

Report on the consultation on “Right to Education Bill, 2005”

Deepalaya, a not for profit non Government Organization, engaged in education of under-privileged children in Delhi since 1979, organized a Consultation on the “Right to Education Bill 2005” on 9 November 05. It was held at India International Centre, New Delhi and was attended by about 40 persons representing 31 organizations. Ms Razia Ismail of the India Alliance for Child Rights facilitated the Consultation. The other Panelists were Mr Vinot Raina of the Bhat Gyan Vigyan Samiti, Ms Farida Vahedi, of Bahai Office for Advancement of Women, Ms G.Syamala, of Action for Ability Development and Inclusion and Mr Karan Tyagi of National Alliance for Fundamental Right to Education.

Welcoming the participants, Rtn. T.K.Mathew spoke about the various constitutional commitments in the past and the recent history of the Bill. He pointed out that the government was willing to place the draft of the Right to Education Bill 2005 on the public domain. This is the time when concerned NGOs and others should discuss the draft and point out the defects in the draft. He pointed out that the reference to the Article 45 in the preamble of the draft should be removed as for well over 50 years this Article has not been honoured by the State. Further Article 51A can be misused to harass the parents. In Chapter 2 where the years a child should get compulsory education is from ages 6 to 14, this should properly be 0 to 18. Clause 3.1 talks about disabled children being segregated. The proper thing to do is to integrate them in the existing schooling system which should be made more disabled friendly. Under chapter 3 point 5, the civil society and the parents should have a role in monitoring the government in how it passes this bill. Under Chapter 4, while industry and business has been liberated from the bureaucracy, education is still held captive by the ministry. Recognition is used in a way not to educate children. Poor children do not require a recognized school. They just need an environment to learn. Recognition is given based on infrastructure and some other aspects rather than results. What is important is the quality of education and the results. Teachers are asked to put in duties for census, election work etc. Teachers should only teach and not be used for other purposes. Teachers should be answerable to

students and parents and to the community at large. There is a criticism against the examination system. If we do away with the exams we should have some other mechanism that is less threatening to assess whether the children are learning. The national commission should be an independent body, not influenced by the govt. The commission should get a feed back from the civil society and not the ministry.

Mr Vinod Raina who made the next presentation pointed out the importance of the issue which necessitates mass backing and not just NGO's backing. The important aspect is that the bill awaiting legislation should be based on proper principles. As a principle, it is the moral and ethical duty of everyone to be participating in the education of children, not just the government. If this were so, then it is unacceptable that some will use this for the purpose of making profits. Commercializing of education is unacceptable. State has the primary responsibility of ensuring that every child is educated. Elementary education cannot be an avenue for profit making. State has a primary duty in that it has to be a facilitator in a process that involves civil society. Primarily duty refers to the provision of finances. The state has to provide it. This is the first principle.

The second principle relates to the child. Who is a child when we talk of educating children? The old article 45 referred to the child as one from birth to age 14 and put the burden of education on the state. There are two other definitions. The Juvenile Justice Act refers to a child as one up to the age 18. The other comes from the Convention of Child Rights from the UN to which India is a signatory. Taking all these together, the child should be taught from birth to the age 18. Then this Bill is dealing only with a sub section of this age range. Apart from the fact that it has eliminated the group of children from 16 to 18, what happens to the children from 0 to 6? If one is bothered about educating the child from 6 to 14 and not about the ages 0 to 6 which is when 70 percent of the learning in a child occurs, then one is not bothered about the 70 percent of the learning process of the child and confines only to the age group of 6 to 14. This is wrong from child development strategies, and from quality of education point of

view. If we say we do not care about ECCA education and health of child till 6, but only give free education only from year 6, then this is meaningless.

The third principle has to do with values. What is the kind of education we plan to give to our children? Is giving education the objective or is it a particular kind of education? School is a means towards creating a kind of human being and depending on the kind of education you provide, and the kind of atmosphere you provide, a certain kind of individual will emerge. Therefore, what kind of person we try to create is an important question as most amount of lumpenism in this country in the name of caste or religion is not from illiterates, but from those who are educated. So we cannot but be bothered about the kind of education that is provided. This Bill does not take the issue head on.

