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SPECIAL ISSUE ON RIGHT TO EDUCATION

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Foreword

It is generally well-acknowledged in contemporary discourses that access to good quality elementary education (if not higher levels) must be treated as a fundamental right. Custodians of public policy in India, after doing precious nothing on a matter so critical to the country's future for over half a century now, seem to have displayed a degree of urgency and seriousness in the recent years. The enactment of the Right of Children to Free and Compulsory Education Act, 2009 (henceforth RTE Act 2009) is a step in the right direction. The road ahead, however, seems to be rough given that the 'how' and the 'where to' remain ambiguous in several important respects in this otherwise significant enactment.

To quickly recap the recent steps in the journey of the RTE Act, 2009, the 86th Amendment Act, 2002 made three specific provisions in the Indian Constitution to facilitate the realization of free and compulsory education to children between the ages of 6 to 14 years as a Fundamental Right. These were (i) adding Article 21A in Part III (Fundamental Rights), (ii) modifying Article 45, and (iii) adding a new clause (k) under Article 51A (Fundamental Duties) making the parent or guardian responsible to provide opportunities for education to their children between 6 and 14 years.

In September 2004, the CABE Committee was constituted as a first step to drafting the RTE Bill which was submitted to the government in June 2005, although without any consultations being held with the public at large. The Bill was found wanting on several fronts, beginning with its definition of a 'child' (not less than 6 years and not more than 14 years) to shying away from owning the economic responsibility by the Union government while fleshing out the provisions. Further, not only did the Bill have none of the tenets of the Common School System (CSS) incorporated in it that would have allowed for compulsory and uniform quality education to all but also was unable to suggest carrying out specific Amendments necessary in the Child Labour (Prohibition and Regulation) Act, 1986.

The government, however, dithered on moving ahead with the recommendations made in the draft RTE Bill 2005 citing lack of funds and drafted a Model Right to Education Bill, 2006, and proposed to incentivise the States to adopt the Model Bill. The draft Model Bill's implementation was linked to the States' funding of Sarva Shiksha Abhiyan (SSA) by the Centre to the tune of 75 percent. If this arm-twisting was not enough, the financial liability of providing free and compulsory education was on the States and UTs, making elementary education first charge on the revenue of the State/UT government.

Due to a combination of factors, including public pressure, a decision was finally taken to introduce a Central legislation in the budget session of Parliament in 2008. The CABE draft of August 2005 was resurrected. Since it had already received substantial responses from State governments and the public, these were incorporated in preparing a new draft Bill by a working group constituted by the Ministry of Human Resource Development. Although the re-drafted RTE Bill 2008 was not made public or open to consultations, the Union Cabinet went ahead and cleared the draft Bill on October 31, 2008; with some changes, this got enacted as the RTE Act 2009.

One would have expected that after so many rounds of drafting and re-drafting the enactment, the final outcome would be an effective instrument for any child in this country to demand her basic entitlement. The following pointers reveal some of the major concerns.

Unequal Dispensation of Right to Education

To begin with, the Act further fortifies the multi-tiered and unequal education structure as opposed to a common school system. While the government-run schools would cover



costs associated with all its wards, the government-aided schools would be accountable to admitting students proportionate to 25 percent of its annual grants. One can understand if the government is keen to get the Act operational at the earliest and is subsidising the cost of private-run schools for providing education temporarily; however, this is certainly not the case as the government does not specify any time frame up to when it would continue to reimburse the costs of education of the private-run schools. With over 21 percent of schools in the country already being run by private management on commercial principles, there is a real concern that this provision might be seen as a lucrative business opportunity by many.

Unclear Definition of a Child

Clarity is missing even on the basic understanding of who is a child. The United Nations Convention of Rights of the Child (UNCRC) defines any individual below 18 years of age as a child. While the Juvenile Justice Act in our country considers persons below 14 years as children, the Right to Education Act narrows it down to persons between 6 to 14 years.

Indefinite Timelines

Several of the provisions in the Act leave a lot of scope for the government to delay effective implementation. For instance, establishing a neighborhood school where there is none within three years of commencement of the Act is a case in point. The extent of ambiguity becomes obvious as the Act does not clarify the area or limits for establishment of a neighborhood school, leaving this to be decided by the government at a later date through rules that it may deem fit to alter.

Varying Standards for Accountability

Quality monitoring is attainable only in a culture of accountability. To ensure this, the Act provides that all schools, except unaided, would constitute a School Management Committee (SMC). Obviously, having SMCs do not ensure that mechanisms for monitoring of norm-adherence as specified in the Act, and more important, issues of quality with respect to specified norms – a grey area. Apart from the complex questions relating to fixing of accountability at different levels remaining unaddressed, it is not clear why unaided schools are left out of the purview of accountability, when we define accountability in the narrow sense of the school constituted SMCs.

Fixing Financial Responsibility

There is no clarity on who will take the lead in financing the Act. Ideally, the Central government ought to be shouldering this duty in the light of the poor fiscal situation in most of the States. Acknowledging this reality, the Act notes that the States may seek a pre-determined percentage of expenditure as grants-in-aid from the Central government based on recommendations of the Finance Commission on assessment of additional resource requirements to any State. Be that as it may, the Act reveals the obvious contradiction when on the one hand, it suggests both the Union and State governments have concurrent responsibility to finance the Act, with the Centre preparing estimates of capital and recurring expenditure under the Act, on the other, it unequivocally holds the State governments responsible to provide funds for implementation of the Act.

The Union government trying to shy away from taking the financial responsibility of implementing the Act is in keeping with its reluctance in allocating adequately for the social sector. Spending on education by the Union government in 2009-10 (BE) stood at Rs.44,528 crore (around 0.76 percent of GDP) while the State governments in 2008-09 (BE) were provisioning Rs.1.3 lakh crore (around 2.3 percent of GDP). Despite reiterating the same commitment in the past 40 years, spending on education by Union and State governments as a proportion of GDP remains at 3.7 percent (2007-08).

The CABE Committee had estimated that in the six year period of 2006-07 to 2011-12, Rs.4.36 lakh crore (with teacher's salary at Kendriya Vidyalaya norms) and Rs.3.93 lakh



crore (with teacher's salary at prevalent scales) would have to be allocated to universalise elementary education. Sticking to the lower level of CAGE projections, the additional required outlays are Rs.3.93 lakh crore for a five-year period. In this regard, reports in the media suggesting the required additional outlays anywhere in between Rs.1.78 to Rs.2.32 lakh crore, spread over a period of five years, as estimated by the MHRD, for implementing Right to Education Act seem extremely disturbing, if not mysterious.

These and some other critical issues have been taken up in considerable detail in this Special Issue focusing on Right to Education Act where we have invited contributions from leading lights in the sphere of academics, civil society and movements working towards realisation of this critical entitlement. These articles would, it is hoped, inform and guide our understanding and advocacy on the operationalisation of Right to Education Act and come in handy as a ready-reckoner on the issue of financial and quality aspects pertaining to the Right to Education Act.

Praveen Jha & Pooja Parvati



Right to Education and India's Democracy

Shantha Sinha*

Since the time of framing of India's Constitution, the journey of the State's obligation to ensure children's right to education has been ridden with obstacles. Although there has been a phenomenal increase in the numbers of schools, teachers and school going children in effect universalisation of education remains an unfinished task¹. It is hoped that with the passing of the 'Right of Children to Free and Compulsory Education' Act (RTE Act) 2009, children in our country would no longer be out of school as part of the labour force but would all enjoy their right to education in a full time day school. For, it is education alone that opens up possibilities for a world of opportunities and choices and its absence draws one to a marginalised and vulnerable work force. Education leads to path of equity and social justice which are so intrinsic to the democratic fabric of society.

Setting the Context

The RTE Act is historic as it makes it a State obligation to provide for free and compulsory education to every child of the age of 6-14 years in a neighbourhood. Ordinarily the definition of neighbourhood is based on distance: 1 km of walking distance from habitation of a child at the primary level and 3 km at the upper primary level. However in areas of sparse populations or those prone to natural disasters or with difficult terrain or civil unrest, this limitation may be changed so that their education is not interrupted or disrupted.

In making it mandatory for the State to 'ensure compulsory admission, attendance, and completion of elementary education by every child of 6-14 years by implication, the State is violating the law if any child is out of school, or is a school dropout'. According to the Act free education means that no financial constraints can 'prevent' a child from completing elementary education. In other

words if a child lives in a remote area, providing free transportation (or residential facility or some other facility) will be part of the child's entitlement to education. These include special aids for children with disabilities.

The Act seeks to remedy the structural deficiencies that have pushed children out of schools. The government schools which are currently bursting at their seams with overcrowded classrooms, having no corresponding increase in the numbers of schools at the elementary level are now mandated by the Act for State provisioning of infrastructure facilities.²

Compounding the lack of infrastructure are issues of corporal punishment and consequent insults and humiliation. Children are often punished for non-payment of school fees and other charges, not wearing school uniforms, inability to buy text books, notebooks and other stationery. This in itself discourages children from participating in school. In many schools children are subject to discrimination on the basis of caste, gender, disability, ill-health and so on. These issues too are addressed in the Act which clearly provides that 'no child shall be subjected to physical punishment or mental harassment'. It also spells out a child friendly pedagogy.

Encouraging the First Generation Learners

More importantly, the RTE Act appreciates the difficulties faced by the first generation learners in coping with the school system. Families that have been denied literacy for centuries would not know how to transact in the world of school and education while they are able to deal with the world of work, labour and employer-employee relation. The act of going to the school necessitates inculcating a culture and habit of packing the school bag and lunch box, doing the home-work, preparing for endless tests,

learning the language, coping with an unfamiliar medium of instruction, being regular to school and so on. It requires knowing the procedures of admission, getting a birth certificate, attendance in schools, obtaining a transfer certificate to move from one level i.e. primary school to the next level. They are at a loss to deal with the school system, the myriad procedures, rules and hidden practices that we as middle class have acquired and transact almost unthinkingly. The RTE Act is sensitive to all the above challenges faced by children and thus makes it mandatory that no child is denied admission or driven out of school for want of birth certificate, transfer certificate nor can they be held back in any class till the completion of elementary school.

Tackling Backlog

With large numbers of children of school-going age out of school, it is inevitable that they join the labour force. The markets are ever ready to absorb them as they are a source of cheap labour that can be compelled to work for long hours. Consequently the child joining the labour pool is condoned. This indirectly gives a message that children may not learn and teachers need not perform because poor children in any case would not continue in schools. Under the RTE Act, no child is to be out of school and in order that older children and school dropouts catch up with their peers, children will be enrolled in the class that corresponds their age. It is the obligation of the State to admit a child to an age appropriate class and receive special training to be on par with others. This means that the RTE Act addresses the huge backlog of children who have been left out of the formal schools.

Role of Private Schools

Rights based discourse also means evolving a framework that includes the private

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sector to provide every child education of equitable quality and access. Most private schools in the country today are guided by the logic of the market and have emerged as commercial ventures. This scenario is vastly different from the private schools which had earlier emerged to serve the educational needs of children and were non-profit organisations and charitable trusts that depended on State aid. Now in the framework of market, services are offered to such children who can buy education. Like any other product, it is packaged to convey that a good school is English medium, children in school uniform, tie and shoes, competition and home-work, discipline of learning and if better endowed, it is picnics, computers and state-of-the-art technology. In their urge to acquire the 'brand' product as any consumer, the clients begin to spend more than what they can actually afford just as consumers of any commodity in the market. In this sense education is becoming a commodity for sale and transaction, available only for those who can afford it.

