

National Convention on Right to Education
9 December 2005, New Delhi

DEBATING RIGHT TO EDUCATION BILL, 2005
seeking equality with social justice, challenging neo-liberal agenda

PEOPLE'S CAMPAIGN FOR COMMON SCHOOL SYSTEM
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Introduction

The debate on Right to Education is not new in India. Most of the issues being raised today had been debated for more than a century. For instance, a substantial part of the memorandum presented by Mahatma Jotirao Phule to the Indian Education Commission (i.e. the Hunter Commission) in 1882 dwelt upon how the British Government's funding of education tended to benefit "Brahmins and the higher classes" while leaving "the masses wallowing in ignorance and poverty." In 1911, when Gokhale moved his Elementary Education Bill in the Imperial Legislative Assembly, he faced stiff resistance. Instead of supporting the Bill, the members representing the privileged classes from Mumbai, Maharajas and other rulers from princely states and the big landlords from feudal areas talked of the conditions in the country not being ripe for such a Bill and that haste should be avoided. The Bill could not be approved. At the National Education Conference held at Wardha (Maharashtra) in 1937, Mahatma Gandhi had to use all the moral powers at his command to persuade the Ministers of Education of the newly elected Congress governments of nine provinces to give priority to Basic Education (*Nai Talim*) of seven years and allocate adequate funds for this purpose. The Ministers kept on pointing out that there was no money.

During the Constituent Assembly debate in 1948-49, a member pleaded with Dr. Babasaheb Ambedkar to withdraw the commitment made in the draft Article (later to be known as Article 45) to provide "free and compulsory education" to children up to 14 years of age and limit it instead to only 11 years of age. This was on the plea that India did not have the necessary resources. The dilution would have been made but for Ambedkar's clarity of mind that it is at this age of 11 years that a substantial proportion of children become child labourers. He forcefully argued that the place for children at this age should be in schools, not in farms or factories. Yet, the majority in the Assembly did not allow him to place Article 45 in Part III of the Constitution, thereby denying education the status of a Fundamental Right in modern India. Interestingly, this was the only Article among Directive Principles (Part IV) that had given a time schedule viz. within ten years of the commencement of the Constitution, for fulfillment of the goal.

In 1986, when the new education policy was being formulated, more than half of the children in this age group and two-thirds of the girls were out-of-school. The situation has not changed much since then on an all-India basis. A couple of states can be set apart as exceptions along with Kerala for having broken the stalemate. Even here, the issues of quality, equality and social justice in and through education stand ignored. The IMF-World Bank's Structural Adjustment Programme and the externally aided primary education projects during the 1990s added to the crisis by further derailing the prevailing anti-poor policy in a number of ways. The reality becomes much more scary if you disaggregate data and look at SCs, STs, religious and linguistic minorities or the disabled in separate categories. Almost 80-85% of SC girls and 90% of the ST girls do

not finish class X. This means that most of the SC and ST young people have not been able to benefit from the reservation scheme since independence as essentially no such benefits are available before Plus Two stage. With the increasing dominance of the global market forces in policy making, privatization-cum-commercialization of school education is rapidly undermining the sovereign role of the State in providing education and thus further widening the gap between the privileged and the under-privileged with respect to access to education of equitable quality.

2. A Historical Overview of the Bill

These ominous trends were challenged when the Supreme Court delivered its historic judgment in the case of *Unnikrishnan J.P. vs. State of Andhra Pradesh and others* (S.C. 2178, 1993). The judgment gave all children a Fundamental Right to "free and compulsory education" until they "complete the age of fourteen years". The Supreme Court further stated that this right "flows from Article 21" when read in conjunction with the original Article 45. While the Directive Principles (Part IV), it ruled, provided the goals to be pursued by the State, the Fundamental Rights (Part III) provided the means to achieve these goals. This unique formulation implies that the Fundamental Right shall include, as per even the *amended* Article 45, free early childhood care and pre-primary education for the children below six years of age. The Supreme Court in the same judgment further ruled that, after the age of fourteen years, the Fundamental Right to education continues to exist but is "subject to limits of economic capacity and development of the State" as per Article 41.

This judgment built up an unprecedented public pressure on the Government. Several PILs in various High Courts succeeded in getting orders favourable to children under the impact of the Unnikrishnan Judgment. The Central Government set up a Committee of State Education Ministers (known as the Saikia Committee, named after the then Union Minister of State in the HRD Ministry) in August 1996 to examine the implications of making elementary education a Fundamental Right. In line with the Unnikrishnan Judgment, the Committee recommended in January 1997 that Article 45 in its *original* form be shifted to Part III through a Constitutional amendment to make free elementary education a Fundamental Right. In July 1997, the then United Front Government introduced the 83rd Constitutional Amendment Bill in Rajya Sabha. This Bill was flawed on three major counts as it: (a) excluded the children below six years from the scope of Fundamental Right by limiting the proposed Article 21A to children in 6-14 year age group, thereby diluting both the Unnikrishnan Judgment and the recommendation of the Saikia Committee; (b) kept the private unaided schools outside the obligation to provide "free and compulsory education" to children in the 6-14 year age group; and (c) failed to provide adequate financial resources for implementation of the Bill. The Bill faced widespread public criticism which was also presented to the Parliamentary Standing Committee related to the Ministry of HRD. The Government dithered and placed the Bill in cold storage.

By this time, major policy-level changes were being instituted under the dictates of IMF-World Bank's Structural Adjustment Programme. As part of the World Bank-sponsored DPEP, a number of critical policy-level changes were made viz., (i) the national agenda of eight years of elementary education was diluted to five (or less) years of primary education; (ii) inferior parallel layers of education were introduced for the deprived sections of society; the notion of under-qualified, untrained and underpaid local youth

appointed on contract as para-teacher rapidly started replacing the regular teacher; multi-grade teaching wherein a single teacher is trained to teach five classes simultaneously was promoted in place of Operation Blackboard's norm, as given in the 1986 education policy, of three teachers per primary school; (iii) multi-track education was accepted as a substitute for the Common School System (see Annexure I for this concept); and (iv) the Constitutional obligation of the State was being increasingly shifted to NGOs, religious bodies or corporate houses. All these changes, promoted by World Bank, were introduced without any explicit sanction of the Parliament.

There was still a ray of hope. As recommended by the Saikia Committee, the United Front Government had constituted a Group of Experts (popularly known as the Tapas Majumdar Committee) in June 1997 to assess the financial requirements for operationalising the free and compulsory education legislation and suggest measures for mobilizing additional resources. The Tapas Majumdar Committee Report (January 1999) ruled out the notion of multi-track education of inferior parallel layers altogether and recommended that eight years of elementary education must be provided through regular formal schools that fulfill certain basic infrastructural and related norms. For this, it estimated a total of Rs. 1,37, 000 crores would have to be invested in elementary education as an additionality during the next ten years, beginning from the year 1998-99. To put it simply, an additional investment of Rs. 14,000 crores per year on average would have to be made for the next ten years, though the report proposed a graded increase in resource requirement from a low level in the first year to reach a high level in the tenth year. This gross view amounted to an additional investment of merely 0.86% of GDP in 1998-99 i.e. merely an additional 86 paise out of every Rs. 100 earned by the country (at the current year's GDP level, it would be merely 0.45% of GDP!). The report opined that meeting such requirement is entirely within the realm of possibility if we fulfill the long-standing policy resolve of reaching the investment target of *at least* 6% of GDP in the entire education sector. However, the report cautioned that this won't be an "entirely painless" operation. It would be worthwhile to quote the report:

