

Legislative Brief

The Right to Education Bill, 2005

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Highlights of the Bill

- ◆ The 86th Constitution Amendment Act added Article 21A affirming that every child between the age of 6 and 14 years has the right to free and compulsory education. The Right to Education Bill seeks to give effect to this Amendment.
- ◆ The State shall ensure a school in every child's neighbourhood. Every school shall conform to certain minimum standards defined in the Bill.
- ◆ Government schools shall provide free education to all admitted children. Private schools shall admit at least 25% of children from weaker sections; no fee shall be charged to these children. Screening tests at the time of admission and capitation fees are prohibited for all children.
- ◆ Government schools will be managed by School Management Committees (SMC), mostly composed of parents. Teachers will be assigned to a particular school; there will be no transfers.
- ◆ The National Commission for Elementary Education shall be constituted to monitor all aspects of elementary education including quality.

Key Issues and Analysis

- ◆ Some experts criticize the Bill for not implementing the 'common school system' whereas others believe that even the 25% free seats required of private schools is not justifiable.
- ◆ There is a concern that assigning teachers to a specific school will affect their chances of promotions and job security.
- ◆ The Bill appears to be ambiguous on its applicability to schools administered by minorities.
- ◆ The Bill needs to provide greater clarity regarding the rights of children with disabilities and how these will be implemented.
- ◆ There is mixed evidence on the ability of SMCs in improving quality of schools and learning outcomes of children.
- ◆ This Bill will cost the exchequer between Rs 3,21,000 crore to Rs 4,36,000 crore over six years in addition to the current expenditure on education. This is estimated to be an increase of between 1.1% and 1.5% of GDP.

November 21, 2005

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Supreme Court in the case *Unnikrishnan vs. State of Andhra Pradesh (1993)* ruled that the right to education is a fundamental right that flows from the right to life in Article 21 of the Constitution. Following this ruling, the 86th Constitution Amendment Act, 2002 added Article 21A, stating, “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” The 86th Amendment also modified Article 45, which now reads as “The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years”. The Right to Education Bill, 2005 seeks to give effect to the 86th Constitution Amendment.

Key Features

Right of Every Child

- Every child between the age of 6 and 14 years has the right to full-time free and compulsory education in a neighbourhood school.
- Non-enrolled children of age group 7-9 years have the right to be admitted in an age-appropriate grade within one year of the commencement of the Act, and of age group 9-14 years have the right to be provided special programmes that will enable them to attend such grade within three years.
- Children with severe or profound disability, who are unable to attend a neighbourhood school, have the right to be provided education in an appropriate environment.
- A child cannot be held back in any grade or expelled from a school till Class VIII. Any expulsion requires an order of the School Management Committee (SMC), which will be given only after all other corrective measures have been exhausted, and parents/guardians have been heard. The local authority will take steps to enroll such a child in another neighbourhood school.

Responsibility of the State

- The State shall ensure availability of a neighbourhood school for every child within three years. In case of non-availability, free transport or free residential facilities shall be provided. The state/UT government shall determine every year the requirement of schools, facilities, and their locations; establish additional schools as required; deploy teachers and create facilities for their training.
- The State shall develop a mechanism to monitor enrolment, participation and attainment status of every child, and take corrective steps wherever required. Information in this regard will be made available in the public domain, including on an on-line basis.

School Admissions

- State² schools and fully aided schools shall provide free education to all admitted children. Partly aided schools shall provide free education to at least such proportion of admitted children to the extent that government funds its annual expenses, subject to a minimum of 25%. Unaided³ schools and special category⁴ schools shall provide free education to at least 25% students; the government shall reimburse the school to the extent of the per child expenditure in government schools or the school fee, whichever is lower.
- No school can conduct any screening procedure of any child or parents at the time of admission. Children will be selected for admission in a random manner. Capitation fees are prohibited.

School Management

- All non-government schools have to be recognized by a Competent Authority or shut down. The Bill specifies certain norms (such as teacher-student ratio, physical infrastructure etc) to be fulfilled by all schools as a pre-requisite for being recognized.
- All State and aided schools are required to form School Management Committees (SMCs) with at least 75% of the members being parents/guardians, and the other members representing teachers, the community and the local authority. SMCs will manage the school, including the sanction of leave

¹ This Briefing has been developed on the basis of the Draft of the Right to Education Bill, 2005 dated, November 14, 2005

² Also referred to as “government schools” in this Brief

³ Also referred to as “private schools” in this Brief

⁴ Special category schools include Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools, etc.

and disbursal of salary to teachers. The SMC/local authority shall also have the power to assess teachers' performance and impose minor punishment.