The fourth principle has to do with the nature of Indian society. When the Indian constitution was being written there was a major debate about giving free education. This came about under the debate on universal adult franchise. India's literacy rate in 1948 was 18 percent. People felt that giving adult franchise to such a population would distort the vote itself and governance itself. A strong link was seen between education and governance. Article 45 came as a consequence which said we should have a literate society. Article 45 is the only time-barred article in the constitution saying we should do this within ten years. The ten years had to do with the quality of governance than anything else. Something else that was discussed was that in a country that is fragmented by caste and class, the only way one can do social integration is through education. Only people from all castes and all classes sat in the same class room, only then social integration could take place. Education has the purpose of quality governance as well as social integration. Therefore the differentiation between the school for the rich and the school for the poor, the double faceted education was foreseen at the time of independence and there should be provision that did not take place. The new law should reflect that - there should be social integration.

The question is how do you get these into the Bill? It is easy to get this into a policy and how these can be incorporated into the Bill is the issue. Privatization of

Elementary education in the country is about 20 percent. This violates the first principle that no one should be making profits. Are we in a position to outlaw any school that makes profits? If we have the mass backing for this, then the Bill should reflect that. When the Bill talks of neighborhood schools and says that unaided schools will have a responsibility of 25 percent admissions from the neighborhood, we just have to change the clause to the following: All schools, aided, unaided or semi-aided will take 100 percent children from their neighborhood for free and compulsory education. That is all that needs to be done. Ten meetings out of the thirty held to draft this Bill was just on this question. In that we could go no more than 25 percent. Are we ready to lobby with the Members of Parliament who will ultimately pass this Bill about this? This is the practical issue, an action oriented issue. This also solves another principle. If we admit 100 percent from the neighborhood, then you are approaching the common school system which holds that all children should come from the neighborhood irrespective of caste or class. Social integration will be facilitated. This is restricted to 25 percent in private schools now.

What kind of education is the next issue. Kothari Commission talked of education of equitable quality which meant that each section of society - the dalits, the adivasis, the deprived girl child - and decide what is the appropriate quality for that section of society. You cannot have one textbook done by NCERT which has no relevance to many section of society. Equity has to be discussed in terms of each section of society. One view of this Bill is that you should have first basic minimums which determine quality. We must have basic minimum in terms of food intake - there should be no malnutrition, and you should have basic minimum infrastructure that is necessary for quality. The quality of education of the schooling system is completely diluted through schemes like DPEP and Sarva Shiksha Abhiyan by the notion that an education guarantee center is also a school. The basic minimum requirements are mandatory for both private and government schools. If they do not meet in 3 years time, it will not be accepted as a school.

The second point has to do with teachers. The govt finds it convenient to blame absenteeism on the part of teachers as the reason why quality of education is low. This is completely untrue. Only a small section of teachers play truant. Teachers need motivation. The image of teachers has taken a beating and DPEP and Sarva Shiksha Abhiyan has distorted the notion of teachers. Nine states have stopped recruiting teachers and have abolished the post of teachers and replaced this by casual teachers who are poorly paid and do not have any training worth the name. It would be difficult to expect quality education given this background. So the Bill has to reflect this concern. The teachers are harassed by transfers. This Bill asks for no transfer clause in their service. Secondly, teachers should be allowed to just teach and not be given election or census duty. These are constitutionally mandated as all govt servants are required to serve for these duties. So this has to be amended. Trained teachers from NCT should be encouraged.

The first thing to do about quality increase is to raise the MCD schools to that of the Kendriya Vidya quality. This has important implications in financial terms. The cost at Kendriya Vidyalaya is Rs 11, 000 per learner per year and that in the government schools it is Rs 2,000. The view of the government is that the Bill cannot go beyond 86th amendment which says 6 to 14 years. The Bill flows from article 21A which talks of providing compulsory education from 6 to 14 years. So the flaw is in the 86th amendment. But there is another view which says other acts should be considered in addition to this and make the target age range from 0 to 18.

If we clearly say 100 percent from neighborhood then we are denying private schools. But if we say 25 or 50 percent then we are indirectly saying we are allowing private schools.

In response to people from the disability sector a new clause has been added that says people with serious disabilities can be given at places other than the school. Education for them need not be confined to a site called school to which they cannot

come. If you make a law that education is given at schools then we would be depriving them of education.

Possibility of bridge courses have come from people working with child labor. This is required for children who are above 9 years old and start their schooling once they are out of child labor. They need not start from standard 1 but after a bridge course of 3 months are fit for class 3 or 4. This has been successful.

The government cannot be the monitoring authority when the responsibility to provide education is on the government. There has to be an independent authority like a Commission reporting to the Parliament and which is independent from the government. We know that commissions cannot be 100 percent autonomous as they are dependent on the government for funding but we can try to do the best we can. The government has to give data to the commission; but the commission should have the authority to check it.