"From being an *incremental* developmental goal in the process of education for all, UEE [Universalisation of Elementary Education] has, in consequence of the [Unnikrishnan] judgment, now become a *justiciable entitlement* of every Indian child entitlements sanctioned by the Constitution cannot be deferred by the State at its convenience The State has to make the necessary reallocation of resources, by superseding other important claims, if necessary, in a manner that the justiciable entitlement can become a reality. This may call for restructuring of all government spending, forcing the State to cut down even on spending that it would otherwise consider as essential, but which was not covered by any of the Fundamental Rights guaranteed by the Constitution. (italics added)"

The message was clear. **There is no dearth of resources in the country.** Indeed, **lack of resources is a myth** that has been deliberately promoted by the ruling elite since Mahatma Phule submitted his memorandum to the Indian Education Commission in 1882. What is instead required to be done is **a change in the priorities of the national economy in favour of the masses.** It must be appreciated that the Tapas Majumdar Committee estimates are indicative of the '*cumulative gap*' that has been building up due to continued under-investment for decades since the Education Commission's recommendation of investing 6% of GDP in education. The more you delay the required level of public expenditure, the bigger would be the size of the '*cumulative gap*', as is the case with the new estimates made in 2005, and the level of pain in this operation would also rise proportionately!

Yet, the Government refused to see sense. The NDA attempted to confuse the issue by introducing the notion of 'public-private partnership' in education in its election manifestos of 1998 and 1999. A document of the NDA Government later stated falsely that the investment of 6% of GDP shall be reached by inclusion of private investment in education. Nothing could be more misleading as both the Education Commission and the 1986 policy had clearly conceived of this level of investment as a *public* expenditure. The NDA Government took more than two years to move again. In November 2001, the 86th Constitutional Amendment Bill was introduced in the Lok Sabha. This Bill, like its predecessor 83rd Amendment Bill, too, was flawed. It was misconceived insofar it (a) excluded almost 17 crore children up to six years of age from the provision of Fundamental Right to *free* early childhood care and pre-primary education; (b) restricted the Fundamental Right of even the 6-14 year age group by introducing the phrase '*as the State may, by law, determine*' in Article 21A; (c) shifted the Constitutional obligation towards free and compulsory education from the State to the parents/guardians by making it their Fundamental Duty under Article 51A (k) to '*provide opportunities for education*' to their children in the 6-14 age group; and (d) reduced, as per the Financial Memorandum attached to the amendment Bill, the State's financial commitment by almost 30% of what was estimated by the Tapas Majumdar Committee. The aforesaid flaws, now legitimized through this amendment made in the Constitution in December 1992, have since provided the basis for misconceiving the Sarva Shiksha Abhiyan and, more recently, the Draft Free and Compulsory Education Bill, by both the NDA and UPA Governments respectively.

The NDA Government made public three successive drafts of the Free and Compulsory Education Bill viz. in June 2003, December 2003 and January 2004 – all as part of the requirements of the 86th Constitutional Amendment. All the three drafts were designed to (i) legitimize low quality educational streams for under-privileged sections of society; (ii) provide legitimate space at various administrative and academic levels for extra-constitutional authorities (including NGOs, communal bodies and corporate houses) to introduce their ideological agenda in school education while keeping them outside the purview of the Constitutional framework; (iii) negate the principles of the 73rd and 74th Constitutional Amendments; (iv) promote privatization and 'corporatisation' of school education; (v) franchise parts or whole of Districts to corporate or religious bodies for running the elementary education system; (vi) shift the Constitutional obligation of the State to support elementary education to the parents and the local communities; (vii) promote 'special schools' for the disabled children at the cost of *inclusive education*; and (viii) introduce a range of other distortions in the elementary education system. The NDA Government was criticized severely for these dilutions and distortions. Ignoring public protests, however, the matter was pushed at a hurried pace. By mid-January 2004, the Draft Bill had been sent to the state governments for their comments.

The Draft Bill was almost ready to go to Parliament when the General Elections intervened. The people of India undid the designs of the NDA Government and, in May 2004, gave a two-pronged mandate to the UPA Government by rejecting (a) the communal and divisive politics pursued so blatantly as an ideology during the previous six years; and (b) the so-called economic reforms that were pushed ruthlessly 'without a human face'. Suddenly, the political scenario had been *apparently* transformed. Expectations were high. After dragging its feet and making ambiguous statements for weeks, the UPA Government finally agreed under public pressure to review the NDA Government's misconceived Draft Bill of January 2004. The reconstituted Central Advisory Board of Education (CABE), at its first meeting held on August 10-11, 2004,

seemed to take a determined step. The Minister of HRD Sh. Arjun Singh announced a review of the 1986 education policy by constituting seven different committees on various dimensions of education. One of these committees, chaired by Sh. Kapil Sibal, Union Minister of State for Science & Technology and Ocean Development, was asked to (a) draft a "legislation envisaged in Article 21A of the Constitution"; and (b) examine other issues related to elementary education for achieving the objectives of free and compulsory basic education." The high public expectations were to be belied soon. After nine months of deliberations, the Kapil Sibal Committee ended up by refusing to (a) take a historical view of policy-making, particularly with reference to the recommendation of the Education Commission (1964-66) regarding the criticality of building a Common School System on the principles of equality and social justice, as enshrined in the Constitution; (b) analyse the failure of the State to fulfill its Constitutional obligation to provide adequate financial resources for free and compulsory education; (c) probe the adverse impact of IMF-World Bank's Structural Adjustment Programme on the school system during the 1990s; (d) look into ways in which global market forces are being allowed to destroy the vast government school system and promote commercialization of school education, thus making education inaccessible to large sections of society; and (e) consider issues that link elementary education to early childhood care and pre-primary education, on the one hand, and secondary or senior secondary education, on the other, thereby entirely ignoring the second term of reference.

All the above flaws were reflected in the Kapil Sibal Committee's report that was finalized, despite consistent protests by its members, at its meeting held on June 5, 2005. The worse was still to come. This distorted version of the concept of Right to Education was further diluted when a highly 'doctored' report was presented by the Chairperson Sh. Kapil Sibal at the full CABE meeting held on July 14-15, 2005. During the heated debate that followed, a four-page note (Annexure IIa) by a member of the Kapil Sibal Committee listed 15 'unauthorised changes' that were introduced to change the character of the Draft Bill without taking the committee into confidence. The note was not even allowed to be introduced as a Point of Order. The intention to silence all dissent was fully established when the Minutes of this meeting presented at the next CABE meeting held on September 6-7, 2005, refused to even record the protest against introducing the 'unauthorised changes' (Annexure IIb).

The story did not end here. The State is determined to deny the Fundamental Right in more clever ways than one can imagine. The strategy is to give by one hand and snatch it away by the other. Clever rhetoric is used to camouflage the real intentions of the State. In the weeks that followed the CABE meeting held in July 2005, several new sections have been added or previous ones modified to achieve these objectives. The latest Draft Bill dated August 25, 2005 that was put on the Ministry's website is replete with contradictions and loopholes. A detailed analysis of the Draft Right to Education Bill 2005, as finalized by the UPA Government, is presented below.

3. Guiding Principles for Probing the Bill

The following basic principles constitute the analytical framework in which the latest Draft Bill may be examined:

- The primary purpose of education is to help build a democratic, egalitarian, secular and humane society, both at the national and global levels; at the same time, it

must also promote universal human values and respect for India's composite culture and her rich ethnic, socio-cultural and religious and linguistic diversity.

