal structure, while simultaneously failing to address many issues that are important.
- Among the issues that have not been addressed are learning outcomes, certification and the importance of early childhood care and education.
- Basic principles informing the new legislation must at least include:
 - **Equity:** The responsibility of the State has been defined as that of ensuring that every child in the relevant age group receives free and compulsory education. From an equity perspective, at the simplest level this implies that there should be equity in State expenditure on each child, regardless of whether that child is in a government or private school. It should be possible to work out an appropriate norm for such expenditure on this basis and thus transfer funds to State governments on an annual basis.
 - **Access:** The State must ensure that all children have access to elementary schools. This is not only in the sense of ensuring establishment of enough schools, but also in the sense of removing barriers to participation. The new

legislation must also specifically address the manner in which the State would support girls and students from traditionally marginalised groups in participating in mainstream education.

- **Learning outcomes:** Any legislation that does not accord importance to learning outcomes will remain incomplete. Confining the provisions of the Act to inputs will result in the kind of input-driven approaches that we have observed thus far, with no accountability for what children learn. At the end of the prescribed period of education, children must be able to demonstrate a basic acquisition of knowledge, measured independently of the system. This will call for the introduction of child-friendly third-party external evaluations, which may be administered without being intrusive and stressful.
- **Extension of coverage:** The Constitution (86th Amendment) Act, 2002, restricts the Fundamental Right to children between the ages of 6-14. While elementary education may have been appropriate in the 1950s when the original Directive Principle was formulated, in today's world there is a need to increase coverage at least up to the secondary education stage, i.e., Class 10. At the same time, given the importance of early childhood care and education, pre-school education should also be covered in the scope of the new legislation even though it is beyond the scope of the Constitutional Amendment. This would also be consistent with the UN Convention on the Rights of the Child, to which India is a party.
- **Role of non-State actors:** There are a large number of NGOs and private organisations engaged in school education in India today. Regardless of the economic and political philosophies attached to their participation in this sector, this is a reality that has firmly established itself over the last six decades and cannot be wished away. There may be some merit in using their capacities to support State efforts. As has been the case in other countries, NGOs and the private sector could be invited to take over and run State schools on existing budgets, with prior approval of the local community/government.

- **Oversight of implementation:** Traditionally, the Ministry of Human Resource Development at the Centre has been responsible for monitoring the implementation of Centrally-sponsored educational programmes. While it should remain the funding Ministry, the role of monitoring implementation of the Act should be assigned to an independent body through the creation of say, a National Commission on Education, with quasi-judicial powers. This Commission could be replicated at the State government level so that each State is also able to ensure implementation of the Act within its own jurisdiction.

The writer is a former civil servant who was Director in the Ministry of HRD from 2001-2006 and worked with the CAGE Committee that produced the recommendations that led to the draft RTE Bill 2005. He now works with the private sector.