Encouraging private schools as commercial enterprises compromises the principle of universality as it offers services only to those who can pay for it. Thus those who are deprived and marginalised are automatically out of its net. If left unregulated, the high-end suppliers would foster further exclusion and reinforce class differentiation. It is in this context that it becomes imperative to see the role of schools as institutions that are indispensable for creating conditions for an inclusive democracy and as instruments for building capacities of citizens. The very act of studying along with their peers in the neighborhood, transcending class differentiation integrates children into a web of interaction, encouraging them to utilise creative modes of thinking and pursuit of knowledge. As a first step towards equity and bridging the gaps in the social and cultural hierarchies, the

right to education act makes it mandatory that all private schools provide for 25% of its admission to poor students.

Childhood, State and Democracy

A childhood enjoyed, is the result of having State support; either direct or indirect. Indeed I am what I am because of the support I received from the State in terms of subsidised school fees, college fees and university fees. Due to this State support the next generation from among those of us who have benefited is able to participate as empowered citizens of the State and take advantage of the market.

An undercurrent of cynicism about government and its capacity to deliver is slowly getting solidified. Such a discourse does not encourage or build the capacities of the State to deliver services, but allows for abdication of the State's obligation towards its children. More than anything else it systematically augments de-legitimisation of the State. All of us are aware that there is no other institution in contemporary times that can parallel the State especially for the protection of rights.

Therefore when the State falters and creates structures and processes that exclude children, the solution would be in not abandoning the State but in reforming its system, rethinking its policies for children, making greater investments and constantly bring to the fore the rights-based perspective that resonates with the values of democracy, justice and equity as enshrined in the Constitution of India. This requires galvanising the energies of all in society to create an atmosphere where the rights of children are protected as a State obligation and guaranteed by the State as political expression.

Implications for Democracy

The process of realising children's rights in a way is a process of deepening of democracy. The challenge is in making the voices and the practices on the ground the voice of those in authority and

establishment. When utmost faith in its people and their capacities is evidenced by the State's commitment, local actions emerge, which go beyond the expectations of the government. In fact it has been seen time and again how a community can take ownership of the idea, spread its wings and offer all that it has to make education happen including breaking down many exclusionary barriers, as if it was waiting for this call from its government leaders. Since several of these ideas challenge normative ways of thinking and doing things, they do question the existing social and cultural hierarchies and power structures. It seems that at this point taking sides becomes inevitable. However, the strengthening of the community forums which emerge, serve to strengthen collective democratic processes through local consensus building in favour of the democratisation of existing structures and practices. The challenge in taking such movements forward has always been in institutionalising the ground swell of local action.

The process of attainment of right to education requires all to take a categorical stand in favour of children's rights. It must be an expression of moral indignation leading to action and daily practices of respecting all children of all classes. We must question in an institutionalised fashion all violations of children's rights and create energy for the State to respond to avoid ad-hoc schemes and commit for long term inter-generational policies. Every right attained brings changes in the existing socio-economic formation towards greater participation and confidence of citizens of the nation. Every right attained builds State capacities for democratisation of all public institutions, giving access to one and all without discrimination, when those institutions no longer are sites for contestation of power. Every right attained indeed radicalises democracy and makes for a proud and cultured nation.

¹ India has the largest network of government schools in the world today with over 9 lakh schools and 36 lakh school teachers covering 14.3 crore children in the 6-14 years age group in schools.

² Enrolment at primary stage increased by 11.5 % from 1183 lakh in 2004-05 to 1319 lakh in 2006-07 and that of upper- primary level increased by 26 % from 377 lakh to 475 lakh between 2004 to 2006. 16.45 schools of All Types are running with the student-classroom ratio equal to or more than 60. (Flash Statistics 2006-2007, NUEPA)



Fulfilling the Promise of Right to Education

Jayati Ghosh*

Among the more striking failures of the development project in India, two in the field of education stand out: the apparent inability to deliver universal good quality school education to all the country's children and the growing inequalities of access to education at all levels.

One reason for this unfortunate state of affairs has been the inadequate fixing of Central responsibility for the financial resources required for universal school education. Until 1976 (when the Constitution amended to move education from the "State" list to the "Concurrent" one, thereby allowing more direct intervention by the Central government) state governments were largely held responsible for providing school education in particular. This led to widely different outcomes across states, reflecting not only historical legacy but also the ability and willingness of state governments to provide resources for school education. Governments in the poorer and more backward states tended to have fewer fiscal resources to enable the required expansion, much less to ensure quality. This tended to reinforce existing spatial inequalities.

But even after 1976, there was little real progress, because ensuring universal quality schooling was simply not made a policy priority even at the Central government level. It is true that subsequently there was some increased involvement of the Centre in providing financing for expansion of school education – first in the 1990s through the District Primary Education Programme (DPEP) in some districts, and then

through Sarva Shiksha Abhiyan (SSA) under which the Centre provided 75 percent of the funds with the goal of universalising primary education. This has led to greater expansion of the school system, especially in states that previously could not or would not provide more resources for such growth. The latest Annual Survey of Education Report (ASER) 2008 finds that the share of children not in school has fallen considerably: the proportion of 7-10 year-olds not-in school was 2.7 percent and proportion of 11-14 year-olds not in school was 6.3 percent.

However, the pressure to increase enrolment was also associated with dilution of quality norms in that "schools", or rather, "Education Centres" were permitted to come up based on single (often untrained or minimally trained) and underpaid local teachers handling multi-grade classes with poor facilities and occasionally no buildings or other basic infrastructure. Quality is not solely influenced by spending but it certainly does play an essential role, and therefore, it is crucial for public intervention not to try and deliver this human right "on the cheap". In addition, it is clearly important to focus on other means of ensuring quality and relevance of schooling such as greater decentralisation, accountability and flexibility in the government school system.

Partly because of public miserliness and also other problems with the government school system such as teacher absenteeism in certain places, there has been growing reliance on private schooling. This is no

longer a phenomenon confined to the rich and middle classes: ASER 2008 finds that there has been a 37 percent increase in private school enrolment just between 2005 and 2008. Among all 6-14 year-olds, the proportion of children attending private schools increased from 16.4 percent in 2005 to 22.5 percent in 2008 and the increase was particularly striking in Karnataka, Uttar Pradesh and Rajasthan.

Illiteracy rates remained shockingly high. The National Literacy Mission (NLM) played a major role in providing a quantum leap in increasing functional literacy among the adult population in the late 1980s and early 1990s. However, follow-up has been poor and many of the gains are now eroded with some beneficiaries even falling back into illiteracy. More importantly, a significant part of the age cohort 15 to 30 years – around one third according to the NSSO Survey of 2004-05 – did not benefit from NLM and were too old to benefit from the expansion of primary education. So they remain functionally illiterate.

This is the background in which Right to Education has finally become law, after nearly a decade of promises and continued efforts by some sections of civil society. This law is relatively limited, confining itself to children in the age group 6 to 14 years and therefore excluding both pre-primary and above elementary schooling. Nevertheless, this law is not only essential in order to ensure that every child in the country gets access to good quality schooling; it also holds out the hope of significant improvements in enrolment, retention and quality of schooling. However, concerns remain with both the nature of the law and its likely implementation because this law is unfortunately opaque on allocation of responsibility and financing. Some of the more important concerns, especially those

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that have a bearing on the public expenditure aspects, are highlighted below. The most important limitation is that the law does not make any explicit financial provision by the Central government. State governments are made responsible for implementation of the law, but since they face hard budget constraints and already have uneven levels of development of school education, this does not augur well for implementation. State governments already bear the brunt of financing school education (estimated to be around 84 percent of the total expenditure). While universal education is nearly achieved in some states, in several others it will not be possible without significant additional funding, which is simply not available with the state governments concerned. In addition, in some states with large gaps, there are likely to be large requirements of additional infrastructural spending to ensure the right to education. Also, there are major issues of inferior quality that stem from inadequate funding even in states where enrolment has been increased.

The legislation leaves it to the discretion of the Central government as to how much of the additional expenditure required will

be provided by it. This is bad news, because the UPA government has actually *reduced* rather than increased its financial commitment to the Right to Education, through its move to reduce central funding of the Sarva Shiksha Abhiyan from 75 percent to 65 percent and eventually to 50 percent. This retrograde step actually militates against RTE and must be immediately reversed if the promise is to be met. Similarly, the allocations for the proposed SUCCESS programme for secondary education must first of all ensure adequate allocations to ensure the right to education up to Class VIII, and in addition provide for additional resources to expand secondary and higher education. The current allocations for secondary education proposed in the 11th Plan are completely inadequate for these goals.

It was noted earlier that the pattern of funding of SSA and the emphasis on expansion of enrolment has led to the emergence of parallel streams of schooling, with “Education Centres” operating with minimal infrastructure and resources, which cannot be accepted as schools. The legislation does provide some notion of minimum quality norms, but these in turn

have to be associated with changes in the minimum financial norms per student as well.

Another important issue is the need for greater flexibility in providing resources, both from Centre to States and from State governments to local levels. The current norms for SSA are excessively rigid and do not allow for regional, spatial, and rural-urban differences. The legislation is also very rigid. For example, it lays down the exact nature of decentralisation of management (amounting to a highly centralised notion of decentralisation) even down to specifying the required composition and powers of the School Management Committees and District Education Committees. Instead, state governments should be allowed to choose their own manner of provisioning, as long as it meets certain basic criteria as well as the norms for quantity and quality.

Clearly, continuous public pressure and social mobilisation that impacts on the Central government as well as on certain state governments will be required if the promise that is inherent in this law is actually to translate into a positive reality for the country’s children.



Right of Children to Free and Compulsory Education – Some Reflections

R. Govinda*

The Indian Parliament amended the Constitution in 2002 incorporating Article 21a that guaranteed free and compulsory education to all children in the age group 6-14 and it entered the legal statute books only on April 2010. The event has however raised euphoric endorsements heralding the Act as being capable of transforming the whole education system. Will it really do so? Is that the intention of the Act? There is no doubt that if we succeed in getting every child in the country to participate in schooling, it would have far reaching impact on the education scenario in the country. But what is needed at the present juncture is not euphoria. We have to take an objective and realistic view of the provisions of the Act and the ways and means of effectively realising their potential benefits to the children. A core issue to be addressed in this context is whether mere passage of a law would suffice to achieve the goal of universalising education? What about factors outside the framework of schooling that promote or hinder participation of children in schooling? This paper attempts to highlight some of these issues.

Salient Features of the RTE

Enactment of the RTE law and thereby making free and compulsory education in the age group of 6-14 years a fundamental right is indeed a landmark event in the educational history of India. The Act effectively shifts the discourse on universalisation from provision to entitlement; the shift is also from norm based and supply oriented planning to need based and entitlement oriented planning. The Act also introduces certain specific features which have the potential to transform the elementary education

scene in a significant manner. First, the Act makes a beginning in explicitly delineating the responsibility of the State and the School management who are the two major actors involved in elementary school provision. Second, it attempts to define the entitlements of the child in terms of educational provision, independent of the kind of school the child is attending. This is done by setting benchmarks on what minimum standards should a school conform to.

This is of very special significance as in recent years both in the Government and private sectors, a large number of schools have come up with almost no basic facilities. The greatest pressure of this provision will be on the Government itself which has in recent years created many single teacher schools with sub-minimal facilities under the banner of Education Guarantee Scheme (EGS) centres. Third, by specifying that every school should have a School Management Committee, the Act recognizes the centrality of effective school functioning. This also recognises the important role that the community and parents have to play in school management by insisting on majority membership for parents of children studying in the school. Fourth, with an eye on bringing greater equity in the school system, the Act sets up a fresh agenda for engagement with private providers. It avoids the traditional trap of treating the Government and the Private as adversaries and provides a framework for functioning as partners engaged in promoting a common public cause. Fifth, it lays down the ground rules for treating children in schools with dignity free from physical and mental harassment; creating all basic facilities particularly with an eye on the girl

child. Sixth, it provides directions for adopting a child friendly pedagogy where children attend schools free from the fear of failing in examinations and being thrown out of the school. Finally, perhaps the most important implication of the Act is that as a law arising out of a Fundamental Right it gives teeth to the concepts of compulsory and free education; it designates the State to shoulder the responsibility and make the commitment justiciable.