- The education system must strengthen the commitment in every citizen to the goals as enshrined in the Preamble to the Constitution, especially sovereignty, secularism and democracy and to secure socio-economic and political justice, liberty of thought and faith, equality of status and opportunity, dignity of the individual and integrity of the nation.
- Education is a means for unleashing the full human potential in the larger public interest as well as a path to social development with equality and social justice; it has a critical role in generating knowledge for welfare of the masses, rather than for *profit, subjugation or concentration of power*.
- It follows that **education is definitely not a commodity** or service that can be traded in market and, therefore, must not be allowed to be used for commercial purposes.
- After becoming a Fundamental Right, elementary education for the 6-14 year age group children cannot be conveniently treated as an *incremental* developmental goal any more. Instead, the State is under obligation to **reprioritize the national economy** and to make the necessary reallocation of resources, by superseding other claims not covered by any of the Fundamental Rights, if necessary, in a manner that the justiciable right to education can become a reality.
- Yet, for the purpose of allocation of public resources or otherwise, elementary education is not to be juxtaposed against secondary, higher, technical or professional education, each sector being critical to people's welfare and national development.
- It is the Constitutional obligation of the State to guarantee elementary education as a Fundamental Right *along with* other Fundamental Rights (Part III) as well and in consonance with the Directive Principles of State Policy (Part IV) of the Constitution.
- As a consequence of 86th Constitutional Amendment and induction of Article 21A, **all schools**, including the private and non-government ones, aided or unaided, **need to be viewed as instrumentalities of the State** that are under obligation to play their due role in ensuring that all children between the age group of 6-14 years realize their Fundamental Right to 'free and compulsory education'.
- The Supreme Court of India, in the case of *Unnilrishnan J.P. vs. State of Andhra Pradesh and others* (S.C. 2178, 1993), gave all children a Fundamental Right to "free and compulsory education" until they "complete the age of fourteen years" and stated that **this right "flows from Article 21" when read in conjunction with the original Article 45**; this shall include, as per the amended Article 45, free early childhood care and pre-primary education; further, the Supreme Court in the same judgment ruled that, after the age of fourteen years, the Fundamental Right to education continues to exist but is "subject to limits of economic capacity and development of the State" as per Article 41.

4. Right to Education: Emergence of a Core Agenda

The following Core Agenda for Right to Education emerges from the above guiding principles:

1. The National System of Education shall be built as a Common School System from the pre-primary stage (integrally linked with early childhood care) to the Plus Two stage wherein each school, irrespective of its type of management, Board of affiliation or source(s) of income/grant, shall act as a genuine neighbourhood school for all children from the neighbourhood and provide them *absolutely* free education of equitable quality.
2. No school, even if it is an unaided private or non-government school, can either deny admission or charge any fee (or impose other charges/donations) whatsoever from the children belonging to its specified neighbourhood in order to provide them education of equitable quality.
3. The curriculum, teaching-learning process and the socio-cultural environment of the Common School System shall promote the values enshrined in the Constitution in such manner that the children from various sections of society, including SCs, STs, religious and linguistic minorities and the disabled, with focus on girls in each of these deprived sections, shall have a place of dignity and be *fully included* in the neighbourhood school.
4. The State has a Constitutional obligation to regulate all categories of schools, including the unaided private or non-government schools, with the primary purpose of checkmating commercialization of education, maintenance of equitable quality of education and ensuring adherence to Constitutional values and national policy framework, while, at the same time, giving them the necessary autonomy for the purpose of pursuing creativity, flexibility and contextuality in the curriculum and teaching-learning process.
5. The management of the schools needs to be decentralized with *optimum and democratic* participation of students, parents and teachers while keeping in mind (a) the framework of 73rd and 74th Constitutional Amendments; and (b) the Constitutional obligation of the State to provide adequate public resources for ensuring free education of equitable quality for all children.
6. The 1986 policy dictum that '*no people can rise above the level of its teachers*' must become the basis for raising the status of the teachers of all categories of schools and reconstructing their role in policy making, educational planning and all other levels of decision-making. No discrimination between the teachers of the government/local body schools and the private schools must be allowed with respect to emoluments, service conditions or their deployment for national duties. The ongoing misconceived campaign orchestrated by the World Bank and other global market forces against the government school teacher needs to be countered effectively while taking measures to instill a greater sense of purpose and commitment in the teaching community.
7. The State is duty bound to provide *free* early childhood care and pre-primary education to all children below six years of age.

8. Elementary education must lead to *free* secondary and senior secondary education in order to give access to each child to the 'world of work'. The State must commit all the necessary public resources for promoting secondary/ senior secondary, higher and technical education such that its benefits accrue equitably to all sections of society, as already recommended by two CAGE Committees (July 2005). Without this commitment, the majority of the SCs and STs will continue to be deprived of the benefits of the reservation schemes.

9. Prohibit the entry of FDI and/ or external assistance in all sectors of education, unless there is objective evidence to show that this will help in ways that can't be achieved through mobilization of internal resources by reprioritisation of national economy.

10. Mobilise public opinion to prevent the Govt. of India from offering education as a commodity/service under GATS and making any commitments whatsoever thereunder, without a transparent and nation-wide debate and, since education is a concurrent subject, involving the state legislatures in decision-making.

5. Right to Education Bill, 2005: Basic Flaws

The Draft Bill,

- **dilutes** the notion of child's Fundamental Right to Education under Article 21A with respect to 'free and compulsory education' and education of equitable quality [Sections 3 (1) esp. its proviso and explanation, 3 (2 to 5), 5 (ii), 6, 14, 30; weak/ incomplete/ misleading definitions of 'Child', 'Compulsory Education', 'Disability', 'Elementary Education of Equitable Quality', 'Free Education' and 'School' in Sections 2 (1) (f), (k), (l), (p), (q) & (ll) respectively; definition of 'Working Child' in Section 2 (1) (tt) read with Sections 48 & 50 (2)];
- **violates** the principles of equality and social justice as enshrined in the Constitution by including provisions that cause further attrition of the concept of Common School System and enhance discrimination between children admitted in government/ local body/ aided schools, on the one hand, and private unaided schools, on the other [Section 14 read with Sections 3 (1) esp. its proviso and explanation, 3 (2 to 5), 5 (ii), 6, 7, 18 (3) (ii) with proviso, 20, 22 (1), 29 (ii) (c); weak definition of 'Neighbourhood' in Section 2 (1) (aa); lack of a definition of Common School System];
- **fails** to fulfill the objectives of the 86th Constitutional amendment, in so far it neither ensures justiciability of Article 21A [Sections 51 (k), 54] nor provides for State's financial obligation to guarantee *free* education of equitable quality for all children in the 6-14 age group [Sections 9 (i), 10 (2) (i)];
- **negates** the commitment of the 1986 policy to undertake measures to achieve Common School System (CSS) through genuine neighbourhood schools; also diverts public attention from this critical policy objective by introducing the provision of 25% free seats in the private unaided schools/ government schools of specified categories and varying percentages of free seats in private partially aided schools [Section 14];
- **deprives** children below six years of age of their right to early childhood care (including health and nutrition support) and pre-primary education which flows out of a harmonious reading of the amended Article 45 in conjunction with Article 21, as directed

in Supreme Court's Unnikrishnan Judgment (1993); also falsely equates pre-primary education with ICDS [Section 7 read with placement of 'pre-school education' in the "Desirable" category of the Schedule];