- Teachers of state schools will be appointed to a specific school, and teachers already serving will be assigned to a specific school within two years. They will not be transferred from the school so assigned.
- The teacher has the duty to transact and complete the curriculum, regularly assess the learning level of each child, provide supplementary instruction if required, and apprise every parent/guardian about the progress of learning and development of the child.
- Teachers are prohibited from giving private tuitions. Teachers shall not be deployed for any non-educational purpose other than census, election and disaster relief duties.

Content and Process

- Schools and academic authorities formulating curriculum shall conform to the values enshrined in the Constitution. Schools should operate in a child friendly and child centred manner.
- No child shall be required to appear at a public examination before completing Grade VIII. No child shall be awarded physical punishment in any form in school.

National Commission for Elementary Education (NCEE)

- NCEE shall be appointed by the President on the recommendation of a committee comprising the Prime Minister, Speaker of Lok Sabha, Minister for Human Resources Development and Leaders of Opposition in the two Houses of Parliament.
- NCEE shall monitor all aspects, including quality of education. It will act as Ombudsman⁵ for this Act.

Other Major Provisions

- No person shall prevent a child from participating in elementary education. No person shall employ or engage a child in a manner that renders her a working child.
- It is the responsibility of every parent/guardian to enroll his child/ward who has attained the age of 6 years and above in a school and facilitate her completion of elementary education (till Grade VIII). If a parent/guardian persistently defaults in discharging this responsibility, the SMC may direct him to perform compulsory community service by way of child care in the school.
- Any person who has a grievance about the establishment, provisioning and management of a school may submit a written representation to the SMC/ local authority, which shall take appropriate action and inform the applicant within 90 days. If the applicant is unsatisfied with such action, she may submit a representation to such authority as prescribed (by the state/UT/central government), which shall take appropriate action and inform the applicant within 90 days.
- The state/UT government may form a State-level Regulatory Authority for inquiring into grievances which remain unredressed even after the steps mentioned above.
- A child shall be admitted in Grade I only after attaining the age of five years and ten months before the beginning of the academic year.
- The Bill specifies penalties for persons and schools contravening the provisions regarding capitation fees, screening tests, recognition and preventing children from participating in elementary education.

Finances

- The central government shall provide financial assistance to state governments in accordance with such formula regarding sharing of costs as determined in consultation with state governments. The state government shall provide financial assistance to local authorities.
- Though the draft Bill does not specify cost implications, a paper by the Central Advisory Board of Education (CABE) committee indicates a tentative estimation of total additional costs between Rs 3,21,000 crore and Rs 4,36,000 crore over six years.

⁵ An Ombudsman is an official who investigates citizens' complaints against the government or its functionaries.

PART B: KEY ISSUES AND ANALYSIS

Objectives of the Bill

The Bill has a clear objective that every child between the age of 6 and 14 years has the right to elementary education that is (a) free, (b) compulsory, (c) of equitable quality, and (d) available in her neighbourhood. This education will be available between Grade I and VIII, and provided at a recognized school satisfying specified norms. The Bill implies that there will be no non-formal schools and teachers will have to possess qualifications as defined in the National Council for Teacher Education Act, 1993.

Implementation

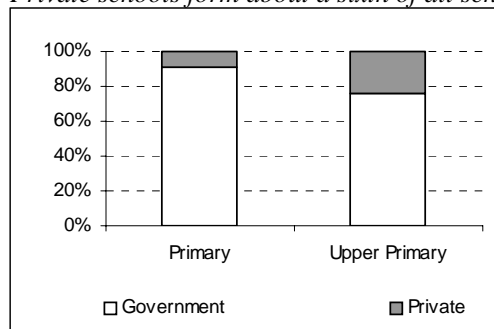
Delivery of Education

The Bill seeks to provide education through a combination of government schools, aided schools and unaided (private) schools.