Some Implementation Challenges

There has been widespread criticism of the law as being too limited in scope as it leaves out 0-6 year age group which was part of the earlier formulation in the Constitution under the Directive Principles of State Policy. But one has to recognize that at the core of the present law is the objective of empowering the compulsory education act by placing it in the Fundamental Rights Schedule. Obviously, one would not want to forcibly subject children before they become even 6 year old to the treacheries of present day formal schooling. The need is to design and implement a holistic programme of child care and development which would include elements of education. In fact, the ongoing ICDS programme is supposed to achieve this objective. Could we have a separate law to enforce such a provision? Yes, but I would not endorse the idea that all development goals can be achieved only through legislative provisions.

In fact, the goal of child care and development is too complicated to be bound by a single law. Rather this goal could be achieved to a great extent by strengthening and expanding the scope of the livelihood provision act such as NREGA, coupled with enactment of food security act including basic nutrition for children and a law to guarantee health for all. This is critical as many studies have unequivocally pointed to the fact that poor health condition and malnutrition in early years, on the one hand and family poverty, on the other are the predominant reasons

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for children not benefitting from primary schooling. Together these factors stunt the cognitive development of the children, make them vulnerable to chronic ailments and predispose them to remain on the margins of schooling. I would reiterate that it would be a wrong assumption to believe that all problems of children can be solved through legislation. Rather, proactive and effective developmental action by the State holds the key for addressing the basic needs of the young child by tackling the root causes for their involuntary exclusion from schooling, which actually lie outside the education sector.

The second issue to be addressed is that of accountability. Who should be held responsible to ensure that the Right to Education of every child is protected? The traditional wisdom as reflected in most of the Compulsory Education Acts has been to hold the parents responsible for admitting and guaranteeing the attendance of their wards in school. Historically, in Indian school system, the teacher has also been expected to secure the admission and attendance of children in school. Indeed, some teachers take proactive action to enroll all children in their schools and even closely keep track of their regular participation. The current legislation adopts an altogether new approach of designating the Government as responsible for compulsory participation of children in schooling. Yet, who in the government is responsible for securing regular participation of children in the elementary school has been left vague, to be decided by the respective State Governments. Even though National

Commission for Protection of Child Rights (NCPCR) has been identified as the body responsible for overall monitoring of the implementation of the law, it is obvious that the NCPCR cannot shoulder the responsibility for monitoring day to day implementation of the provisions of the Act. The Act elaborates on the role of the local authority in monitoring of implementation at the school level. While some roles have been specified for the school management committee, much more is left vague expecting the local authority to take the lead role. However, with many State Governments still undecided on the exact role of Panchayati Raj Institutions (PRIs) in educational governance, the issue of 'who is the local authority?' remains confusing.

The solution seems to be that the State Governments designate and notify the name and designation of the person who would function as the nodal officer at the local level. Will the State Governments take such proactive steps without external pressure? It is unlikely that the State Governments would act fast enough in this regard without concerted pressure from the civil society - organized civil society bodies as well as grass root level community groups. Such civil society action is critical for forcing the hands of the State to act with speed and commitment. In this context, constitution of the School Management Committee (SMC) with 75% members as parents of children attending the school is very significant. In fact, SMCs have

existed in many states for a long time under different names. The SMC, therefore, for the first time has become an essentially parental body influencing school functioning with due authority legally vested in it. This scope for collective action is important even while the individual parent has the right to approach the court of law, when they find their ward's Right to Education as elaborated in the Act is violated.

The third issue to be addressed is that of financing the implementation process. Disaggregated computation of the financial requirement reveals that state wise assessment would push up the financial requirement significantly from around Rs.170,000 crore to around Rs.200,000 crore. Currently, the Centre and several of the State Governments seem to be engaged in a debate on whose responsibility it is to finance an Act of this kind. Part of this debate is indeed political in nature. Again the solution lies in moving beyond political posturing and engaging in a more realistic examination of the situation in each state for joint action. It would also require differentiated action from the Centre with regard to the financial support to be extended to different states. The major item of expenditure is invariably towards engagement of qualified teachers. If one were also to include financing institutional infrastructure for training of teachers to this amount, it would be erroneous to measure these with a common yardstick for different States implementing Right to Education making it a reality for every child of this country.

Financing the Implementation of Right to Education Act

Jandhyala B G Tilak*

One of the most contentious issues relating to the Right to Education has been financing. It is held that provision of good quality elementary education to all children as a right would mean a lot of finances, which a fast developing economy like India cannot afford. It is perhaps the same view that prevented the Constitution makers from including education in the Fundamental Rights in 1950 and as a result, it was listed only as a Directive Principle. And, it is the same view that delayed for a decade the 86th Constitutional Amendment after the 1992 Supreme Court judgment and delayed the Right of Children to Free and Compulsory Education Act, meant to operationalise the amendment for a further period of seven years until 2009.

After the Supreme Court ruling in 1992 pronounced education as a fundamental right, a committee of ministers of education of selected states under the chairmanship of Muhiram Saikia, constituted by the Government of India in 1997, estimated that provision of elementary education as a Fundamental Right would require around Rs.40,000 crore for a five-year period. As it was a crude estimate, the panel itself recommended examination by an expert committee. Accordingly, a committee chaired by Tapas Majumdar was set up, which considered several parameters for providing good quality education to all children in India and in 1999 estimated that it would additionally require around Rs.137,000 crore (in real prices) for a 10-year period – Rs.13,700 crore on average per annum (about 0.7 percent of GDP, assuming that GDP would increase at a growth rate of five percent per annum).

But the estimate was found to be astonishingly high and several attempts were made in the subsequent period to re-work the estimates, essentially attempting to lower it. For instance, the Working Group on Elementary Education constituted in the context of the 10th Five Year plan estimated this figure to be Rs.55,000-60,000 crore for the plan period. At the time of launching of Sarva Shiksha Abhiyan (SSA), the requirement was estimated to be Rs.98,000 crore for a 10-year period and in the context of the preparation of the National Plan of Action for Education for All, it was estimated at Rs.52,000 crore for a five-year period. According to the CAGE Committee (2005), the estimate (in current prices) varied between Rs.320,000 crore and Rs.436,000 crore based on alternative assumptions regarding pupil-teacher ratio. The most recent estimate that seems to have been accepted by the Ministry of Human Resource Development is Rs.171,000 crore for a five-year period. Most of the estimates made after the Majumdar Committee are in current prices and are based on dilution of several norms regarding pupil-teacher ratio, provision for quality of education, provision for incentives, allowance for enrolments in private schools and non-formal education among other things.

However, the estimate of Rs.171,000 crore is also regarded as too high to make it a part of the financial memorandum of the Act. Given the fragile fiscal position of many states and their wavering commitment to elementary education as also the importance of the Constitutional Amendment, many state governments

expected that the Union government would shoulder either the total or a large part of the financial responsibility of making elementary education a Fundamental Right. The Union government in contrast, wanted the states to assume significant responsibility in this regard. To avoid any controversy, the financial memorandum was omitted altogether when the Act was made. Not even a categorical assurance is made that sufficient financial resources will be made available for implementation of the Act.

The Act recognises the concurrent nature of education in the Constitution, as made through the 42nd Amendment in 1976, and states that “the Central government and the state governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act”. It only promises that the Centre should provide grants-in-aid as a percentage of capital and recurrent expenditure “as it may determine, from time to time, in consultation with the state governments”. It also promised to request the President to make a reference to the Finance Commission for a special consideration in this regard, which it did. What is most worrisome is Clause No.7.5 which transfers the ultimate responsibility of providing adequate funds to the state governments. It states, “Notwithstanding anything the state government shall ... be responsible to provide funds for implementation of the provisions of the Act.”

One of the important aspects of SSA – the flagship programme launched at the turn of the century for universalisation of elementary education – is that for the first

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time the Centre-State share in financing elementary education is clearly defined. The ratio that was 85:15 (85 percent being the responsibility of the Centre and 15 percent of the state) at the start of the scheme, is expected to settle at 50:50 by the beginning of the 12th Five Year Plan. On the same lines, one would have expected the Act to clearly mention the financial responsibilities of the Union and state governments in implementation of

the Act, and indeed, offer a generous ratio favourable to the states. Alas, it does not. There is no compulsion on the part of the Union government to provide funds to the state governments. In the absence of any clear provision, the Union government may be let off the hook by providing a small token share.

The Act gives an impression that the Union government might abdicate

gradually, if not suddenly now, its responsibility of providing adequate funds in favour of the state governments for fulfilment of the fundamental right of children to free and compulsory education.

After all, it tried in vain to transfer the entire responsibility of making this legislation to the states during the last couple of years.

The Right to Education and its Financing

Santosh Mehrotra*

Enactment of Right to Education for all children between the age group of 6 to 14 years might well be one of the most significant measures taken by the government in the recent times. However, the financial provisions towards the Act have not been clearly spelt out; but we get some indication about the government's priorities in this regard by looking at the most recent Union Budget (2010-11) outlays for education.

The Finance Minister's speech on the budget said the following on Education: "The Right of Children to Free and Compulsory Education Act, 2009 creates a framework for legal entitlements for all children in the age group of 6 to 14 years to education of good quality, based on principles of equity and non-discrimination. In recent years, Sarva Shiksha Abhiyan (SSA) has made significant contribution in improving enrolment and infrastructure for elementary education. About 98 per cent of habitations are now covered by primary schools. I propose to increase the plan allocation for school education from Rs.26,800 crore in 2009-10 to Rs.31,036 crore in 2010-11. In addition, States will have access to Rs.3,675 crore for elementary education under the 13th Finance Commission grants for 2010-11."

The Ministry of Human Resource Development (MHRD) has estimated the increased or additional funds required in order to meet the norms stipulated in the Right to Education Act, 2009 (RTE), is of the order of at least Rs 10,000 cr to Rs.12,000 cr. per annum (for each of the next five years). SSA and teacher education (which constitutes the entire

elementary education expenditure of the central government) was about Rs.18,000 crore in 2009-10, while the minimum needs of RTE are to the tune of Rs.30 000 crore per annum, bringing the difference to about Rs.10,000 - 12,000 crore per annum. The question then is: will the Government of India and States combined find the funds in 2010-11 for meeting the needs of RTE?

The Plan allocation is an increase of Rs.4236 crore (i.e. Rs 31,036 - Rs 26,800 crore) from 2009-10 to 2010-11 . However, this is the increase for the entire school sector (i.e. elementary and secondary education). The allocation for SSA has been limited compared to 2009-10. This leaves a serious shortfall. The allocation for SSA in 2010-11 is only Rs 15,000 crore plus another Rs 500 crore for Teacher Education (total Rs 15,500 crore). That makes the shortfall compared to the requirement for RTE of Rs 30,000 crore a full Rs 14,500 crore in 2010-11.

In addition to the Rs 15,500 crore that the central government will have to allocate to meet the RTE needs, the States have been given, "access to Rs.3,675 crore for elementary education under the Thirteenth Finance Commission grants for 2010-11" says the Finance Minister in his speech. That still means that Rs 15,500 crore (Union Govt. outlays for SSA and Teacher Education) and Rs 3675 crore (as recommended by the 13th Finance Commission) adding up to a total of Rs 19175 crore will be available in 2010-11 for elementary education. That is a full Rs 11,000 crore short of the minimum requirement of Rs 30,000 crore for RTE.