- **denies** the children in the 14-18 year age group essential support for transition from elementary stage to secondary/ senior secondary stage in order to (a) benefit from elementary education by linking it with the 'world of work'; (b) access advance knowledge and skills through higher education and professional courses; and (c) in the case of SCs and STs, be included in the scope of the reservation schemes; without the State's commitment to ensure free secondary/ senior secondary for all children in this age group in an equitable manner, the Right to Education given under Article 21A also loses its significance [in this light, Section 8 is farcical];
- **provides** for punishment of children, parents and teachers [Sections 3 (5), 5 (ii) proviso, 22 (4) (iv), 26 (2), 27 (1) (iii), 30, 48 read with 50 (2)] but does not conceive of any credible mechanism of punishing the State authorities or representatives for their non-compliance of the provisions of the Bill [Sections 33 (4), 42, 46 (2), 47, 51 (k) and 54, with a possible lone exception of Section 42 (3) (iii)];
- **shifts** the Constitutional obligation of the Central and State governments towards elementary education to Panchayati Raj Institutions and/or school-level School Management Committees (SMCs) for making available adequate number of schools and providing quality education to all children while retaining all critical decisions regarding resources, infrastructure and teachers in the respective government's control [Sections 12, 13, 22 (3 & 4), 23, read along with Sections 9 (i), 10 (2) (i), 20, 24, 26 (1) (vii), 27 (1) (ii & iii) & 28];
- **conceives** of a decentralised education system with community participation that is based on the false premise of the existence of homogenous, just and secular communities, committed to gender equality, at local level and gives to such SMCs major powers to control and punish teachers, expel children, penalize parents and redress grievances [Sections 3 (5), 22, 23, 26 (2), 27 (1) (ii & iii), 28, 46 (1) and 48 read with 50 (2)]; this minimizes the progressive space for State's proactive intervention and supports abdication of State's obligation;
- **promotes** privatization-cum-commercialization of school system through either lack of requirement for building regulatory provisions or inclusion of camouflaged provisions to help commodification of education or introduction of new scope for market for professionals [Sections 3 (1) esp. its proviso; 3 (2 to 5), 6 (ii), 15 read with misleading definition of 'Capitation Fee' in 2 (1) (e), 18 (3) with its proviso read with ambiguous definition of 'Aided Schools' in 2 (1) (c) and 22; 29 (ii) (c) leaving scope to avoid teaching through mother tongue; exemption from Section 20 regarding deployment of teachers on national duties that result in loss of teaching days; removal from Section 10 of requirement for the appropriate govt. to regulate private schools that was present in the third draft of the Bill dated 27th May 2005 as prepared by the CAGE Committee];
- **lowers** the status of teachers of government/ local body/ aided schools by making the teacher a school-based cadre without avenues for transfer, promotion or deputation during her entire career [Section 23]; **incapacitates** the teacher by placing her entirely under the control of possibly hierarchical, caste-dominated and patriarchal (with likely communal bias) School Management Committees (SMCs) with powers of punishment, including deduction of salaries, while ignoring the framework of 73rd/74th Constitutional Amendments [Section 23 read with Sections 22, 26 (2), 27 and 31 (2)];

- **contradicts and/or dilutes** some of the apparently progressive provisions (e.g. Schedule regarding norms of a School) by providing for loopholes [Sections 19 read with Schedule; 20 read with 24, 25 (1) with its proviso and 26 (1 (vii); 29 (ii) (c) leaving scope to avoid teaching through mother tongue; 30 providing for public examination at the completion of elementary education];
- **misleads** the public by providing for weak and ineffective grievance redressal, rectification and monitoring mechanisms such as the high profile but rather disempowered National Commission for Elementary Education and State-level Regulatory Authority [Sections 33 (4), 42, 46 (2), 47]; and
- **withdraws** State's Constitutional obligation to ensure adequate financial resources for fulfillment of the goals of Article 21A [None in Sections 9 & 10 or anywhere else].

In view of the above observations, it is clear that the Draft Bill is entirely against the spirit of the Common School System to be achieved through neighbourhood schools and is a clever attempt at legalization and legitimization of the lacunae introduced in the educational System in the wake of the 1986 policy, particularly during the 1990s under the impact of the World Bank-sponsored schemes. The Bill thus extends the neo-liberal agenda by promoting abdication of State's Constitutional obligation, attrition of the government school system, privatization combined with commercialisation and denial of free education of equitable quality to vast sections of the nation's children. In this sense, the UPA Govt. has failed to live up to the expectations that the people had when it initiated a review of the NDA Govt.'s Draft Bill by announcing a CAGE Committee in August 2004. This also amounts to violation of several of the UPA Government's commitments made under its Common Minimum Programme.

6. Demanding Non-Negotiable Substantive Amendments

The following non-negotiable substantive amendments are being sought with the aim of transforming the anti-Constitutional, anti-poor and pro-neo-liberal character of the Draft Right to Education Bill, 2005:

1. Providing for unambiguous Constitutional obligation of the State to guarantee adequate financial resources for fulfillment of the obligations flowing out of the 86th Constitutional Amendment wherein the central and state/ UT governments will be concurrently accountable for the same; a Financial Memorandum to be attached to the Bill.
2. Making Article 21A completely and transparently justiciable by enabling all citizens of India to seek justice in the courts of law whenever the State or any of its authorities/ representatives/ agencies fail to comply with the provisions of the Bill.
3. Substitution and/or redrafting of all provisions in the Draft Bill relating to 25% free seats in private unaided/ govt. schools of specified categories (or varying percentages in private partially aided schools) by unambiguous provisions for transforming all category of schools (including the above-named categories, private or government) into genuine neighbourhood schools for all children within the framework of a Common School System;

4. Provisions for banning all forms of parallel or multi-track educational facilities that were introduced during the Nineties and continue to be the main instrumentalities of Sarva Shiksha Abhiyan; making schools of equitable quality as the only institutions allowed by the Bill; all camouflaged references to parallel layers such as 'appropriate alternative environment', 'home-based education', 'special programmes' or 'suitable conditions' to be withdrawn from the Bill;
5. Uncompromising provisions for all necessary support structures and processes *in the schools* for inclusive education of the children from various deprived sections of society such as the *dalits*, tribals, religious and linguistic minorities and the disabled, with girls being in the focus in each of the above categories;
6. Guarantee for completely *free* education of equitable quality for all children drawn from the specified neighbourhood in all category of schools (including private aided/ unaided schools) as per Article 21A and other Constitutional provisions for equality and social justice; modifying the definition of 'free education' to make it an unmitigated right of all children in its widest meaning (including non-fee costs e.g. household expenditure on school education or opportunity costs in the case of child labourers) such that it can't be curtailed or diluted under any *alibi* whatsoever.
7. Complete and unconditional abolition of child labour by providing all necessary support to such children (or their families) in order to enable them to participate and complete full-time education in regular formal schools; this must be viewed as their Fundamental Right under Article 21A and the duty of the State to enable them to realize this Right; opportunity costs to be guaranteed since child labourers belong to families that don't have access to Living Wages as provided for in Article 43 of the Constitution.
8. Include provisions for raising the status of teachers of all categories of schools, government/private or aided/unaided, by making the teacher either state-based (with state governments) or district-based (with Zila Panchayats) cadre with a well-defined, transparent and dignified policy for transfer, promotion or deputation; establish parity between government and private school teachers in terms of emoluments, service conditions, deployment for non-teaching or national duties and any other conditions impacting upon their ability to function as full-time professional teachers.
9. Removal of various bureaucratic impediments in realisation of education of equitable quality by all children irrespective of their economic, social, religious, cultural, linguistic or other backgrounds.
10. Defining child as a person up to 18 years of age as per UN Child Right Convention ratified by India in December 1992 and also various Indian laws and, therefore, guaranteeing free early childhood care (including health and nutrition support) and pre-primary education for all children below six years of age and free secondary/ senior secondary education for all children in the 14-18 years age group.
11. Withdrawing all provisions relating to punishment of children, parents or teachers (except those specified in their service rules as per due process) and instead introducing clear provisions for holding all State authorities and/or their representatives/ agencies accountable for failure to implement the Bill and, therefore, liable to be punished in the court of law.
12. Replacing the scheme of decentralization (based upon a false premise with respect to the local communities) inherent in the Draft Bill by a vision of

democratically shared and balanced responsibility and accountability among the central/ appropriate government, PRIs and village/school-based management committees, strictly within the framework of 73rd and 74th Constitutional Amendments and other related laws.