Some educationists believe that the ‘common school system’ should have been adopted instead of the 25% quota in private schools. That is, all children from all strata of society in a locality should go to the same set of schools in that locality and receive free education. They believe that this will (a) improve the overall standards in government schools as the influential upper strata of society pushes for higher standards, (b) reduce the disparity of opportunity among children, and (c) lead to a better society as children from different sections mingle from an early age.⁶

Another school of thought says that private schools have contributed significantly to the current educational apparatus in the country. These include not only the ‘elite’ private schools but also the non-elite private schools including unrecognized schools. Some micro-studies indicate that private schools constitute a significant proportion of schools in some poorer urban areas, and dismantling this infrastructure may be undesirable and impractical. Indeed, a number of non-elite private schools may be more cost efficient than government schools⁷.

Chart 1: Proportion of schools by management
Private schools form about a sixth of all schools



Source: Selected educational statistics 2001-02, MHRD.
Note: Private school data do not include unrecognized schools. Unrecognized schools form a significant part of the system; e.g., 26% of students in Punjab attended unrecognized schools (study by AC Mehta, NIEPA 2005)

The Bill states that private schools have to provide 25% seats for weaker sections until Grade VIII. There is no obligation for continuation of education of such children in higher grades.

There are implementation issues with respect to the requirements of no capitation fee and no screening. The Bill states that private schools can be set up only after certification from a ‘Competent Authority’. Critics argue that these may be laudable objectives but could offer scope for corruption by officials who will oversee these aspects. These rules could lead to interference in school management and an ‘inspector raj’ by the local authority.

Quality of Education

Every child has a right to education of “equitable quality”. The term ‘equitable quality’ is not adequately defined. The Bill specifies norms for physical infrastructure (number of rooms, teachers, toilets etc) but

⁶ Kothari Commission (1966) recommended the common school system. Sadgopal (presentation to CABE, 2005) also discusses this system.

⁷ Tooley and Dixon, “Private Schools Serving the Poor”, September 2005 find 66% of schools in Shahdara, Delhi are managed privately. They estimate the average fee in private schools in Shahdara at Rs 125 per month and state that these schools provide about 10% seats at zero or concessionary fees. This fee structure is lower than the average estimated cost per child at Rs 2000 p.a. in government schools (estimate by Eduardo Faliero “Union Budget 2003-04: The gross neglect of education”, Mainstream, March 29, 2003).

does not outline expectations on learning outcomes. Given the no detention policy, there is a risk that the child progresses through to Grade VIII without acquiring necessary competencies. Some studies indicate that the current system has not ensured learning outcomes⁸.

Schools Established by Minorities

This Bill will be subject to Articles 29 and 30 of the Constitution which provide the right to minorities to establish and administer educational institutions of their choice. The Bill needs to clarify whether the right of minorities to establish and administer schools is subject to the requirements of this Bill, including recognition norms, no-screening policy, 25% quota for weaker sections, etc.

Child Labour

Though the Bill prohibits any person from preventing a child from participating in elementary education, it does not adequately address the issue of child labour. A child who both works at home and attends school faces the problem of 'double burden'. For example, the Bill ignores the issue of sibling care which deters elder siblings (typically girls) from attending school.

Children with Disabilities

The Bill says that children with "severe or profound disability, [who] cannot be provided elementary education in a neighbourhood school, shall have the right to be provided education in an appropriate alternative environment as may be prescribed".

Whereas the Bill has detailed the norms required of a school (teacher-pupil ratio, buildings etc), it is silent on the facilities needed to enable children with disabilities to attend school (such as ramps, Braille readers, etc).

In this Bill, "disability" has the meaning assigned by the Persons with Disabilities Act, 1995, which does not include such other disabilities as defined by the National Trust Act, 1999 (autism and cerebral palsy). Also, this definition does not include children with learning disabilities such as dyslexia who require special attention and teaching methods.

The CABE committee note assumes 2.7% of children to be disabled, and 0.3% to be severely disabled. An amount of Rs 2,000 per child per year in the former case and Rs 50,000 in the latter case is assumed to be required to meet the educational costs of these disabled children⁹.

Monitoring and Evaluation

School Management Committees

SMCs will monitor and oversee the working of the school, manage its assets, utilise grants to disburse teacher salary and for the upkeep and development of the school, and monitor teacher performance (including granting leave, providing regular assessment reports, and imposing minor punishment).

The evidence in Karnataka for the performance of School Development and Monitoring Committees is mixed. International experience with SMCs does not present conclusive evidence of improvement in quality of schools¹⁰. It is arguable whether all SMCs would have the capability to manage the assets of the school and carry out administrative functions such as disbursement of salary etc. Also, the constitution of SMCs does not mention women members or term of office for members.