Hence, the central government has to find alternative means of finding additional resources if the RTE requirements are to be met. First, Public Private Partnership (PPP) in building school infrastructure is a possibility. But so far the scheme is restricted to setting up secondary schools, not elementary schools, through PPP. And that too is at an exploratory stage. Second, the central government has announced that for the next three years (2010-13) funds generated from disinvestment of major public sector enterprises will be partly put aside for infrastructure investments in the social sector. The Finance Minister in the Budget Speech has repeated what was announced earlier that Rs 25,000 crore is likely to be generated from divestment of PSUs in 2010-11. However, the issue remains how much of this additional Rs 25,000 crore will be allocated to meet the needs of RTE-based school infrastructure. Third, it is necessary for the central government to negotiate new loans from bilateral donors and from multilateral financial institutions (e.g. the World Bank, Asian Development Bank) for a loan for elementary education. Fourth, the National Education Finance Corporation has been proposed, but more serious thought needs to be given to how capital for it could be mobilized from the capital markets, and directed towards elementary education - though these will likely be only loans for the private sector to develop schools.

It is a matter of concern that the question of financing such a crucial legislation that directly impacts the future of the country has not yet been clearly answered by the government. It is hoped in the interest of India's children that the ambiguity with regard to financial provisioning for the RTE is resolved in right earnest and in no unclear measure.

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Implementing Right to Education

Vinod Raina*

It is over three months since the Right to Education is being implemented, from April 1, 2010. That day began with the unprecedented address to the nation by the Prime Minister, the first time ever that the PM of the country has done so on a single issue. The important part of the address was the PM's commitment that lack of funds would not be allowed to hamper the implementation of this constitutionally mandated right. Though three months is a short time to assess the present UPA government's actual commitment to implementation of the Act, the trends are however beginning to emerge. In financial terms, they can not be said to be encouraging as of now.

Financially, the Act is somewhat front loaded since some of the time targeted measures requiring heavy financial inputs have to be in place within five years. The Act makes it a legal obligation on the state to provide a neighbourhood school of a prescribed quality to every child in the 6-14 age group within three years, that is by March 31, 2013. All out of school children have to be admitted to schools and mainstreamed after a bridge course that may at best last up to two years. Given that the actual number of out of school children, non-enrolled and drop outs, may be over 40 per cent of the total population of this age group, which could be as many as 80 million, the required expansion of the school system would be massive. The requirement of a Pupil Teacher Ratio (PTR) of 30:1 for this expanded system implies that over a million teachers would need to be recruited within the prescribed three year period, since maintaining the PTR in each school is part of the prescribed quality of the neighbourhood school. Finally, state

governments have up to five years to ensure that existing and newly recruited teachers attain nationally notified academic and professional standards within five years, by March 31, 2015. This will require a massive expansion of the teacher education institutions and mechanisms.

All of these measures will obviously require enhanced funding. However it is equally important that the state governments are able to utilise the funds if they are made available to them. One must keep in mind that though the availability of adequate amount of funds is a necessary measure for the implementation of the Act, the ability of state governments to utilise these funds in prescribed time frames is a big issue, since expenditure deflation afflicts many state governments, particularly those that require more funds. This is evident from the unspent balances with state governments from the SSA funds in the past.

The central government has decided to adapt (or harmonize, as is the terminology used by the MHRD) the SSA for the implementation of the Act, for at least the remaining part of the 11th plan period. This will be done on the basis of a report that a committee set up for the purpose has already submitted to the government. MHRD has also circulated a set of model rules to the states, and each state government is in the process of examining them in order to formally adapt them with requisite changes. Such adaptation will be critical in the area of teacher salaries, a subject that falls within the purview of the state governments. Whereas the Act and the central model rules emphasise on a professional cadre of

teachers with a long term commitment, and the principle of equal pay for same work, which should normally do away with teachers with differing salaries and contracts in each state (called para teachers), it will be critical to watch how many states follow these principles, since their ability to financially sustain a single permanent cadre of teachers will crucially depend on their own financial commitments, and the support the central government is willing to provide for this vital need.

Given the foregoing imperatives, we may finally ask the question: What kind of funds is required and what should be the sharing pattern between the centre and the states? NUEPA had done an estimate of fund requirement that suggested an amount of Rs.1.71 lakh crore for the first five years. NUEPA had based these calculations assuming the deployment of regular rather than low paid teachers. In my opinion this is a conservative estimate, particularly with respect to the number of out of school children and their education as per the provisions of the Act. There is also a methodological problem in making these calculations. The Act defines 'free' education as any fee, expense and expenditure that is an obstacle to the completion of elementary education; implying the state would have to bear this expense. Though the model rules itemise some of these free entitlements, like uniforms, copies, books, writing material, support and educational materials for children with special needs, the requirement may be very large for migrant, working, homeless and dispersed population children in terms of residential facilities, free transportation etc. It is to my mind quite difficult to estimate these financial needs at this stage, and they may come up from actual needs, or through litigations where violations occur.

The good thing is that after the NUEPA estimates, MHRD itself realised that there

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was a big deficit in the recruitment of teachers in the initial years of SSA which has to be carried forward as per the requirements of the PTR of the Act, and this deficit would work out to Rs.60,000 crore for the next five years. Accordingly, the Expenditure Finance Committee note submitted by the MHRD to the Finance Ministry is for Rs.2.3 lakh crore for the implementation of the Act, and not Rs.1.71 lakh crore as estimated by NUEPA. This would work out, on an average, to Rs.46,000 crore per year for the next five years.

The critical factor is the sharing pattern between the centre and the states. Under the SSA at present, the ratio is 55:45 which is supposed to go down to 50:50 at the end of the 11th plan. Calculations for each state clearly suggest that the states can not meet the financial needs of the Act at the present sharing ratio of SSA. Many of the states have been demanding a ratio to the tune of 90:10, but this is merely a bargaining strategy, since it is fairly clear that even a state like UP with a large deficit in areas mandated by the Act should find it financially comfortable to implement the act at a 75:25 ratio. The problem is that the central government might finally settle the sharing ratio at 65:35 from the present 55:45. Though that is an evidence of the realisation of the central

government to its responsibility towards the implementation of the Act, in my opinion it is insufficient. If the Prime Minister's commitment to the nation that finances shall not be allowed to hamper the implementation of the Act is to be translated into action, then the central government has to settle for a 75:25 ratio. If that is not done, some state governments are most likely to violate this fundamental right, blaming the centre for burdening them with a central Act they can not financially implement.

The recent central budget, though prepared before the implementation of the Act commenced, is clearly at variance with the PM's commitment. It allocated a meager Rs. 15,000 crores as against the requirement of Rs.46,000 crore, which is one-third the required amount. True that the 13th Finance Commission has allocated over Rs.24,000 crore that can be directly accessed by the states, the combined sums are however far short of the Rs.2.3 lakh crore estimate that is with the finance ministry now.

What is therefore required in financial terms for the implementation of the Act is that:

1. The estimate of Rs.2.3 lakh crore for the next five years made by the MHRD is accepted by the finance

2. The sharing ratio between the centre and states is pegged at 75:25 for the next five years
3. The central government devises a mechanism that oversees the expenditure in the states to ensure that the funds are expended in the required manner and there is no expenditure deflation leaving large unspent balances in the states.

These financial arrangements are clearly necessary requirements for the implementation of the Act, not sufficient given the wide-ranging provisions the Act contains. The proper formation and functioning of the school management committees, functional local authorities, deployment and training of teachers, quality and inclusive neighbourhood schools for all children including the homeless, working, migrant and disabled, classroom transaction as per the provisions of the Act and National Curriculum Framework (NCF) 2005 are some of the other measures of implementation. Together, these constitute a daunting task; but that should not be surprising since the nation is making up for the cumulative deficit of 63 years after independence.



What's so Uneconomical about the Common School System?

Janaki Rajan*

In recent years, the Common School System (CSS) has often become a red rag for educational planners and policy makers in India. This is odd because it was the Education Commission (1968) that first recommended it and it was reaffirmed by the National Policy on Education (1986), review committee of the National Policy on Education (1990) and the Programme of Action (1992). What is it about a system that is prevalent in all developed economies including China that alarms Indian planners?

We must begin by first understanding what exactly is meant by the Common School System. The originators¹ of the idea express it as follows:

Para-10.05. **The Creation of the Common School System of Public Education.** The main problem before the country is to evolve a common school system of public education which will cover all parts of the country and all stages of school education and strive to provide equality of access to all children. This system will include all schools conducted by government and local authorities and all recognised and aided private schools. It should be maintained at an adequate level of quality and efficiency so that no parent would ordinarily feel any need to send his child to the institutions outside the system, such as independent or unrecognised schools. This is the goal which the country should strive to reach and a number of steps will have to be taken for its early realisation.

Para-10.19.From this point of view we recommend the ultimate adoption of the 'neighbourhood school concept' first at

the lower primary stage and then at the higher primary. The neighbourhood school should be attended by all children in the neighbourhood irrespective of caste, creed, community, religion, economic condition or social status, so that there would be no segregation in schools. Apart from social and national integration, two other important arguments can be advanced in support of the proposal. In the first place, a neighbourhood school will provide 'good' education to children because sharing life with the common people is, in our opinion, an essential ingredient of good education. Secondly, the establishment of such schools will compel the rich, privileged and powerful classes to take an interest in the system of public education and thereby bring about its early improvement...The ultimate goal should be to provide tuition-free education at the school stage. From this point of view, tuition fees will have to be abolished in a phased programme.

How utopian are these recommendations? Looking at the current education system divided across many socio-economic strata, the more deprived the sections of society, the less the resources and quality. Obviously, this type of policy provision makes a kind of economic sense – supply as much as (we imagine) will be absorbed.

The same economic logic has led to private schools being given land subsidies to 'supply better' to those that will be able to absorb what is offered. This in turn has led to a mushrooming of private schools with heavy subsidies on land and liberal policies for charging fees. In the middle class public imagination, the quality debate has been linked directly with the

quantum of fees: higher the fees charged, better the quality. The expenses on education include school bus, uniforms, stationery, after school tuitions, guide books and mock tests that are a near universal phenomena among private schools. However, in real terms the costs are so considerable that in Delhi alone, around one lakh children shifted to government schools from private ones in 2008. Educational economists have also viewed educational costs to be sufficiently important to provide evidence that household expenditures on education do have implications for redefining poverty in India².

On the other hand, an economically strong India requires skilled human resource requirements. The traditional view that demographic abundance supplies a huge army of unemployed and underemployed and, hence, no planning is required, has to change³ as does the current trend wherein merely 25 percent of the trained have the requisite skills for employability.

All children, irrespective of their backgrounds have a potential for merit and talent that can all too easily wither without timely, sustained, long-term care and investment. Even the most rudimentary probability theories show that 67 percent can be expected to be capable of achieving, 18 percent very capable, and 3-5 percent exceptionally capable from any given child population. Neural network activities it seems are immune to caste, class, creed or gender! At a conservative estimate, probabilistically, there are 200 million children in India who *can shine*. And, that is why the common school system makes economic sense.

As it is, 93 percent of school-going children in the country study in Central and state government schools and those who are out-of-school are only likely to be drawn into government schools, which not

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only do not charge fees but also provide Mid-Day Meals, uniforms, books and other basic requirements. Improving the government school system is an absolute imperative both in national and economic interests.

In the same economic sense of absorption capacity, the 'quality' of private schools are manufactured by simultaneously slanting the examination system in favour of private schools and starving government schools of requisite teachers, pedagogical budgets and conditions for conducive schooling.

