

MISCONCEIVING FUNDAMENTALS, DISMANTLING RIGHTS*

deciphering the neo-liberal assault on Right to Education

- Dr. Anil Sadgopal

Today, if a parent petitions the Court to demand addition of pre-primary sections with trained nursery teachers in the government primary school or seeks a pupil:teacher ratio of 1:30 instead of 1:40, or if yet another parent pleads that her child's potential for music, art or games is not supported since there is no provision for teachers in these critical areas – in such examples, if the judges see merit in the petition they may pass a favourable judgment.

This became possible because of the Supreme Court's historic Unnikrishnan Judgment in 1993 which gave all children *up to fourteen years* of age a Fundamental Right to Education. The Court contended that the Fundamental Right to Life (Article 21) in Part III of the Constitution should be read in "harmonious construction" with the Directive in Article 45 (Part IV) to provide Free and Compulsory Education to the 0-14 year age group children, including *those below six years of age*. Hence, by implication, free education of *equitable* quality from nursery stage to Class VIII became a Fundamental Right.

This judicial framework will be dismantled once the Draft Right to Education (RTE) Bill, 2008 becomes an Act. The UPA government was all set to present this Bill in the Budget Session but it did not happen. Strangely, this may turn out to be a blessing in disguise.

The Unnikrishnan Judgment sent jitters down the spine of the ruling elite. It meant that the government would have to reprioritise the Indian economy in favour of the masses. Even more frightening to the rulers was the political implication of entitlement of the masses to education of *equitable* quality. They will then be enabled to compete with the privileged classes and demand their *equal* share in economic and democratic life.

Since 1993, the successive governments at the centre undertook exercises to undo the impact of the Unnikrishnan Judgment – designing ways to dilute and distort the meaning of Fundamental Right to Education. This culminated in the 86th Constitutional Amendment Act (2002). The Act inserted a new Article 21A in Part III which *limited* the Fundamental Right to the *6-14 age group*, thereby disentitling 17 crore children below six years of their Fundamental Right to nutrition, health and pre-primary education. Article 21A further stated that free and compulsory education shall be provided "*in such manner as the State may, by law, determine.*" This conditionality was brought in to enable the State to circumscribe the Fundamental Right of even the 6-14 age group.

The issue of Right to Education is critically linked to Common School System founded on neighbourhood schools. In 1966, the Kothari Commission had argued that such a system was necessary to build a socially cohesive society. All children in a given neighbourhood, drawn from diverse backgrounds, should be able to study and socialise together in a common public

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space. This has been the organising principle of school education in G-8 countries like the USA, Canada, France, Germany and Japan.

Is it not absurd to even think of a ‘right’ to unequal and inferior education? Yet, this is what is provided through the current multi-layered school system. The Draft Bill legitimises the schools that *promote inequality* such as the government elite schools (e.g. Kendriya Vidyalayas) and the private unaided schools. This reflects in its provision of 25% reservation of seats in such schools for purportedly ‘free’ education of the weaker sections from the neighbourhood. For 75% of the admitted children, both the principle of neighbourhood and the Fundamental Right to free education stand violated. The 25% provision shares its rationale with the neo-liberal *guru* Milton Friedman’s school vouchers that are meant to promote private schools out of public funds. The Eleventh Plan also pushes school vouchers along with public-private partnership. By providing for *shifting of public funds* to private schools, the Draft Bill becomes an instrument of the market forces.

The Prime Minister constituted a High Level Group (HLG) comprising Finance Minister, Planning Commission’s Deputy Chairman, PM’s Economic Advisory Council Chairman and the Human Resource Development Minister. The HLG promptly concluded that the centre lacked resources for implementing the RTE Bill and that it should be primarily a state government responsibility. This amounts to kowtowing to neo-liberal pressure for abdication of the State’s Constitutional obligation.

A recent Note prepared by the HRD Ministry for the Union Cabinet warns that, unless the 86th Amendment is immediately enforced through an RTE Act, the Unnikrishnan Judgment covering the 0-14 age group will prevail. This vindicates my decade-old stand that the *hidden agenda* of 86th Constitutional Amendment is to snatch away the Fundamental Right gained by the children below six years and also to circumscribe, through a law, the right being *purportedly* given to the 6-14 age group. Yet, the central government has balked at introducing even a diluted and distorted Bill (see BOX). It is clearly not a matter of lack of resources but of the government’s neo-liberal priority framework. This is why it backed out.

The dilemma was underscored at the November 2007 meeting by HLG chairperson Arjun Singh who suggested that “the only logical way out is to report to the Prime Minister that the Constitutional Amendment . . . was legislated in a hurry without taking into account all the attendant problems.” This is indeed an irony, particularly because all political parties had voted for the 86th Amendment. It is not unlikely that the market forces and neo-liberal advisers are pressurising the government to repeal the 86th Amendment, but for the wrong reason.

A public campaign is called for to seek *replacement* of the 86th Amendment by an Amendment that would give an *unconditional* Fundamental Right to children from birth to 18 years, encompassing early childhood care and pre-primary education onwards through Class XII. The Right to Education Bill could then be imbued with a vision of systemic transformation for equality *in* and *through* education, rather than making adjustment with neo-liberalism. This will create the framework for building a Common School System in order to forge a sense of common citizenship for a democratic, egalitarian and secular society.

BOX

'Dirty Dozen' Flaws of the Draft Right to Education Bill, 2008

1. Lacks provision to compel the State to provide adequate funds.
 2. Dilutes the Fundamental Right of children below six years to nutrition, health and pre-primary education by falsely equating it with ICDS.
 3. Denies right to secondary and senior secondary education.
 4. Shifts public funds to private unaided fee-charging schools to exacerbate commercialisation, exclusion and inequality.
 5. Legitimises inequality through a multi-layered school system.
 6. Permits violation of the 'neighbourhood' principle by the government-run elite and private schools, allowing them to charge fees and screen and exclude children.
 7. Continues discrimination against government school children as their teachers will still be deployed for census, elections and disaster relief duties.
 8. Doesn't provide for the states/UTs to regulate private unaided schools, leaving them free to indulge in profiteering, anti-child practices and other violations.
 9. Fails to guarantee child's mother tongue as medium of education, even at primary stage. (For children of linguistic minority groups, this violates Article 350A.)
 10. Contains subtle provisions that exclude disabled children from schools.
 11. Opens space for private agencies to make money through questionable assessment.
 12. Lacks guarantee of dignified salaries, professional development, promotional avenues and just social security for teachers and prevention of fragmentation of teachers' cadre.
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E-8/29, Sahkar Nagar
Bhopal 462 039, India

Tel.: (0755) 2560438
Mo.: 9425600637

Email: anilsadgopal@yahoo.com