Ms Razia Ismail pointed out that the government would like to show that it involved the NGOs before the passage of the Bill. It tells the NGOs that let us pass the Bill now and we can always amend it later. But the NGOs should ensure that the package as it is going to be passed is a good now before passage and not later. How uncompromising should the stand of the NGOs be is the question. There should be informed opposition to a wrong set of decisions from moving forward. In the National Plan of Action for children that has been adopted in late August, some NGOs involved in the drafting worked hard on the education section. In this the bureaucrats have made sure that their draft stayed. Whether it is possible to have an alternative commission on children which will command the attention of the government is something we should think about. The UN listens to alternative reports and entities but the government does not. There is no alternative Bill to this. Have the NGOs thought on these lines and communicated to the Parliament?

S G Shyamala of AADI who spoke next dealt with the issue of children with disabilities. The preamble of the Bill talks of right to free and compulsory education for

all children. But the word disability is mentioned just in a few places only. The children with disability are not addressed. Disability further discriminates against a child who already faces discrimination because of the social class system or gender. Persons with Disability Act was passed in 1995 and ten years later we have the Bill on Right to Education. But it does not talk about the rights of the child with disability. The Ministry of Welfare looked into the issues of child with disability. Now the Ministry's name has been changed to that of Ministry of Social Justice and Empowerment. Ministry is looking into what it calls as inclusive education. Earlier it had a component on integrated development of the single child. It provided only aids and appliances. Now there is a sea change in the disability sector on how it views disability and the rights of people. It sees people as individuals and sees disabilities later. How does this fit into inclusive education? Children with disabilities are mostly educated in special schools that come under the Ministry of social justice and empowerment. The Ministry and the many NGOs have a charitable approach to special children. The schools are not recognized. Education that is imparted is based on how the NGOs views education. It is not based on a standardized curriculum.

What do we understand by education? Is education bringing out responsible citizens, who are decision makers, who know what they want? This is not being done. Social integration should include children with disabilities. Which body actually is in charge of ensuring that disabled children get proper education is not clear. There is a National Policy on Disability passed by the Ministry of Social Justice and Empowerment. There is a Plan of Action on Inclusive Education that has been recently passed by the HRD minister. Then there is Sarva Shiksha Abhiyan, and then IEDC. Thus there are four different documents that look at including children with disabilities. What is inclusive education? Is it just a section of children with disabilities who can be included in the main stream? Who decides on that? One of the factors that decides that is the disability certificate. National policy on disabilities says that a child with severe disabilities should be in a special school. This is decided by the Disabilities Certificate getting which is a cumbersome process. This certificate does not look at a child as a child but as one with a condition. The medical procedure that the hospitals take to decide

the percentage decides whether the child goes to a special or a main stream school. But there are children with profound disabilities who can go to a main stream school but are not allowed to. Their being let in to such schools depends on what is it that we mean by education. Is it the marks? Or years completed? Schools should be places where all children with different needs are able to go. In today's situation, ninety percent of children who are seen to be normal need mental health. How is the Bill going to address this? Can we clarify what we mean by education and outcomes of education? If we do that then the methodology of imparting educational needs and outcomes, the strategies can be thought of for children with different conditions.

National Plan of Action lacks a vision as to what is inclusive education. It should not be giving education to children with disabilities in segregated settings. It should not be labeling children with conditions they have and give them special provisions forgetting the overall issue that the child is like any other child. If we conceptually agree that we need to include children with disabilities with all other children, then other issues of teacher training, infrastructure will follow. Teacher training curriculum will have to be looked into. Provision of barrier free environment to children will have to be worked out. Examination and monitoring system may have to be modified. This will benefit all children not just those with disabilities. A child with a minor impairment will flourish in such an environment. Adaptation would be required for a minor number of children. There is talk of special schools being inclusive schools and acting as resource centers for general school, which is a positive development. How to combine special and general education is the issue.

Ms Razia pointed out that when we talk about disabilities we have to include those disabilities with are profound to the marginal or slight disability.. Seen thus ten percent of the children are disabled.