But can there be quality constitutive of making even better economic sense? There are examples now of quality public services in the form of highways, IT sector, metros. Cell phones have the same architecture and performance whether used in the remotest village or in a metro. The rise of the cell phone consumer is an example that people in India, however impoverished, *do discern*, take to and use quality products to excellent personal economic advantage. One of the first purchases of a rickshaw-*wallah* in Delhi arriving from Dantewada in Chhattisgarh is the cell phone. We can therefore imagine and create templates of quality of schooling that cannot be done using colonial notions of 'norms'. But such templates, and there may be several of them, should provide and ensure similar educational outcomes from which we begin to glimpse the beginnings of the CSS.

The next problem is our experience with anything 'government' - the shabbiness, the corruption, the nepotism, the having to know someone, the red tape. Is that what we want for our children's education? Do government schools *have to be all that*? Of course not! We only have to look around to find government institutions that do us proud - Kendriya Vidyalayas, IITs, IIMs. Why do they do so well and beat the government stereotype? The answer lies in the composition of students in these institutions which are invariably from the middle class (even reservation policy beneficiaries cannot get there until they are middle class). As pointed out by D S Kothari, the middle

class is needed in our schools including the 93 percent government ones. As in the case of Delhi, government schools improved and were back on the map after a determined intervention from 2000-06 in which many middle class students were taken in. In fact, their results were comparable, and many cases better than, the private schools.

Of course, children from working classes will continue to be part of government schools and gain immeasurably with the quality education demanded from their middle class classmates. I can only demonstrate this from personal experience.

In the mid-80s, I was a young school teacher, teaching Physics, Mathematics and sometimes English in Class IX. I took pride in my work, even though I was 'just' a school teacher and was eager to prove that it was as good as the work my siblings and spouse were doing as MBAs and IIT graduates. The year 1987 was the most anxious and exhilarating time of teaching for me. I would prepare for my Physics class till late into the night and wake up early to revise my plans for the day. Why was this year so different from others when I taught without such stress? I had the daughter of a physicist in the class. I imagined he was bound to ask his daughter what she learnt in Physics and was anxious that what she would recount would reflect that I, her teacher, had indeed instilled the basics correctly and well. I never met her father. But he was my 'mental audience', a benchmark. I raised the bar for myself, often phoning friends and family with training in science to clarify concepts (something I could have always done but never did until then). As a result, many children in the class developed an interest in science and six of them chose a career in science. They were the first in their families to do so. Ironically, the daughter of the physicist did not but her very presence contributed immensely to the educational purpose.

There are two more issues of immense economic importance: private schools

(oddly, called 'public' schools) and Public Private Partnership (PPP).

There are many kinds of private institutions. Unauthorised 'teaching shops', tuition and coaching classes thrive only because policy and political patronage so allows. These will wither away once the government school system gets its act together. The category of civil society interest is the 'unaided' school where parents pay all kinds of 'fees' aspiring for the 'exclusive' tag and shelling out more in expensive private tuitions. Most of these schools have obtained land at subsidised (laughable) rates. They have two options. To become private in the real sense as in most advanced countries (pay up real price of land and conduct education as Constitutional right to enterprise, embrace GATT which lists education as a profitable activity). The profile of children in such schools will change to rising upper middle class; fees will go up hundred-fold but how many schools will survive this 'market economy'? The second option is to switch to other sectors such as hotel industry. Therefore, there must be **no** subsidy of any kind for 'societies' or 'unaided' schools. For instance, if they hire a teacher with academic and professional qualifications from a higher education institution supported by the State, and hence subsidised, the subsidised amount must be due back to the State. No land should be allotted under Master Plans for 'educational institutions'. These are private enterprises and must be dealt with under the Ministry of Commerce. Those that still want to be seen as 'public schools' must follow the same principles as that of government schools in terms of child composition.

Only then can we bring about a common system (with a small sliver of breakaways of the super rich as happens in advanced countries). There is good reason why countries cutting across ideologies like the USA, UK, Russia, China, Australia, New Zealand, Germany, France, Kazakhstan, Korea, China and Cuba adopt the CSS. As Bill Clinton famously said "Read my lips, it is the economy stupid!"



Sathi Alur, a Dubai-based economist and financial advisor to the National Resource Centre for Inclusion and child rights activist says: “The fundamental reason for the national failure to develop a common school system is the lack of a political constituency for education. Those who attend government schools are powerless while the rest – middle and upper classes – have no stake in them. I recall a conversation with the incumbent Prime Minister Dr. Manmohan Singh some time ago. He agreed with the logic of a common school system for all children but expressed helplessness without a powerful lobby being created for a CSS.”⁴ (S. Yasmeen, 2004)

“Some perceive the universalisation of elementary education as a threat to the opportunities of their own children. In their view the role of the schooling system is to act as a filtering process which picks the best and brightest and helps them to realise their potential. If too many children get on board, the prospects of those who currently enjoy the privilege of good schooling facilities will be threatened.”⁵(PROBE, 1999)

“I understand that the Central Advisory Board on Education, which is the highest policy advisory body in our federal structure, had some time ago reiterated the need for moving towards the goal of a common school system. I recall that way back in 1998, the Law Commission of India, in its 165th Report, had also recommended a somewhat similar approach to school education. It is important to understand what such a system should imply - it should not try to bring down the quality of education to any common denominator - but make it imperative to raise the quality of all institutions, whether public, or private; in elite neighbourhoods or in modest locations; meant for farmers, labour or peasants or for the white collared.”⁶ (K.G. Balkrishnan)

¹ Kothari, D.S.. 1968. Education for National Development, New Delhi: Department of Education; Government of India.

² Tilak, J.B.G. 2009. Household Expenditure and Implications for Redefining Poverty in India, Draft of Background Paper prepared for Expert Group for review of methodology for Estimation of Poverty, May 2009. Planning Commission ,New Delhi:

³ Parameshwaran, M.P. 1994. Manpower Planning in India. Social Scientist, Vol. 2, No. 10 (May, 1974), pp. 55-66

⁴ Summiya Yasmeen.2004, Swelling Support for Common Schools, indiatogether.org/2004/july/ed-kothari.htm

⁵ Public Report on Basic Education in India, 1999, PROBE Team with Centre for Development Economics, Oxford University Press, New Delhi

⁶ Convocation Address, Indira Gandhi National Open University, by Hon'ble Justice K.G. Balkrishnan, Chief Justice of India



Budget and Policy Tracking

Navanita Sinha

It's been more than a year since the United Progressive Alliance (UPA) government was voted back to power for a second consecutive term. When the UPA returned, many were optimistic that its numerical strength in Parliament¹ combined with the "absence of the restraining Left" would help it take strong policy decisions, earlier thwarted by its unyielding Left partners.

Unfortunately, UPA's performance over the past year and half has not been up to par, with its political opponents echoing the sentiments of all-round failure to redress the woes of the *aam aadmi*. According to CPM General Secretary Prakash Karat, "in every sphere of policy making – whether it concerns gas pricing, allocation of telecom spectrum, opening up of mining and minerals or retail trade or allowing foreign educational institutions into the country – the imprint of a government pandering to big business and their foreign finance collaborators is visible."²

This issue of *Budget and Policy Tracking* examines significant policy related developments at the Centre and important legislations during the last three sessions of Parliament – Winter Session 2009, Budget Session 2010 and Monsoon Session 2010. It will also draw attention to trends that dominated UPA-II's first year and half in office and briefly discuss inflation, which has been the principal economic concern for the past several months. The article is broadly divided into four parts:

- I. Last Three Parliamentary Sessions
- II. The Union Budget 2010-11
- III. Important Legislations – Opportunities Gained and Lost
- IV. Tracking Key Policy Related Developments

I. Last Three Parliamentary Sessions

(a) Winter Session 2009

The Winter Session commenced on November 19, 2009. The Lok Sabha (LS) adjourned *sine die* on December 18, 2009 and the Rajya Sabha (RS) on December 22, 2009.

In the Lok Sabha, six Short Duration discussions were held on the following issues:

- Rise in prices of essential commodities;
- Natural calamities in the country;
- Impact of climate change;
- Report of Liberhan Ayodhya Commission of Inquiry and Memorandum of Action Taken by the government on the report laid on the table of the house on November 24, 2009;
- Indo-Sino relations with special reference to recent occurrences; and
- Increase in Naxalite/ Maoist activities in the country.

In the Rajya Sabha, four Short Duration Discussions were held on the following issues:

- Situation arising out of threat to the internal security of the country;
- Achievements and problems of Women's Self-help Groups, comprising mainly poor rural women;
- Rise in prices of essential commodities; and
- Liberhan Commission Report.

During the session, 22 bills were introduced in the LS and one in RS. LS passed 19 bills and RS passed 17. The total number of bills passed by both houses was 17.

Financial business transacted consisted of Supplementary Demands for Grants

(General) for 2009-10, Supplementary Demands for Grants (Railways) for 2009-10 and Supplementary Demands for Grants for 2009-10 relating to the state of Jharkhand and related Appropriation Bills, discussed and passed in LS. RS considered and returned the Appropriation Bills.

Four bills replacing four ordinances: (i) Competition (Amendment) Ordinance, 2009; (ii) Jharkhand Contingency Fund (Amendment) Ordinance, 2009; (iii) Central Universities (Amendment) Ordinance, 2009; and (iv) Essential Commodities (Amendment and Validation) Ordinance, 2009 were promulgated by the President and passed by both houses during the Winter Session.

(b) Budget Session 2010

The Parliament met for the Budget Session between February 22 and May 7, 2010 with a one-month recess beginning mid-March. Apart from budget discussions, the session witnessed debates on major issues such as price rise, phone also tapping and Naxalism. The *Rajya Sabha debated and passed the Women's Reservation Bill*.

During the session, 37 bills (27 in LS and 10 in RS) were introduced. LS passed 21

Parliament in Winter Session 2009

- Lok Sabha worked for 84% of the scheduled hours
- Rajya Sabha worked for 81% of the scheduled hours.
- Average attendance in the Rajya Sabha was 68 per cent.
- Average attendance in the Lok Sabha was 66 per cent.

Source: PRS Legislative Research Website



and RS 16 bills. The total number of bills passed by the two Houses during the session was 15. These included Tamil Nadu Legislative Councils Bill 2010, Employees State Insurance (Amendment) Bill, 2009 and National Green Tribunal Bill, 2009. It is worthwhile to note that the critical process of legislative scrutiny is not being taken seriously as evident from the inadequate discussion and unseemly haste in introduction and passage of most of the bills.

The session was mainly devoted to transaction of financial business relating to the Railways and General Budgets for 2010-11, presented during the first part of the session. General discussions on the Budgets were held in both houses while LS also discussed and voted Demands for Grants on Account and Supplementary Demands for Grants relating to the Railways and General Budgets. Appropriation Bills relating to these demands were introduced, considered and passed by LS and subsequently returned by RS.

During the second part of the Session, Demands for Grants relating to the Railways Budget were discussed and voted after which the related Appropriation Bill was passed by LS and returned by RS. Demands for Grants under the control of the ministries of (i) External Affairs; (ii) Rural Development; and (iii) Tribal Affairs, were discussed and voted by LS.

Demands for Grants of the remaining ministries/departments that could not be discussed were put to the vote of the house and voted in full on April 27, 2010. The related Appropriation Bill was introduced, considered and passed and subsequently returned by RS.

During this period, RS discussed the working of the ministries of (i) Power; (ii) Youth Affairs and Sports; (iii) Housing and Urban Poverty Alleviation; (iv) Consumer Affairs, Food and Public Distribution; and (v) Home Affairs. The two houses also considered and passed/returned the Finance Bill, 2010.

In the Lok Sabha, three Short Duration discussions were held on (i) price rise; (ii) the Maoist attack on CRPF personnel in Dantewada district of Chhattisgarh; and (iii) the need to lay down specific parameters for conducting Census 2011. In the Rajya Sabha, three Short Duration discussions were held on (i) price rise; (ii) the statement made by the Minister of Home Affairs on the Maoist attack on CRPF personnel in Dantewada District of Chhattisgarh, and (iii) tapping of telephones of certain politicians.