13. Clear provisions to check and regulate privatization-cum-commercialization of schools and commodification of school education at all stages from pre-schools to Plus Two stage, including creation of market for professionals within the school sector or sale/ transfer/ lease/ disposal of the assets of the government/local body schools to NGOs, religious bodies, non-government Societies/Trusts or corporate houses.
14. Include provisions to prohibit the entry of FDI and/ or external assistance in school education, unless there is objective evidence to show that this will help in ways that can't be achieved through mobilization of internal resources by reprioritisation of national economy.

7. Where is the Draft Bill Stuck?

The CAFE Committee chaired by Shri Kapil Sibal was pushed to submit its report in great hurry on the ground that the UPA Government is keen to take the Bill to the Parliament. The Committee was told that the pressure is coming from no one less than the Prime Minister himself. As a result, the Committee did not have time for either public interaction, meeting teachers' and students' organizations or placing the Draft Bill on the website in order to seek public feedback. Several critical issues could not be sorted out on the same ground. As already mentioned, the 'doctored' report of the Committee failed to get consensus at the CAFE meeting held in July 2005, when the dissenting voices were neither considered nor recorded. The draft that was finalized by the government in August 2005 and placed on the website was an entirely altered document – contradicting, diluting or distorting even the 'doctored' report presented to CAFE. This was sent to the states/UTs for their comments. The public impression was that the government is determined to present the Bill at the winter session of the Parliament beginning in late November 2005. However, by mid-November, a section of the press reported that the Bill had hit a roadblock in Prime Minister's office itself as "lack of funds is forcing the government to have a second thought on it". The Minister of HRD was quoted as saying that the "Prime Minister has referred the Bill to a committee of experts consisting of Deputy Chairman of Planning Commission Montek Singh Ahluwalia and C. Rangarajan, Chairman of the 12th Finance Commission" who will "look into its financial implications and ways to generate resources."

One hopes that two 'experts' would take direction from the Supreme Court (Unnikrishnan Judgment, 1993) which held that the State's financial capacity cannot be cited as a valid reason to limit the Fundamental Right to education with respect to children *up to 14 years of age*; limitation of financial capacity can be a consideration *only after the age of 14 years*. And this was before the 86th Constitutional Amendment. After the amendment, there is no room whatsoever for hesitation to mobilise adequate resources. In case the two 'experts' do not know how to mobilize resources, they may like to read the report of the Tapas Majumdar Committee (January 1999) which inferred that, in the case of a Fundamental Right, the entitlement "cannot be deferred by the State at its convenience The State has to make the necessary reallocation of resources, by superseding other important claims cut(ing) down even on spending that it would otherwise

consider as essential, but which was not covered by any of the Fundamental Rights guaranteed by the Constitution." We dare to provide such a list of claims on resources that need to be "superseded": writing off the bank loans of corporate houses as 'non-performing assets' (as per Reserve Bank, loans worth Rs. 45,000 crores were written off recently); holding Commonwealth Games in 2010; waiving off taxes and providing hidden subsidies in order to promote conspicuous consumption; subsidizing private schools and colleges (cheap land, tax exemptions, giving them teachers trained at public costs) and so on.

The CAFE Committee Report (June 2005) had provided four scenarios of financial requirements for implementing this Bill. The highest estimate was for the first scenario which was based on a pupil:teacher ratio of 35:1 and an average salary for the teacher of almost Rs. 8,000/-. For this, an additional investment of Rs. 4,36,500 crores would be required over a period of six years from the year 2006-07 to 2011-12. The implications of these requirements in terms of % of GDP are presented below:

Year	Additional Financial Requirement (% of GDP)
2006-07	1.88
2007-08	1.75
2008-09	1.85
2009-10	1.57
2010-11	1.22
2011-12	1.15
Total	1.51

Source: Report of the CAFE Committee on Free and Compulsory Education & Other Issues Related to Elementary Education, Volume 2, Table 3.2.

At present, the nation is spending 3.9% of GDP on education, including elementary education. Add the additional requirement for the Bill as indicated above and we would still be well within the scope of 6% of GDP, with a balance of 0.6% of GDP left over for other sectors of education. The balance would obviously not be adequate for meeting the requirements of secondary/ senior secondary and higher education sectors. This high investment requirement in elementary education is a result of under-investment over decades, resulting in a cumulative gap. This gap has to be filled up urgently in order to meet the future requirements by maintaining expenditure at 6% of GDP. This is precisely why the 1986 policy resolved that the outlay on education will "uniformly exceed 6 per cent of the national income." It is a different matter that all governments, irrespective of their political hue(s), that followed ignored this resolve.

Additional cess is not the answer as this has yielded only about Rs. 6,000 crores last year. By levying the cess, the UPA government attempted to divert public attention from the real issues. The tax:GDP ratio can be improved to some extent to yield additional resources, as suggested by the Tapas Majumdar Committee. But the real answer lies somewhere else. How long would we avoid the question of *reprioritising the national economy in favour of the masses*? The ruling elite has refused to accept this solution

since Mahatma Phule addressed the Indian Education Commission in 1882 or Gokhale presented his elementary education Bill in the Imperial Assembly in 1911 or Dr. Ambedkar advocated 'free and compulsory education' in the Constituent Assembly. One wonders whether the two 'experts' appointed by the Prime Minister will still prefer to explore ways to undertake the mythical "painless operation" and mislead the people again by claiming lack of resources. Or would they have the courage to face the bitter truth? One thing is clear. More we delay, the greater will be the cumulative gap and the goal of building a civilised society in India will recede further, well beyond the national horizons.

8. Epilogue

This document has attempted to establish how the Government's decision to constitute the Saikia Committee (1996) was a knee-jerk response to the historic Unnikrishnan Judgment (1993) by the Supreme Court. It is no exaggeration to infer that the 83rd Constitutional Amendment Bill, 1997, was the State's device to dilute the impact of the Unnikrishnan Judgment. When people resisted, the Bill was sent into cold storage for the next four years. Hoping that the public memory would have faded, the State introduced the 86th Constitutional Amendment Bill, 2001. The objective was to give an impression that the NDA Government was taking the initiative of giving the children the Fundamental Right to education. As pointed out earlier, the real objective was, as in the case of the previous Bill too, to confuse the public opinion and take away the advantage the people had gained through Unnikrishnan Judgment. However, this time it worked and the Fundamental Right to education given by the Supreme Court in 1993 was effectively *snatched away* when the Bill was signed by the President of India in December 2002. Clearly, the 86th Constitutional amendment was a result of a compromise with the IMF-World Bank's Structural Adjustment Programme designed to (a) reduce investment in the social sector; (b) enable the State to abdicate its obligations under the Constitution; and (c) allow rapid deterioration of the quality of the government school system, thereby promoting privatization-cum-commercialization of school education. The phrase '*as the State may, by law, determine*' in the new Article 21A provided a legitimate basis for further attrition of the notion of Right to Education and the Common School System. Four years later, the State is now ready to '*determine*' how *not* to give the Right and yet maintain an illusion of the same. This is what this National Convention hopes to expose and then seek to rectify the Draft Bill in favour of the masses.