Parents

The Bill states that if a parent/guardian fails to enroll his child in school, the SMC may impose a penalty by way of compulsory child care. Since the responsibility for ensuring schooling for all children lies with

⁸ (a) According to the MHRD Annual Report 2004-05, a Terminal Assessment Survey conducted during 2001 and 2003 in 132 districts where DPEP was implemented indicated the percentage of districts with average marks exceeding 60% was 43.2% (in language) and 28.8% (in Mathematics) in Class III/IV. (b) A study by Pratham Resource Centre (available at www.pratham.org) undertaken in June-August 2004 across 17 states indicates that 45% of children of age 7-11 in government schools could not read; the figure was 24% for private schools.

⁹ The assumption that 3% of all children are disabled is higher than the NSS (2002) estimate of 1.2%-1.5% for the age group 5-14 (NSS Report No. 485: Disabled Persons in India, July-December 2002).

¹⁰ (a) Government of Karnataka, DSERT study, May 2005. (b) Gunnarson *et al*, "Does school decentralization raise student outcomes?" February 2004 study 10 countries in Latin America. (c) Lewis and Naidoo, "Whose theory of participation?" Harvard Graduate School of Education, May 2004, study school governance in South Africa.

the local authority, it may be appropriate for the local authority (rather than the SMC) to be given the responsibility of penalizing such parents.

Teachers

Teachers will belong to a school-based cadre. They will not be transferred to another school. The system of school based cadre has implications for the career progression of teachers, as well as on job security (for example, in a scenario where a school closes down on account of a reduction in the number of children in a habitation).

The teacher is expected to approach the SMC/local authority for redressal of grievances. The teacher does not have a redressal mechanism if he has a complaint against the SMC or the local authority.

Finances

The CABE report suggests that the implementation of the Bill will require an additional amount between Rs 3,21,000 crore and Rs 4,26,000 crore over six years -- an annual average of Rs 53,500 crore to Rs 72,700 crore in addition to the Rs 47,100 crore that is being spent on elementary education currently (2003-04)¹¹. The amount budgeted to be raised by the Education Cess in 2005-06 is Rs 6,875 crore, and assuming this grows at the nominal GDP growth (assumed at 12.2% by the CABE Committee for its calculations), it would cover just 15-20% of the additional requirement.

The report also points out that state governments may be fiscally constrained from funding incremental expenditure as required to implement the provisions of this Bill, and the entire burden may have to be borne by the central government. This would imply an estimated increase of 6.4%-8.5% to the central government's annual budget.

Table 1. Estimates of Additional Funding Requirements

<i>(Rs crore)</i>	
Committee	Amount Required
Draft 83 rd Amendment Bill, 1997	40,000 over 5 years
Tapas Majumdar Committee, 1999	1,36,922 over 10 years
93 rd Amendment Bill, 2001	98,000 over 10 years
CABE Committee Report, 2005	3,21,000 to 4,36,000 over 6 years

Sources: Committee Reports, PRS

Table 2. Additional Requirement of Finances (CABE estimates)

Amount Required (Rs crore)	3,21,000 to 4,36,000 over 6 years
As % of GDP	1.1% to 1.5%
As % of government expenditure	6.4% to 8.5%

Sources: CABE Committee, union budget, PRS
Assumptions: (a) Nominal GDP growth at 12.2% per annum (same assumption as CABE committee); (b) Government budget (except additional spending) to grow at GDP growth rate.

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¹¹ Source: CABE Committee report, June 2005