(c) Monsoon Session 2010

The Parliament met for its monsoon session between July 26, 2010 and August 31, 2010. At the beginning of the session, the agenda for government bills included 36 bills for passing and 38 bills for

introduction, consideration and passing. The final tally at the end of the session read 24 and 26 respectively. Although over 50 hours were lost in protests and adjournments, both houses sat late on several days to make up for the lost time.

Some of the bills that were passed in this session included, Personal Laws (Amendment) Bill, 2010, Foreign Contribution (Regulation) Bill, 2006, National Commission for Minority Educational Institutions (Amendment) Bill, 2009, Nalanda University Bill and Educational Tribunals Bill, 2010. Besides legislative bills, Members of Parliament also engaged in discussions on various issues of national importance such as inflation, flood and drought conditions, the forthcoming Commonwealth Games, Bhopal Gas Tragedy, protests in Kashmir, atrocities against SC/ST and illegal mining.

The major highlight of the session was the passage of the Civil Nuclear Liability Bill and Salary and Allowances Bill, raising the salary of MPs from Rs 16,000 to Rs 50,000 in addition to increasing other allowances. However another contentious Bill, the Enemy Property (Amendment and Validation) Bill, 2010 was deferred for the next session of Parliament.

Another significant development was the tabling of the Direct Taxes Code Bill (DTC) aimed at replacing the Income Tax Act, 1961 in the Lower House of Parliament on August 31, 2010. It was referred to the Select Committee of Parliament for scrutiny. Under the Direct Taxes Code Bill, 2010 the government has sought to raise the income tax exemption limit from Rs.1.6 lakh to Rs.2 lakh. Tax rate of 30 per cent shall apply to income exceeding INR 1 Million. While senior citizens (above 65 years) will enjoy a higher exemption of Rs.2.5 lakh, it waives the preferential treatment to women in tax payment. On the other hand, Corporate Tax rate is proposed to be pegged at 30 per cent while shedding away the surcharge and education cess tag. The rollout date has been advanced from April 1, 2011 to April 1, 2012.

Parliament in Budget Session 2010

- Average attendance in the Rajya Sabha was 78% and 79% in the Rajya Sabha during Budget Session 2009. Attendance was over 90% on the days that the Finance Bill was debated and put to vote.
- On 8 out of 32 days, the Lok Sabha met for less than an hour. The Rajya Sabha met for less than an hour on 9 days.
- Total productive time in the Lok Sabha was 138 hours - 66% of scheduled time, while that in Rajya Sabha was 130 hours - 74% of scheduled time.

Source: PRS Legislative Research Website

**Parliament in Monsoon Session 2010**

Participation: In LS, 35% and in RS 28% of members did not participate in any debates

Private Members Bills: In LS 97% and in RS 96% of members did not put forward any private members' bill.

Attendance in Parliament: 41 MPs in LS and 24 in RS had an attendance of less than 50 %. In LS 195 lawmakers and in RS 98 had more than 90% attendance .

LS passed 17 Bills, with average 2.0 hours spent per Bill. RS passed a total of 21 Bills and devoted an average of 2.3 hours per Bill.

Source: PRS Legislative Research Website

II. THE UNION BUDGET 2010-11³

When Finance Minister Pranab Mukherjee presented the Union Budget, expectations were high that it would be a policy statement of the government towards propelling not just faster growth but also “inclusive growth”. While the government’s focus on attaining a double-digit GDP growth rate was evident, what was clearly missing was the sense of urgency needed to address the deep-rooted problems in the social sectors and those confronting the disadvantaged sections. Some major developments relating to the social sectors, important economic sectors and interventions for the disadvantaged sections are discussed in this section.

Highlights of Union Budget 2010-11

With an indication of the economy reviving fast, the government should have taken an expansionary fiscal stance but it chose to revert to the path of fiscal conservatism, albeit gradually, with Union Budget 2010-11.

In the sphere of mobilisation of resources by the Centre, certain specific concerns emerged. The tax-GDP ratio shows a small increase from 10.3 percent in 2009-10 (RE) to 10.8 percent in 2010-11 (BE). In this context, the impetus in the budget towards further reduction of direct tax rates (mainly in personal income tax) raises a serious concern. This proposal is estimated to result in a revenue loss of Rs. 26,000 crore. The proposed increases in

rates of indirect taxes and duties are expected to result in a revenue gain of around Rs. 46,500 crore. However, the hike in duties on crude oil, petrol, and in particular diesel, is ill-timed given the steep rise in prices of food and non-food articles over the last few months.

Despite acknowledging that India’s tax base is low compared to other countries, mainly due to a plethora of exemptions/ deductions in the Central government tax system, the Finance Minister did not introduce any corrective measures. The total magnitude of tax revenue foregone

due to exemptions/incentives/deductions in the Central tax system has been estimated (by the Finance Ministry itself) to rise from Rs. 4.14 lakh crore in 2008-09 to Rs. 5.02 lakh crore in 2009-10. In other words, a liberal estimate of the amount of additional tax revenue which could have been collected by the government in 2009-10, if all exemptions/incentives/deductions (both direct and indirect taxes) had been eliminated, stands at a staggering 8.1 percent of the GDP.

On the expenditure side, the Congress-led government seems to be growing complacent about its budgetary policies especially for the social sectors. While the budget did pay some attention to a few important sectors/issues like women and child development, minorities, infrastructure, rural housing and technical education, overall social sector allocations recorded an insignificant increase (Table 1).

Social Sector Allocations:

(i) **Education:** Total public spending on Education as a share of GDP stood at 3.23 percent (2009-10), which is nowhere near the promised 6 percent level. The Centre’s total allocation for Education in 2010-11 (BE) stands at 0.71 percent of GDP, which is slightly better than the 0.64 percent of GDP recorded for 2009-10 (RE).

Table 1: Priority for Social Services in the Union Budget

Year	Expenditure on Social Services as % of Total Disbursements of the Union Govt.	Expenditure on Social Services as % of GDP
2004-05	6.3	1.0
2005-06	7.9	1.1
2006-07	7.8	1.1
2007-08	8.9	1.3
2008-09	10.4	1.6
2009-10 RE	10.1	1.7
2010-11 BE	10.4	1.7

Note: The Annual Financial Statement in the Union Budget does not provide any break-up (for General Services, Economic Services and Social Services) for the Grants-in-Aid component. Hence, the figures for expenditure on Social Services (used in table) do not include Grants-in-Aid provided by the Union Ministries to States and Union Territories in the Social Services.

Source: Compiled from Annual Financial Statement, Union Budget, various years.



(ii) **Health & Family Welfare:** The allocation for Health & Family Welfare shows a negligible increase from 0.35 percent of GDP in 2009-10 (RE) to 0.36 percent of GDP in 2010-11 (BE), which is far short of the NCMP target of raising total public spending on health sector to 2 to 3 percent of GDP.

(iii) **Water Supply and Sanitation:**

Allocations in this sector have gone up marginally from Rs. 8269 crore in 2009-10 (RE) to Rs. 9522 crore in 2010-11 (BE).

(iv) **Rural Development:** The allocation for the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) has been increased by only 2.5 percent while that for Pradhan Mantri Gram Sadak Yojana (PMGSY) has remained stagnant.

(v) **Agriculture and Allied Activities:** As a proportion of the total Union Budget for 2010-11 (BE) and the GDP, allocation for Agriculture & Allied Activities accounts for 9.45 percent and 1.56 percent respectively. Despite high inflation in food articles, allocation for food subsidy has been reduced from Rs. 56,002 crore in 2009-10 (RE) to Rs. 55,578 crore in 2010-11 (BE).

(vi) **Climate Change:** A National Clean Energy Fund (NCEF) has been constituted with the corpus coming from levying clean energy cess on indigenously produced and imported coal at Rs. 50 per tonne.

(vii) **Women:** There has been a 50 percent hike in the plan budget of the Ministry for Women and Child Development. However, the total allocation for women (as reported in the Gender Budgeting Statement) accounts for just 6.1 percent of the total Union Budget.

(viii) **Children:** Priority for Children in the Union Budget shows an insignificant increase – from 3.7 percent in 2009-10 (RE) to 4.1 percent in 2010-11 (BE)

(ix) **Dalits and Adivasis:** Union Budget outlays for SCSP and TSP as a

proportion of Total Plan allocation of the government (excluding Central assistances to state and UT plans) registered a small increase in 2010-11 (BE). Plan allocation earmarked for SCs increased from 6.25 percent to 7.19 percent in 2010-11 (BE) while that for STs saw an increase from 3.67 percent in 2009-10 (RE) to 4.43 percent in 2010-11 (BE).

(x) **Minorities:** There has been an increase of 49 percent in the total budgetary allocation for the Ministry of Minority Affairs in Union Budget 2010-11 over the previous year's allocation; it has gone up from Rs. 1756.5 crore in 2009-10 (BE) to Rs. 2615.37 crore in 2010-11 (BE).

Inflation

While massive tax concessions were provided to the corporate sector and affluent sections of society, the common people continued to be plagued by one of the most severe inflationary episodes in India. Food price inflation rate touched 20 percent in December 2009. Although the latest inflation figures suggests a cooling, following a period that saw the headline rate surge from negative to double digits within just six months (from minus 0.17 percent in August 2009 to 10.06 percent in February 2010), the uncomfortably high levels of food prices remains a major concern. Latest Wholesale Price Index (WPI) data shows the index for 'food articles' to have risen by 16.87 percent year-on-year in April, led by pulses (30.42 percent) and milk (21.95 percent). In fact, current data indicates a rising trend in inflation of non-food items as well with the return of pricing power in many manufactured goods.⁴

The government's inability to control food inflation, despite large buffer stocks has come in for sharp criticism. For some, its efforts are not just grossly inadequate but reflective of a misguided belief that food price inflation of some intensity is inevitable and has little to do with policy. They argue that on the contrary, the increase in food prices can be attributed to major failures in State policy. Its

pursuance of neo-liberal economic policies has also invited flak on the grounds that opening up of trade has exposed farmers to volatile international prices.

Furthermore, factors such as poor distribution, growing concentration in the market and inadequate public involvement are crucial in allowing food prices to rise in such an appalling manner. These along with many other factors have resulted in widening the gap between farm-gate and wholesale prices, as well as that between wholesale and retail prices. Simply put this means that farmers who are the direct producers, do not reap the benefit of rising prices, which consumers in both rural and urban areas are forced to pay.⁵

Given the intensity of the problem, the government will have to take certain severe corrective measures, not just in food production but also food distribution, critical to which would be strengthening the public food distribution system and adopting medium-term policies to improve domestic food supply, political and economic commentators have pointed out.

III. IMPORTANT LEGISLATIONS – OPPORTUNITIES GAINED AND LOST

The last three sessions witnessed at times spirited, at times volatile discussions on a range of legislative proposals including Right to Education (RTE), Higher Education Reform Bill, Nuclear Liability Bill and Women's Reservation Bill (WRB). While the notification on RTE became a high point for the government, its failure to push through the long-pending WRB and delay in introducing the proposed legislations on food security as well and on health and water elicited severe criticism from various quarters. This section runs through some of the significant legislative developments in the Winter, Budget and Monsoon sessions.