We are convinced that this struggle for changing the anti-Constitutional, anti-poor and pro-neo-liberal character of the Draft Right to Education Bill, 2005, is nothing less than a struggle for India's survival as a sovereign nation and a democratic, egalitarian, secular and humane society. Let us recall the words of the Education Commission (1964-66):

"The destiny of India is now being shaped in her classrooms. This we believe, is no mere rhetoric. . . . On the quality and number of persons coming out of our schools and colleges will depend our success in the great enterprise of national reconstruction the principal objective of which is to raise the standard of living of our people. . . . The task is neither unique nor quite new. But its magnitude, gravity and urgency have increased immensely . . ."
 . . ." [Sections 1.01 and 1.02]

As a preface to its clarion call for moving towards a Common School System, the Commission stated:

“Even more important is the role of education in achieving *social and national integration*. Indian society is hierarchical, stratified and deficient in vertical mobility. The social distance between the different classes, particularly between the rich and the poor, the educated and the uneducated, is large and is tending to widen. (emphasis ours)” [Section 1.07]

Re-iterating the concern articulated by Mahatma Phule before the Indian Education Commission (1882), the Commission elaborated:

“The naive belief that all education is necessarily good, both for the individual and for society, and that it will necessarily lead to progress, can be as harmful as it is misplaced. Quantitatively, education can be organized to promote social justice or to retard it. History shows numerous instances where small social groups and elites have *used education as a prerogative of their rule and as a tool for maintaining their hegemony and perpetuating the values* upon which it has rested. On the other hand, there are cases in which a social and cultural revolution has been brought about in a system where *equality of educational opportunity is provided* and education is deliberately used to develop more and more potential talent and to harness it to the solution of national problems. The same is even more true of the quality of education. . . . It is only the *right type of education, provided on an adequate scale*, that can lead to national development; when these conditions are not satisfied, the opposite effect may result. (emphasis ours)” [Section 1.16]

Four decades later, after the naked assault by the global market forces during the past 15 years, the gaps in Indian society, if anything, have widened and the hegemonic control of the ruling elite over our education system, in collusion with the neo-liberal agenda, is now beginning to threaten the very sovereignty of the nation. Both the 86th Constitutional Amendment (2002) and the resulting Draft Right to Education Bill, 2005, are evidence of the extent to which the global market forces have managed to interfere with our Constitution, penetrated policy-making structures and diluted the goals of education.

This National Convention has been organized by the newly formed People’s Campaign on Common School System to unravel the designs of the State against the children of India. With this initial step, we hope to catalyse a nation-wide debate and build democratic pressure to bring about the desired changes in the Draft Bill. In this struggle, we are seeking the support of all progressive political parties (or progressive sections thereof), mass organizations and activist bodies across the country to bring about critical amendments in the character of the Draft Bill. These amendments need to be viewed as a package and must stand out as being non-negotiable, as far as the people are concerned. Only then the Draft Bill will become a powerful instrument of fulfilling the vision of the Constitution, provide education on the principles of equality and social justice and enable India to move towards its civilisational purpose.

A Note presented at CABE Meeting on 14-15 July 2005

Common School System

The Education Commission (1964-66) had recommended a Common School System of Public Education (CSS) as the basis of building up the National System of Education with a view to "bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society." The Commission warned that "instead of doing so, education itself is tending to increase social segregation and to perpetuate and widen class distinctions." It further noted that "this is bad not only for the children of the poor but also for the children of the rich and the privileged groups" since "by segregating their children, such privileged parents prevent them from sharing the life and experiences of the children of the poor and coming into contact with the realities of life. . . . also render the education of their own children *anaemic and incomplete*. (emphasis added)" The Commission contended that "if these evils are to be eliminated and the education system is to become a powerful instrument of national development in general, and social and national integration in particular, we must move towards the goal of a common school system of public education."

The Commission also pointed out that such a system exists "in different forms and to varying degrees" in other nations like the USA, France and the Scandinavian countries. The British system, however, was based upon privileges and discrimination but, in recent decades, under rising democratic pressure, it has steadily moved towards a comprehensive school system which is akin to the Common School System as recommended by the Commission. There are other developed countries as well like Canada and Japan that practice similar systems. It may not be an exaggeration to assert that none of the G-8 countries which met in Scotland (U.K.) last week have reached where they are without practicing the essential attributes of a Common School System. Can India hope to be an exception to this historical experience if it wishes to join the comity of developed nations?

The 1986 policy, while advocating a National System of Education, resolved that "effective measures will be taken in the direction of the Common School System recommended in the 1968 Policy (Section 3.2)." Taking into consideration these policy imperatives and the contemporary emphasis on decentralisation along with the necessary flexibility in the school system to be able to respond to the contextual curricular demands, the concept of the Common School System (CSS) has itself been evolving. There are two widespread misconceptions about CSS, often promoted by its detractors, which we must deal with before going ahead. First, **CSS is misperceived as a uniform school system**. On the contrary, the Education Commission itself advocated that each institution should be "intimately involved with the local community be regarded as an individuality and given academic freedom." This guiding principle has assumed even greater significance in recent times in view of the expectation from each school or a cluster of schools to be able to respond to the local contexts and reflect the rich diversity across the country. The rigidity of the present school system will be adequately challenged when flexibility, contextuality and plurality are accepted, among others, as the defining principles of CSS. Indeed, it should certainly be possible to conceive of a national system wherein "*no two schools shall be identical*." Second, it is wrongly

claimed that **CSS will not permit a privately managed school to retain its non-government and unaided (or aided) character.** Again, on the contrary, CSS implies that all schools – irrespective of the type of their management, sources of income or affiliating Board of examinations – will participate and fulfill their responsibility as part of the National System of Education.

We must also note that 86th Constitutional Amendment (2002) enjoins upon the State to provide free and compulsory education to all children as a Fundamental Right. This amendment in Part III of the Constitution has major implications for the national system of education which cannot continue to function as it has since independence. All schools in the country, including privately managed unaided (or aided) schools, are under social obligation to act as agencies of the State to fulfill the obligation flowing out of Article 21A regarding equality and social justice. This means that they have to act as genuine neighbourhood schools to provide free education to all children residing in the neighbourhood as may be prescribed by the government from time to time. The central and state governments are hence required to take concrete time-bound measures, including policy modification, in order to meet the new Constitutional obligation. This basic principle has been ignored in the Report of the Committee (June 2005) on “Free and Compulsory Education Bill.”

Based upon the evolving public discourse, CSS may be defined as follows:

“Common School System means the National System of Education that is founded on the principles of equality and social justice as enshrined in the Constitution and provides education of a comparable quality from pre-primary stage to senior secondary stage to all children in an equitable manner irrespective of their caste, creed, language, gender, economic or ethnic background, location or disability (physical or mental), and wherein all categories of schools – i.e. government, local body or private, both aided and unaided, or otherwise – will be obliged to (a) fulfill certain minimum infrastructural (including those relating to teachers and other staff), financial, curricular, pedagogic, linguistic and socio-cultural norms and (b) ensure free education to all children up to 18 years of age in a specified neighbourhood, as may be prescribed, while having adequate flexibility and academic freedom to explore, innovate and be creative and appropriately reflecting the geo-cultural, religious and linguistic diversity of the country, within the broad policy guidelines and the Constitutional framework.”