List of Government Bills Pending in Parliament

Rajya Sabha		Lok Sabha	
Title of the Bill	Ministry	Title of the Bill	Ministry
The Indian Medical Council (Amendment) Bill, 1987.	Health and Family Welfare	The Contempt of Courts (Amendment) Bill, 2004	Law and Justice
The Constitution (Sixty-first Amendment) Bill, 1988.	Human Resource Development	The National Tax Tribunal Bill, 2004	Law and Justice
The Participation of Workers in Management Bill, 1990.	Labour and Employment	The State Emblem of India (Prohibition of Improper Use) Bill, 2004	Home Affairs
The Cinematograph (Amendment) Bill, 1992.	Information and Broadcasting	The Andhra Pradesh Legislative Council Bill, 2004	Law and Justice
The Atomic Energy (Amendment) Bill, 1992.	Atomic Energy	The Government Securities Bill, 2004	Finance
The Constitution (Seventy-ninth Amendment) Bill, 1992.	Health and Family Welfare	The Constitution (One Hundred and Third Amendment) Bill, 2004	Social Justice and Empowerment
The Indian Boilers (Amendment) Bill, 1994.	Commerce and Industry	The National Commission for Minorities (Repeal) Bill, 2004	Social Justice and Empowerment
The University Grants Commission (Amendment) Bill, 1995.	Human Resource Development	The Merchant Shipping (Amendment) Bill, 2004	Shipping
The Private Universities (Establishment and Regulation) Bill, 1995.	Human Resource Development	The Actuaries Bill, 2005	Finance
The Delhi Rent (Amendment) Bill, 1997.	Urban Development	The Pension Fund Regulatory and Development Authority Bill, 2005	Finance
The Constitution (Eighty-seventh Amendment) Bill, 1999.	Rural Development	The Commission for Protection of Child Rights Bill, 2005	Human Resource Development
The Lotteries (Prohibition) Bill, 1999.	Home Affairs	The Admiralty Bill, 2005	Shipping
The Coal Mines (Nationalisation) Amendment Bill, 2000.	Coal	The Small and Medium Enterprises Development Bill, 2005	Small Scale Industries and Agro and Rural Industries
The Foreign Trade (Development and Regulation) Amendment Bill, 2001.	Commerce and Industry	The Taxation Laws (Amendment) Bill, 2005	Finance
The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001.	Urban Dev. and Poverty Alleviation	The Banking Regulation (Amendment) Bill, 2005	Finance
The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2003.	Tribal Affairs	The Reserve Bank of India (Amendment) Bill, 2005	Finance
The Companies (Amendment) Bill, 2003.	Company Affairs	The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institution Laws (Amendment) Bill, 2005	Finance
The Criminal Law (Amendment) Bill, 2003.	Home Affairs	The Cess Laws (Repealing and Amending) Bill, 2005	Commerce and Industry
The Cantonments Bill, 2003.	Defence	The Factories (Amendment) Bill, 2005	Labour and Employment
The Arbitration and Conciliation (Amendment) Bill, 2003.	Law and Justice	The Khadi and Village Industries Commission (Amendment) Bill, 2005	Small Scale Industries and Agro and Rural Industries
The Chartered Accountants (Amendment) Bill, 2003.	Finance	The Prevention of Insults to National Honour (Amendment) Bill, 2005	Home Affairs
The Cost and Works Accountants (Amendment) Bill, 2003.	Finance	The Punjab General Sales Tax (As in force in the Union Territory of Chandigarh) Repeal Bill, 2005	Home Affairs
The Company Secretaries (Amendment) Bill, 2003.	Finance	The Food Safety and Standards Bill, 2005	Food Processing Industries
The Seeds Bill, 2004.	Agriculture, Food and Civil Supplies, Consumer Affairs and Public Distribution	The Juvenile Justice (Care and Protection of Children) Bill, 2005	Social Justice and Empowerment
The Prevention of Child Marriage Bill, 2004.	Law and Justice		
The Scheduled Castes, Schedules Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004.	Law and Justice		
The Standards of Weights and Measures (Enforcement) Amendment Bill, 2005.	Agriculture, Food and Civil Supplies, Consumer Affairs and Public Distribution		
The Standards of Weights and Measures (Amendment) Bill, 2005.	Agriculture, Food and Civil Supplies, Consumer Affairs and Public Distribution		

The Homoeopathy Central Council (Amendment) Bill, 2005.	Health and Family Welfare
The Indian Medicine Central Council (Amendment) Bill, 2005.	Health and Family Welfare
The Manipur University Bill, 2005.	Human Resource Development
The Drugs and Cosmetics (Amendment) Bill, 2005.	Health and Family Welfare
The Disaster Management Bill, 2005.	Home Affairs
The Indian Medicine and Homoeopathy Pharmacy Bill, 2005	Health and Family Welfare
The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment and Miscellaneous Provisions Bill, 2005	Labour and Employment
The National Commission for Minority Educational Institutions (Amendment) Bill, 2005.	Human Resource Development
The Indian Medical Council (Amendment) Bill, 2005.	Health and Family Welfare
The Central Silk Board (Amendment) Bill, 2005.	Labour and Employment

Sources: Lok Sabha Bulletin Part II (Nos. 1637-1639) dated September 9, 2005; Rajya Sabha Bulletin Part II (No. 42550) dated November 9, 2005

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