The Education sector witnessed "radical reforms" over the past six months with the efforts to enact RTE and to liberalise the entry of foreign universities. The **Right of Children to Free and Compulsory Education Act, 2009** came into effect on April 1, 2010 and was hailed by many as a



milestone in the education sector. It makes elementary education an entitlement for children in the 6-14 age group and is slated to directly benefit nearly one crore children not going to school at present. The Act passed by Parliament last year seeks to achieve 10 broad objectives such as free and compulsory education in the 6-14 age group, quality education, focus on social responsibility like reservation in private schools, obligation of teachers and de-bureaucratization of admissions. Private educational institutions are required to reserve 25 percent seats for children from weaker sections, in accordance with the Act. Some of the key issues have been taken up in greater detail in this Special Issue of Budget Track.

The 13th Finance Commission has provided Rs 25,000 crore to the states for implementation of RTE. The Centre and states have agreed to share the funds required for its implementation in the ratio of 55:45.

Amid the hype surrounding the RTE notification, some civil society activists and academics have found loopholes in the legislation. "Beginning with its definition of a 'child' (not less than six years and not more than 14 years), to not owning up to the economic responsibility of the Union government while fleshing out the provisions."⁶ Further, it strengthens the multi-tiered and unequal education structure as opposed to a Common School System. Another extremely disconcerting feature is the lack of clarity on financing of RTE Act. It is being argued that so long as these ambivalences and gaps remain, RTE cannot be seen as adhering "to the spirit of the right to education"⁷

The ongoing reforms also extend to the higher education system. The Ministry of Human Resource Development has proposed forming a **National Commission for Higher Education and Research** as the ultimate authority for higher education in the country. However, the fact that the Commission will remain outside the scope of accountability to the Parliament has made the proposal extremely controversial.

The **Foreign University Bill**, which will provide foreign universities an open field to set up their institutions in the country, was also introduced in Parliament. The bill purportedly paves the way for quality foreign universities to come to India and solve the problem of quality of higher education. As per the draft bill, these universities will be completely outside the ambit of any governmental control with respect to finances, curriculum and administrative matters.

For many however, these reforms reveal a dangerous trend- that of relentless centralisation and commercialisation of the education sector.

Another bill that has drawn flak is the **Nuclear Liability Bill**. Introduced in the Budget Session, the Civil Liability for Nuclear Damage Bill got a go-ahead from Parliament in the monsoon session after months of hectic negotiations, paving the way for overseas companies to set up nuclear reactors in the country.

The bill, which is a part of the Indo-US Nuclear Agreement, is seen as an attempt by the government to essentially free multinational plant vendors from all liability even for accidents that result from a design flaw. The draft bill indemnified the supplier of a nuclear plant and capped the liability of the operator in the event of an accident. It offered almost no financial disincentive for unsafe behaviour on the part of operators and suppliers of nuclear plants. Critics pointed out that such inducements to both suppliers and operators in effect transferred the risks for a nuclear mishap onto the people at large.⁸

The legislation was cleared after the government removed the word 'intent' along with 17 other amendments to the bill which had been a major source of contention between the government and a united Left and right opposition. The government further agreed to consider amendments suggested by a parliamentary panel to the original proposed atomic law tripling the liability cap on an operator in case of an accident to Rs.1,500 crore from the earlier Rs.500 crore.

Status of the Women's Reservation Bill

In a significant move, the government introduced the Women's Reservation Bill to give 33 per cent reservation to women in Parliament and state legislatures. The bill was passed by RS but the euphoria over its passage was cut short at the second hurdle. Even the monsoon session came to a close without the bill, which has been in limbo for the last 14 years, being moved in the lower house. The 'in abeyance' status of WRB is being ascribed to alleged clandestine dealings between the ruling party and opponents of the women's bill (Samajwadi Party, Rashtriya Janata Dal, Bahujan Samaj Party and Janata Dal-United) to bail out the former in the wake of the voting on cut motions in the Budget Session.

Its passage in RS during the budget session itself was quite volatile. A bitterly divided all-party meeting saw traditional antagonists such as SP, RJD and JD-U holding firm to their stand that a separate quota for backward class women must be worked into the bill. The Trinamool Congress pushed for sub-quotas for Muslim women while BSP sought the same for dalits.

In a country where 'reservation' appears to be the guiding principle of a certain kind of party politics, the reactions to a piece of legislation like the WRB are not surprising. Women's rights activists attribute this belligerence to a simple fact: "While power sharing at the panchayat and nagarpalika level can be tolerated because these bodies implement laws and policies, it takes on another dimension when it comes to Parliament and assemblies where laws and policies are made."⁹ This is because WRB seeks not only to enable more women to get elected to Parliament but to fundamentally alter the manner in which the system has functioned thus far.

National Food Security Act

The draft National Food Security (NFS) legislation readied for cabinet's approval is much narrower in scope than what was initially envisaged and, hence, stops short of assuring an entitlement as had been previously pledged. The final draft Bill



which has been approved by the empowered Group of Ministers (eGoM) restricts coverage only to poor citizens, confines it to the supply of 25kg of wheat and rice, does not lock in the government to a fixed issue price and excludes destitutes from the purview of other welfare schemes covered by the proposed food security Bill¹⁰.

As a result, it is unlike what has been provided under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), which guarantees employment to one member of every rural household and does not restrict it to those living below the poverty line (BPL).

While the eGoM decision is considered to be final, it requires a formal nod by the cabinet through its inclusion in the agenda. Thereafter, it will be put in the public domain for discussion. It is not yet confirmed when the draft would be put up for approval.

What is obvious, however, is the definite disconnect between the executive arm of the UPA and the political leadership on the very meaning of what constitutes a food security bill. Considering that nearly 40 percent of the rural population is malnourished and an almost equal percentage is poor by the standard measure of consumption poverty, there are three major issues with regard to NFSA that remain unresolved. These are: who should get it, how much and at what price.¹¹

While many activist groups as well as the Left parties have repeatedly highlighted the need for universal entitlement, the government seems to be more inclined to limit it to below poverty line (BPL) families. Accruing from this is the current dilemma over poverty estimates. The government's proposal of giving 25 kg of foodgrains at Rs. 3 per kg to poor families has also created a furore. It is being argued that the question of reducing the dole does not arise given since under the public distribution system (PDS) system BPL families are entitled to 35 kg per family at Rs. 2 a kg.

Questions around the nature and quality of delivery mechanism have also been raised. Although the draft legislation of NFSA raises the issue of broader systemic reform in the PDS, there are concerns about the government's commitment to do so. National Advisory Council member N C Saxena, who headed the committee set up by the Rural Development Ministry to fix rural poverty levels, notes: "The government is not receptive to any ideas to reform the PDS. It doesn't want anything in the NFSA that makes it responsible for implementation...The issue of revamping the PDS has not got the attention that it deserves despite the fact that this will be crucial to operationalising the entitlement."¹²

National Health Bill

India lags behind its neighbours so far as health indicators are concerned while its public spending on health remains abysmally low. Despite repeated promises to address these concerns and create a credible public health system, the proposed National Health Bill has been lying in cold storage with the chapter on financial memorandum yet to be completed.

The National Health Bill 2009, as it now stands, seeks to provide health, health equity and justice for *all Indians*. The core obligations include ensuring equitable distribution of and access to 1) essential health facilities, goods, drugs, services and conditions to all, especially to vulnerable and marginalised groups; 2) minimum essential food that is nutritionally adequate and safe, to ensure freedom from hunger and malnutrition to everyone; 3) adequate supply of safe water; 4) sanitation and sewerage; and 5) basic housing with dignity. One very important obligation is to devise, adopt, implement and periodically review the health policies, strategies and plans of action on the basis of epidemiological, sociological and environmental evidence, addressing the health concerns of the whole population. However, health experts feel, the bill in its present form could legitimise denial of health services to the poor. It is ambiguous on providing universal and free healthcare. As per the draft:

"Governments have an immediate duty to make health a priority for the most vulnerable and marginalised persons and groups." This has led to fears of a targeted approach to health, though for the most part in the bill, the stress is on provision of universal healthcare. Another major concern is its silence on the issue of preventing public health services from being privatised. The draft "should assert the role of public sector health services. But it does not talk about strengthening of the services,"¹³

Assam Public Health Bill

While the Centre failed to set in motion the National Health Bill, the Assam government pushed through the Assam Public Health Bill 2010. It guarantees people the right to appropriate medicines and to effective measures of prevention, treatment and control of epidemic and endemic diseases. It also empowers the state health department to fix accountability and responsibility in cases of recurring outbreaks of viral, communicable and water-borne diseases. The bill makes it mandatory for all new development projects in the state to pass a Health Impact Assessment (HIA) test. With this, Assam has become the first state in the country to make Right to Health a reality for its people.

IV. TRACKING KEY POLICY RELATED DEVELOPMENTS

During the last three sessions of Parliament, many developments impacting on public policy have taken place. Some significant policy related developments include the submission of the report of the 13th Finance Commission and commencement of Census 2011.

Recommendations of 13th Finance Commission

A five-member expert team, headed by economist Vijay L Kelkar submitted the report of the 13th Finance Commission to the government on December 30, 2009, covering all aspects of its mandate. The government has accepted most of its key recommendations.

Key Recommendations

- **Sharing of central taxes:** It's the FC award period spanning from April 1,



2010 to March 31, 2015, the share of states in the net proceeds of central taxes should be fixed at 32 percent against the 12th FC prescribed transfer of 30.5 percent, an increase of 1.5 percent.

- **Non-plan revenue deficit grant:** The 13th FC evaluated revenues and expenditures of the states for 2010-15 and projected the deficit for each state after factoring in its amount of share in central taxes. It recommended a grant of Rs. 51,800 crore to meet this deficit for eight states and favoured a performance incentive grant of Rs 1500 crore for three Special Category states of Assam, Sikkim and Uttarakhand that have graduated out of non-plan revenue deficit.
- **Goods and Services Tax (GST):** A model GST structure has been put in place, the features of which include single rate of 12 percent of goods and service tax, against the extant cascading level of over 20 percent for the Centre and states combined, zero rating of exports, inclusion of various indirect taxes at the Central and state levels in the GST ambit and major rationalisation of the exemption structure. A grant of Rs 50,000 crore for has been made for implementation.
- **Fiscal consolidation:** The FC has drawn a roadmap for fiscal deficit reduction and spelt out a combined debt target of 68 percent of GDP against 75 percent in 2009-10. It stresses on achieving and maintaining revenue account in balance and containing the fiscal deficit to 3 percent of Gross State Domestic Product (GSDP) by 2014-15.

Observations on FC Recommendations¹⁴

(1) **The recommendations are unlikely to help the states step up their public provisioning for development:** The recommendations do not deviate from the path of fiscal conservatism laid out by the 11th and 12th FCs but go a step further

and restrict the space available to the states for determining their fiscal priorities.

(2) Reverting to fiscal conservatism path:

Post Devolution (pertaining to the situation after devolution of shareable central taxes to all states) Non-Plan Revenue Deficit Grant prescribed for only eight states A separate path for fiscal consolidation for Kerala, Punjab and West Bengal – states with large fiscal imbalances – chalked out. Economists point out that such exogenous ceiling on borrowing by states is arbitrary and could have adverse implications.

Fiscal consolidation of the states through reduction of deficits in their budgets does not necessarily imply improvement in fiscal capacity. Such reductions, especially by relatively poorer states, are reported to have been achieved at the cost of public expenditure on development. Hence, the 13th FC's recommendations could create pressure on states to prune their development spending (particularly because a large part of budgetary spending in the social sectors is reported as Revenue Expenditure).

(3) Roadmap for fiscal consolidation and Non-Plan Revenue Deficit Grant:

The 13th FC has drawn up a revised roadmap for fiscal consolidation for both the Centre and the states keeping in mind better implementation of the Fiscal Responsibility and Budget Management (FRBM) Act. Its basic objective is to take account of the combined macro-fiscal position of the Central and state governments and to set targets with reference to the overall position. In this regard, the Commission has identified two key macro-economic parameters – combined fiscal deficit and combined debt to GDP ratio.