Ms Farida Vahedi of Bahai talked next. The first point she raised related to the issue of defining what we mean by education and what kind of human being we are trying to create by imparting them education. We have to be clear about certain

definitions. When we define a child in terms of just age, this may not be adequate. A child has to be looked at as some being whose education is the responsibility of the entire community. Education has to look at various moral, ethical, social and intellectual aspects of child development. It has to look at the integrated capabilities of the child. The Bill has to take into account this. Can the right of the child to Education be seen in isolation from the right of every family to livelihood? A child which is malnourished cannot go through a common and universal education system and is expected to perform as well as a well nourished child. The interconnectedness of these issues has to be recognized and education of the child cannot be seen in isolation. When we talk about the right to education we have to talk about the right to food and nutrition too. When the Bill talks about neighborhood schools it does not recognize street children who do not have proof of their identity. The Bill refers to the neighborhood school as synonymous term to common school.

Ms Razia mentioned how the important learning process from 0-6 years has not been considered at all and attention is not paid to the character of learning in the ICDS. The school text books do not transcend the 'we' and 'they' mentality making social integration difficult. While we keep talking about oneness we have to respect the dignity of difference.

Mr Karan Tyagi who spoke next pointed out how the government had gone back on the promise to provide a common school system for everyone. The government has been going so slow in implementing the 1993 Supreme Court decision. The intention of the State is clear. The Bill as it stands now is the seventh draft. The latter versions of the draft have been increasingly going for privatization of education. We should fight against the 86th amendment and not the Bill. Twenty percent of the politicians in Parliament have their own educational institutions. The crux of the issue is this. State is not increasing the educational institutions in proportion to the enrollment rise. Society is also not fighting against this. Market forces are in full play. When we criticize the Bill we lose sight of the basic fight which is with the 86th amendment. When 0 to 6 are excluded, it is the poor that is affected. The rich can afford to give proper nourishment

and education for that age. The Bill should talk about not elementary education but school education. Kothari talked about geo specific education. This Bill is more in favor of private forces. We should go for at least education till 18 years. This Bill should lead to a common school system. If we give space otherwise, the elite will ensure that its interests alone are taken care of.

During question and answer session, one of the participant pointed out how in the rural areas, the schools were pretending that there were no out of school children. When the NGO in question surveyed and came up with a large number of out of school children, the school administration denied this and thus the NGOs efforts to conduct a project to cover the out of school children came to naught. In this connection he pointed out that the Bill should define what is meant by 'out of school children'. Another participant wondered whether it is possible to have a ministry for child development so that all aspects of a child's development are considered in their totality and addressed and not just education alone. Another participant pointed out how in a number of places the money targeted for education was not spent and returned. The civil society has to pull up the agencies concerned.

Mr Vinod Raina in response said that the 100 percent concept of neighborhood schools is a vision of the Kothari Commission. The government is to provide free and compulsory education. Can one deprive a parent the right to send his child to a fee paying school? Once it is 100 percent then it means there is no private school. It is not that we do not have laws to ensure these things but just that they have not worked well enough in the last 60 years. He felt it was not necessary for the NGOs to try to stall the Bill so that more public discussion could take place. The political parties were not unanimous in the financial implication of this Bill even in its imperfect and watered down form. The Bill in its present form would require Rs.40,000 crores per year over and above the current expenditure for implementation. Education cess brings in about only Rs.6,000 crores and all of it is used up in mid-day meals scheme. We have time as the political parties are not united and will not be in a hurry to pass the Bill.

There is a shortage of teachers running into millions in the country if we see the number of teachers who should be there to teach in terms of accepted student teacher ratios. UP alone needs 2 lakhs more teachers.

The Bill is not the end of everything. The nature of engagement with government has to be considered. Education has a policy which is determined by the 1986 policy. Education has a curriculum which is being formulated by the NCF 2005. Education can be seen as a law which is this Bill. Education can be seen as schemes like the Sarva Shiksha Abhiyan etc. Thus there are these 4 aspects in education. Bill cannot handle all these Bill sets the principles. The first engagement is what should get into the Bill. Instead of long statements, short clauses are what can be introduced into the Bill. As a civil society we are good at rhetoric but we lose to the bureaucrats because they know the language things have to be written to get into the Bill. So we have to match them at that level.

Ms Syamala responded to a participant who wanted children with HIV infection to be admitted to mainstream schools that categorization of children in this way should be avoided. Fareidi wanted to know about the consultations going on at the block level for mass backing.