Notes:

1. The above definition is based upon a definition of CSS that was proposed to the CBE Committee on “Free and Compulsory Education Bill” but *not* accepted.
2. The CBE Committee on Universalisation of Secondary Education has acknowledged certain guiding principles and basic characteristics of a successful programme of moving towards universal and free secondary and

senior secondary education that are fully consistent with the Common School System as defined above.

3. The principles underlying the concept of Inclusive Education are integral to the vision of Common School System. In the Indian context, Inclusive Education has to go beyond the Salamanca Declaration (UNESCO, 1994) and transcend the issue of disability. It must concern itself with all marginalized sections of society viz. *dalits*, tribals, religious and linguistic minorities, child labour and of course, the physically and mentally disabled and particularly the girls in each of these categories, whom the school system tends to exclude in substantial proportions. Unless this exclusionary character of Indian education is challenged, both theoretically and in practice, by application of the principles of Inclusive Education, neither the Common School System nor UEE would become a reality.
4. The educational vision reflected in the above definition of CSS has become critical for the survival of India as a sovereign State and a civilized society as the global market forces are rapidly taking over government school campuses and buildings and also impacting on the nature of knowledge inherent in the curriculum, with little concern for the Constitutional principles and the welfare of the large majority of the people (ASSOCHAM is right now lobbying with MHRD for major changes in the school system so that corporations and other private bodies can turn education into a commodity and use it for profit).

Further, the kind of paradigm shift National Curricular Framework – 2005 (NCF – 2005) is *apparently* advocating can become sustainable only when it is implemented in all categories of schools, including the privately managed unaided schools, in the whole of the country within a declared timeframe, though a properly phased programme will be necessary. Of course, this will require a major dialogue building political exercise (reminiscent of what took place at the time of seeking nation-wide acceptance of three-language formula in 1950s and early 1960s), keeping the federal structure of the country and concurrency of education in mind. The State cannot be a mere bystander in this process but is expected to assume a proactive role of leadership in transforming the system in favour of the masses. Otherwise the State would become superfluous and the global market forces in collusion with the hierarchical social structure will end up determining the character of the school system.

The essential linkage between curricular reforms and systemic reforms must be appreciated, before it is too late. And such reforms would be feasible only within the framework of a Common School System. It is also necessary to assert that **no developed or developing country has ever achieved UEE or, for that matter, Universal Secondary Education, without a strong state-funded and state-regulated Common School System.** India is unlikely to be an exception to this historical and global experience, notwithstanding the ambition of the Indian State to become a 'superpower' by 2020!

Bhopal,
11 July 2005

- Prof. Anil Sadgopal
Member, CABE

RIGHT TO EDUCATION BILL, 2005:
UNAUTHORISED CHANGES MADE IN DRAFT ESSENTIAL PROVISIONS

(Ref.: Previous draft dated 27th May 2005 discussed at the last meeting held on 5th June 2005)

No.	Additions/Deletions	Implications
1.	Added an 'Introductory Note' of 11 pages with premises, guiding principles and other statements that were never discussed by the committee.	The said Note lays the foundation of a highly misleading and questionable framework with respect to the notion of Fundamental Right to Education and its relationship with State's economic capacity; role of non-formal education; social obligation and regulation of private unaided schools; cause of failure to achieve UEE; relevant age of the child; ECCE, ICDS and pre-school education; financial commitment and educational cess in UPA's National Common Minimum Programme; financial implications of Committee's recommendations and "realm of feasibility".
2.	Preamble: Added a para on delivery system.	Diverting attention from critical issues such as Common School System, notion of neighbourhoodness and the unaided private schools, financial obligation of the State, definition of child, status of the right of the 0-6 year age group children in light of Unnikrishnan Judgment and secondary education for 14-18 year age group and others.
3.	Added definitions of 'competent authority' and 'competent academic authority' [S. 2 (1) (f) & (g)].	Providing space for appointing extra-constitutional authorities such as NGOs, religious bodies, Trusts, companies etc. as competent authorities, thereby marginalising Directorates of Education, Boards of Examinations, SCERTs and PRIs. In this sense, the proposed draft becomes similar to the NDA Govt.'s draft Bill of January 2004.
4.	Added definition of "Recognised" [S. 2 (1) (gg)].	Allowing a private school to be <i>established</i> without being <i>recognized</i> for extended periods, as it may not be fulfilling the prescribed norms.
5.	Added a proviso after S. 3 (1) (ii) regarding 'severe or profound disability' and 'alternative environment'.	Provision to keep the disabled children out of regular formal school and promote profit-making bodies to enter this field in the name of special schools or 'home-based education' (see NIEPA's financial implications in Vol. 2).
6.	Added an Explanation after S. 3 (5) regarding mental retardation or mental illness in the context of 'age appropriate grade'.	Opening up space for testing agencies motivated primarily for business and profit in an area whose conceptual basis is yet to be established.!!

No.	Additions/Deletions	Implications
7.	Rephrased the provision for pre-school education [S. 7].	Deleted the reference to the importance of pre-school education for elementary education that was proposed by Director, NCERT and accepted in the meeting. Makes it possible not to provide a pre-school if facilities such as anganwadis are available in the proximity, thereby making it possible for the Govt. to increasingly replace pre-school with anganwadis [see Vol. 2, p. 17, Technical Notes 6.3 (4)].
8.	Rephrased the clause dealing with the financial obligation of the Central Government for implementation of the Bill [S. 9 (i)].	Withdrew all financial obligation of the Central Government towards elementary education which amounts to abdication of State's Constitutional obligation.
9.	Rephrased the clause dealing with the financial obligation of the Appropriate Government for implementation of the Bill [S. 10 (2) (i)].	Withdrew all financial obligation of the Appropriate Government towards elementary education which amounts to abdication of State's Constitutional obligation.
10.	Deleted the provision [in the draft dated 27th May 2005, S. 9 (2) (x)] that enabled the Appropriate Govts. to regulate the private unaided schools.	The Appropriate Govt. need not regulate the private unaided schools so that such schools can be left free to violate the norms prescribed in the Act.
11.	Rephrased the provision concerning recognition of private schools [S. 17 (1)].	A private school can be <i>established</i> without fulfilling the norms prescribed in the Schedule of the Act and function for extended periods, though it may still not be <i>recognized</i> ; in contrast the State schools cannot even be <i>established</i> without fulfilling this condition.
12.	Added a provision for providing financial assistance to private unaided schools [S. 17 (3)]; also added an enabling provision for the Appropriate Govt. in S. 38 (2) (k).	A private 'unaided and fee-charging' school can be given financial assistance in the form of capital grants and yet it will continue to be categorized as an 'unaided school' (read this in conjunction with the definition of aided schools as given in S. 2 (1) (b)). Even the NDA Govt.'s draft Bill of January 2004 did not have such a pro-privatisation provision.