Non-Plan Revenue Deficit Grant

(NPRD): The enthusiasm over attainment of zero revenue deficit at the Centre and in the states has led the FC to ignore that 11 of 17 major states have incurred significantly high revenue deficit as per 2009-10 Budget Estimates. However, even

after acknowledging that some concessions on revenue deficit targets need to be provided for recessionary trends, it went on to recommend that states having attained zero revenue deficit/revenue surplus in 2007-08 should return to that status by 2011-12. In this regard, it has failed to provide relief to states with revenue deficits through the Non-plan Revenue Deficit Grant even for the initial years of the award period, a practice that was even adopted by the 12th FC in its drive towards implementation of FRBM Act. The 13th FC has provided NPRD grants only to Special Category states.

(4) **Incremental approach to issue of states' share in central taxes:** The 13th FC has increased the share of states in total shareable pool of central taxes from 30.5 percent to 32 percent. This, however, is merely an incremental approach towards addressing a core issue in federal fiscal affairs. Most states have consistently demanded a higher share (of up to 50 percent) since the 80th Amendment and observers feel it is justified because of their expenditure requirements (which have been growing rapidly) and limited scope for stepping up own tax revenues.

(5) **Recommendations on GST:** One of the most important indirect tax reforms being proposed by the Government of India is introduction of GST. A tax on goods and services, it will essentially be a tax only on value addition at each stage. It would eliminate all the cascading effects including the burden of Central Value Added Tax (CENVAT) and service tax. Also, major Central and state taxes will get subsumed into GST, which will reduce multiplicity of taxes and bring down compliance costs. With GST, the burden of Central Sales Tax (CST) will also be phased out. GST is not simply VAT plus service tax but a major improvement over the previous system of VAT and disjointed services tax.

Ideally, the implementation of GST would entail one common market, one law, one common assessment procedure and one form to file returns. It would also merit adoption of a common IT platform.



Operationalising of GST depends on the states' complying with the GST model frame. The potential gains of implementing the new indirect tax structure would also hinge on states agreeing to surrender the taxes they levy and items they exempt. An ideal GST would be based on a single rate but a common market would not be viable in the event of differing taxes and rates. There is also the issue of suitable redeployment of existing tax personnel. On one hand, the proposed GST is being seen as pro-poor and progressive and on the other it continues to face hurdles in terms of design, operations and infrastructure across the states.

Constitution of National Advisory Council

Another significant development has been Sonia Gandhi's appointment as Chairperson of National Advisory Council (NAC) for the second time, after her resigned from the post in March 2006 over the contentious issue of office of profit. NAC was first set up after the UPA came to power as an interface with civil society on implementation of its National Common Minimum Programme (NCMP). During its first stint, it played a major role in pushing the government to enact two important pieces of legislation – Right to Information (RTI) Act and NREGA. Other issues on which NAC provided inputs included the legislations against domestic violence, Forest Rights Act and changes in laws discriminatory towards women.

On paper, NAC appears to be the perfect interface between civil society and government but serious doubts have been raised about “the effectiveness of a body that had excellent intentions but no institutional or political legitimacy.”¹⁵ Questions were also raised on the role of civil society organisations in policy formulation through an institution of the state that functioned parallel to the legislature and the executive.

The revival of NAC (as also its timing) has led to further speculation about the intent of the government. It has been brought

back at a time when the issues of Food Security Bill, Communal Violence Bill, the proposed national law on health and water and the controversial amendments to RTI Act are being debated. The government has also come under fire over issues like taxes and food and fuel price rise. In this context, the reconstituted NAC is expected to keep a watch on existing flagship schemes such as NREGA and to scrutinise other proposed social sector legislations

Census 2011

Billed as the largest census ever attempted in the world, Census 2011 took off on April 1 this year. Details of a billion-plus population on diverse subjects such as demography, literacy, fertility and mortality will be provided and primary data at village, town and ward levels will be collected during this exercise, undertaken by the Office of the Registrar General and Census Commissioner in the Ministry of Home Affairs. Some unique features of the census include collection of information on the usage of mobile phone, availability of tap water, and usage of banking services.

Information and biometrics collected in the house-to-house survey will be fed into the Unique Identification (UID) database¹⁶ being created by Unique Identity Authority of India (UIDAI) for issuance of UID numbers. The cleaned database, along with UID Number would form the National Population Register (NPR). The core task for UIDAI is to assign a UID number to each resident in the country and to eliminate the need for multiple identification mechanisms. It would form the basis for a positive and accurate identification of citizens around which governance platforms and services can be built.

According to the government, there are many benefits from such a mechanism for instant identity verification. The need to prove identity only once will bring down transaction costs for the poor. A clear identity number would also transform the delivery mechanism of social welfare

programmes by making them more inclusive of communities, at present cut off from such benefits due to lack of identification.

NPR, the database of residents of the country, would facilitate better targeting of benefits and services under government schemes and programmes; improve planning and help strengthen national security, according to the government. While many see it as a marvel, there is some scepticism, especially with regard to data collection, which involves biometric identification with fingerprints of all citizens.

The proposed population register has also been debunked on the grounds that “it is set amidst NATGRID (National Intelligence Grid), the UID (the Unique Identification project), and a still-hazy-but-waiting-in-the-wings DNA Bank. Each of these have been given spurs by the Union Home Ministry, with security as the logic for surveillance and tracking by the state and its agencies,” law and poverty experts say.¹⁷

The issue is further complicated with the exercise being carried out under the Citizenship Act of 1955 and Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003 instead of the Census Act of 1948. The point of contention is that while there is an express provision regarding ‘confidentiality’ in the Census Act, there is no such provision in the Citizenship Act and Rules. Instead, there is an explicit objective of making the information available to the UID authority for instance, bringing into question the possible breach of citizens’ privacy as well as abuse of power by the holder of the information.

In a response of sorts, UIDAI chairman Nandan Nilekani said the Authority would support and endorse any action towards formulating an umbrella legislation on protecting the data. He said this would help address privacy and security concerns apart from the safeguards being built into the UID Act itself.¹⁸



Census 2011 has also generated a volatile debate on whether caste data should be captured by it. Those opposing the caste enumeration argue that it would push the country back to the practice of the pre-Independence colonial era. They point out that even the Constitution labels census enumeration of caste as a tool of 'divide and rule.' Further, India is home to a "humungous number of sub-castes with nomenclature variations across regions: aggregating them across villages will be too complex for the census to handle."¹⁹ A similar stance was taken by Union Home Minister P. Chidambaram who said census enumerators lacked the sociological sensitivity to record and classify the population on the basis of castes and sub-castes.

Those supporting the proposal argue that by collecting data on the caste-inequality link, the census could become a promoter of progressive social change, chiefly by strengthening the case for compensatory discrimination policies.

Political commentators aver that the debate has ended up confusing two policy decisions with radically different justifications and consequences: one, a full census of all Hindu castes and the other, a more limited exercise of enumerating Other Backward Classes (OBCs).

According to them, census collectors have always asked whether a person belongs to the category of Scheduled Caste (SC), Scheduled Tribe (ST) or Others. If this proposal is carried through, it would mean adding another classification to the existing ones - OBC. "A full caste census involves questions of principles, but an OBC enumeration follows from a simple administrative logic - a modern state cannot recognise a social group in its laws and policies and then refuse to count them."²⁰

Unfortunately, the politics of social justice in India is often a cover for blatant casteist politics and the full-throttle approach of parties like SP, JD-U and BSP towards those opposing the caste census has only

added fuel to the fire. "Reservations have become a mental reflex blocking any thinking about alternative strategies for affirmative action. An obsession with caste as a category tends to obscure other axes of inequality that operate independent of and within castes."²¹

In a nutshell, the first year's performance of UPA-II has been rather disappointing. The economic policies of the current regime have apparently failed to address the concerns of the common people or *aam aadmi*, as they continue to suffer the pangs of inflation, unemployment and inadequate infrastructure. In addition, the failure to push for critical legislation in social sectors (barring Education) has raised serious doubts about its stated commitment about to enlarge the notion of entitlements for those at the bottom of the pile as well as to broaden the space for governmental responsibility. If the government is committed to its promises, it would have to go in for some serious course correction without further delay.

¹ The Congress increased its numbers in the Lok Sabha from 145 (in 2004) to 207 (in 2009).

² UPA-II policies have spawned crony capitalism. (2010, May 20). The Hindu. Retrieved May 15, 2010, from <http://beta.thehindu.com/news/national/article433911.ece?css=print>

³ This section is taken from CBGA's analysis on the Union Budget 2010-11. For a detailed assessment, see CBGA (2010). Union Budget 2010-11: Which Way Now?. New Delhi. Available at www.cbgaindia.org.

⁴ Inflation rate eases to 9.59% in April. (2010, May 14). The Hindu Business Line. Retrieved on May 24, 2010 from <http://www.thehindubusinessline.com/2010/05/15/stories/2010051553310400.htm>

⁵ Chandrasekhar, CP. (2010, March 13-26). Danger of inflation. *Frontline*, 27(6). Retrieved on April 30, 2010 from <http://www.flonnet.com/fl2706/stories/20100326270601600.htm>

⁶ Jha, Praveen and Parvati, Pooja. (2010). Right to Education Act 2009: Critical Gaps and Challenges. *Economic and Political Weekly*, 15(13), 20-23.

⁷ Ibid.

⁸ See Raju, S and Ramana, MV. (2010). The Other Side of Nuclear Liability. *Economic and Political Weekly*, 15(16), 48-54.

⁹ Sharma, Kalpana. (2010, March 20). Thank you, Mulayam Singh Yadav. The Hindu. Retrieved on May 23, 2010 from http://beta.thehindu.com/opinion/columns/Kalpana_Sharma/article257980.ece?css=print

¹⁰ Anil Padmanabhan and Liz Mathew, Final draft Bill denies food security as a right, September 1, 2010 from <http://www.livemint.com/2010/04/02003500/Final-draft-Bill-denies-food-s.html>

¹¹ UPA-II leadership seen struggling (2010, May 19). The Economic Times. Retrieved on May 30, 2010 from <http://economictimes.indiatimes.com/articleshow/5946915.cms>

¹² The government wants to scuttle the PDS. (2010, April 16). The Times of India. Retrieved on May 25, 2010 from <http://timesofindia.indiatimes.com/articleshow/5812971.cms>

¹³ Colin Gonsalves as quoted in Verma, Savita (2010, February). 'Health Bill May Deny the Poor Free Care'. Retrieved on February 22, 2010 from <http://indiatoday.intoday.in/site/Story/85102/India/Health+bill+may+deny+the+poor+free+care.html>

¹⁴ This section is taken from CBGA's briefing paper on the Report of the Thirteenth Finance Commission, available at www.cbgaindia.org

¹⁵ 'The National Advisory Council Experiment' [Editorial]. (2008, April 12). *Economic & Political Weekly*, 7.

¹⁶ The database will be created with addition of biometric information such as photograph, 10 fingerprints and probably Iris information for all persons aged 15 years and above.

¹⁷ Ramanathan, Usha. (2010, April 5). 'Implications of registering, tracking, profiling'. The Hindu. Retrieved on April 27, 2010 from <http://www.thehindu.com/2010/04/05/stories/2010040554240800.htm>

¹⁸ Jebaraj, Priscilla. (2010, May 20). 'UIDAI will support law to protect data'. The Hindu. Retrieved on May 17, 2010 from <http://www.thehindu.com/2010/05/20/stories/2010052064102200.htm>

¹⁹ Ibid.

²⁰ Yadav, Yogendra. (2010, May 17). 'Caste in Doubt'. The Indian Express. Retrieved on May 20, 2010 from <http://www.indianexpress.com/news/caste-in-doubt/619760/1>.

²¹ Ibid.