No.	Additions/Deletions	Implications
13.	Added a phrase to keep the 'State schools of specified categories' (such as KVs, NVs etc.) out of the provision to make teacher cadre school-based [S. 22 (1) & (3)].	While all the government and fully aided schools will be required to appoint teachers in specific schools such that they can not be transferred, the State schools such as KVs, NVs etc. will be exempted.
14.	Added the phrase 'as far as possible' with respect to making child's mother tongue the medium of education at least at the primary stage [S. 28 (2) (iii)] and deleted from the draft dated 27th May 2005 a carefully worked out provision [S. 27 of the previous draft] for protecting the right of various linguistic groups while using mother tongue as medium of education.	Makes a mockery of the policy imperative of NPE-1986 and the global consensus on the right of a child to study through the medium of mother tongue. This provision was already weak and incomplete in the previous draft as it lacked the strength of Common School System as the basic framework without which it cannot be implemented in the prevailing socio-economic conditions. The previous draft was also incomplete in this regard as it did not link the issue with three-language formula which provided for the teaching of English as well. The latest unauthorized changes not only make the whole provision useless but also violate the vision of language education instituted in the National Curriculum Framework -2005. The proposed draft is designed to maintain as well as promote the economic and political hegemony of the affluent and other privileged sections of society.
15.	Added a provision for redressal of grievances regarding non-implementation of school-related provisions [S. 33].	It is designed in such a manner that there is no provision to seek redressal of grievances against either the government (and any of its authorities/ representatives) or the private unaided schools in case of their failure to fulfill the requirement under the proposed Act. This is despite a consistent demand by members to make such a provision.

Major Implications of the Unauthorised Changes in the Draft Essential Provisions of the proposed Right to Education Bill, 2005:

- Dilution of the concept of Fundamental Right to Education as guaranteed in Article 21A and other provisions through the Constitutional (Eighty-Sixth) Amendment Act 2002.
- Abdication of State's Constitutional obligation to provide adequate and necessary financial resources for elementary education.
- Releasing the private unaided and fee-charging schools from their social obligations in violation of the principles of equality and social justice as enshrined in the Constitution and also as recommended by the 165th Report of the Law Commission of India (1998) and yet providing for them to receive capital grants from the government out of public funds.
- Promoting withdrawal of the existing nation-wide laws to regulate private unaided schools necessary for making them to act in consonance with the Constitution and other educational requirements.
- Denying children their right to study through the medium of their mother tongue and, at the same time, receive quality education in English and another language of a region other than their own.
- Diverted attention from the root causes of the State's failure to fulfill the goal of UEE as provided for in the original Article 45 in the Constitution.
- Attrition of the right of the children in 0-6 year age group to receive holistic child care and pre-school education as provided for in the *amended* Article 45 of the Constitution.
- Weakened the concept of Inclusive Education and integration of the disabled children in regular formal schools, while promoting profit-seeking agencies engaged in operating special schools and conducting testing on unsound educational principles.
- Allowing the Appropriate Govts. to arbitrarily appoint extra-constitutional bodies such as NGOs, religious bodies, Trusts, companies etc. as 'competent authority' or 'competent academic authority', thereby marginalizing the role of Directorates of Education, Boards of Examinations, SCERTs and Panchayati Raj Institutions.
- No provision for penalizing government (and its authorities/ representatives) and private unaided schools in case of their failure to fulfill the requirements of the proposed Act.

Note: Undoubtedly, there are still several progressive features in this draft that were absent in NDA Govt.'s draft Bill of January 2004 but the loopholes being provided are making a mockery of the whole exercise. As it is, several of the critical progressive measures as proposed by the members of the committee were rejected. It is alarming that these unauthorized changes are going to make the UPA Govt.'s draft Bill increasingly similar to that of the NDA Govt.'s draft. This is despite the apparently democratic process of CABE and the mandate received by the UPA Govt. for pursuing pro-poor policies. There is yet time to retrieve the people's mandate.

14 July 2005

- Submitted by Prof. Anil Sadgopal
Member, CABE,
to the Union Minister of Human Resource Development
& Chairperson, CABE

PROF. ANIL SADGOPAL
Member, CABE

September 06, 2005

Dear Shri Arjun Singhji,

Please refer to the Minutes of the 53rd meeting of the Central Advisory Board of Education (CABE) held on 14th and 15th July 2005 at Vigyan Bhawan, New Delhi. I wish to draw your kind attention to the section of the Minutes dealing with the discussion on the "CABE Committee on the Free and Compulsory Education Bill and Other Issues Relating to Elementary Education" (pp. 3-4) which is a total misrepresentation of the proceedings. You would kindly recall that, in this context, I raised a Point of Order on a procedural issue which I was not allowed to raise despite my persistent request. On being frustrated thrice in this attempt, I informed the house that the invaluable time of the CABE members will be wasted on discussing this report as this is not the report of the CABE committee of which I was a member and I sought time to substantiate what I wished to say. When this request was not granted, I used my democratic right as a CABE member to walk up to the dais and present to you my 4-page note on the 15 "unauthorised changes" introduced in the report after the last meeting of the said committee had been held on 5th June 2005. There was adequate ground for me to walk out in protest but I decided to respect the Chair and waited for 90 minutes for my turn to speak. This of course meant that the import of the Point of order had been lost.

During my intervention I elaborated upon the following two issues:

1. The 15 "unauthorized changes" had changed the character of the draft Bill approved by the committee and distorted and diluted the concept of Fundamental Right and the Constitutional obligations flowing therefrom (see my 4-page note).
2. Even without the "unauthorized changes", the draft Bill had ignored the principles of equality and social justice in education, failed to provide for the financial obligation of the State and promoted privatization and commercialization of school education in various ways.

My protest at the "unauthorized changes" and critique of the draft Bill amounted to my dissent to the report. I am shocked to see that all this is unreported in the Minutes. I had also requested you specifically that my 4-page note be annexed to the Minutes and you had assured me that this will be done. Yet, I find that the said note is merely mentioned as "some supplementary material" along with other material which possibly could be categorized as supplementary material. The reason for this decision not to annex my note is not clear to me while in the Minutes of the 51st meeting (August 2004) I find that notes/texts of speeches submitted by six of the CABE members are duly annexed. Why is this discrimination?

Curiously, the style of writing the Minutes (which are now being called 'Record of Discussions') has also been changed. The Minutes of all the meetings held since March 1994 (the last meeting chaired by you before CABE was reconstituted in August 2004) followed the style of recording individual statements of the members by name. For reasons beyond my comprehension, this well-conceived practice has been changed this time and only ambiguous listless summaries are recorded which do not reveal the invaluable issues raised by the members.

The rich democratic traditions institutionalized in India under the leadership of our first Prime Minister Jawaharlal Nehru are internationally acknowledged for their healthy respect for the dissenting views. The Minutes of the 53rd meeting of CABE negate not only this tradition but also the conventions followed by CABE for decades. Even during the British times, the CABE report of 1944 (the famous Sargent Report) recorded about half a dozen dissenting notes and each one of them enables the reader to have a finer appreciation of the prevailing policy discourse than would have been otherwise possible. The report of the Education Commission (1964-66) also recorded dissenting views throughout the text and these help clarify the issues. However, the Minutes of the 53rd meeting attempt to undo all this.

What is the purpose of this deliberate attempt to misrepresent the proceedings of a publicly funded exercise of the highest advisory mechanism in policy formulation in education? On the one hand, your government enacts the Right to Information Act and, on the other hand, information is being concealed by not even recording it. I am afraid the purpose seems to be to achieve historical amnesia so that the public mind will not record that 86th Constitutional Amendment was undertaken to dilute the impact of Supreme Court's Unnikrishnan Judgement (1993) and this draft Bill is an attempt to dilute the implications of the Constitutional amendment itself.

I urge upon you, Sir, to withdraw the aforesaid Minutes of the 53rd meeting forthwith lest CABE is viewed in public not as an advisory mechanism but merely as a mechanism for legitimization of what the government has already made up its mind to do.

Awaiting justice and transparency,

Yours sincerely,

Anil Sadgopal

cc.: Shri Sudip Bannerjee, Member-Secretary, CABE.

To,
Shri Arjun Singh
Hon'ble Minister of Human Resource Development
& Chairperson, CABE,
Government of India, New Delhi