Mr Vinod Raina pointed out that social integration is a crying need when we have a steep polarization in society. Some children pay 3 lakh fees for a year and travel in air conditioned buses to school. Others suffer in poorly furnished government schools. Some of these children in urban areas have not seen villages, do not sit with dalits and are cut off from social realities. How can we have social integration given this? This can be done only by common schools in the neighborhood. When we talk of rights and responsibilities it has to be borne by the government, state and the society. So if 25 percent of the school admissions are for neighborhood children, then it is free for them. The other 75 percent may pay higher fees subsidizing this 25 percent. This is a responsibility of the society. This is not unjust. State will anyway pay according to per learner cost which is not a small amount. It is 10,000 rupees a year. The important point

is that the Delhi private schools are small in number compared to the private schools in the rural areas and in the country at large. They charge about 150 rupees a month or 1500 rupees a year. For them the per learner cost of government will be much more. When we say private schools, we think of only high cost private schools in Delhi.

NGOs by themselves do not represent a legal entity. So NGOs cannot be tied to a legal handling of issues. NGOs cannot solve the educational problems of this country. They can solve the educational problem of one village. NGOs can make the government solve the problem through their field work, advocacy, showing models or pressurizing the government. NGOs do this not because they want a place in law. The Bill does not have to talk of the role of NGOs.

One participant held that NGOs can recommend things to the Government as far as the Bill was concerned. He felt the Bill in its present form had a lot of good points.

Mr Vinod Raina pointed out the difficulties in community participation. The principle is community participation. The modality of implementation is the issue. All the village level committees start having politicians if some power is given to them especially financial power. In the committees one will have to have parents of children in school, NGOs, retired teachers, panchayat representative etc. When it comes to a question of implementation, there will be tremendous problems as the existing norms and thinking patterns would find friction with what is being implemented. But this has to be gone thru.

Mr Peter of Deepalaya voiced the concern that the states which are educationally backward and are also financially paupers and hence might try to dilute the mandatory requirements for school that the Bill is envisioning as these call for lot of money. And therefore we should discuss how to prevent deletion or dilution of such pointed features. Vonod Raina replied that a number of states wanted the basic norms prescribed for the schools to be not mentioned in the Bill. If the excess expenditure is borne by the Centre, then the status are willing to implement. There was a clause that the maximum

expenditure of the state in the last five years will be taken as the share for states to meet and seen against what it needs for the implementation and the difference will be paid by the centre. But this clause was removed. We should try to force the centre to bear the expenses. States today spend 88 percent of the expenses on elementary education. Centre spends 12 percent. So to say that states should pay more is unjust. The onus of spending more should be on the Centre.

A neighborhood school in rural areas is one which is within 1 km for elementary education and within 3 kms for secondary education. If there is a shortage of schools on the day this Bill is passed the government has to open a school within 3 years in that area. Till then it has to give free transport. In the last 30 years access to schools has been greatly solved.

When one participant pointed out as to what happens to the child for education beyond 14 years, Vinod Raina responded that the requirement for a child to finish up to 10th has once again to be brought to Parliament. This is a problem as the current Bill has a fragmented approach in that it caters to only a subsection of 6 to 14 age category. The neighborhood schools should ideally have classes till 10th. Universalization of secondary education has been accepted by the government as a scheme. The finances involved are about 75,000 crores.

The primary education and health system in China is completely privatized. Families have to completely pay for these. After 1988 when the household responsibility system came into being this is the case. The utilitarian value of education should not be overstressed. One should get education as it is a right not because it brings down mortality rate or gets employment for a person. It is a basic minimum right anyone should get.

Ultimately the fate of the Bill is going to be decided by the political parties. So NGOs should engage them. Mass organizations have to be involved. State and national teacher organizations are already involved. Student groups participated in a convention

held in Kerala. What are the specific points we can work on? NGOs can ask the government not to change certain clauses as they exist instead of saying do not dilute the positive aspects. The specific points we work on first is age. Whether it is 0 to 18 etc is one point that is important. 0 to 6 is very important. 14 to 18 might be tough to negotiate. Second is about the responsibility of the neighborhood schools. Whether it is 25 or 50 percent or should it be 100 percent. To have it at 100 percent requires a massive movement. With the privatization that is taking along with globalization this will be a Herculean task.

Third, the Ministry had removed two clauses when the draft was changed. One clause was on the regulation of the private schools. This was removed from the earlier draft by the officials of the ministry. It is strange that there is no regulation on private schools on what fees they can charge, what they can teach etc. When telecom is regulated, education is not. Anyone can open a school under any name. There is no regulatory authority. It was in the Bill draft and has been removed. If we accept private schooling then it should be regulated. The second clause that was removed relates to mother tongue. The clause said education in mother tongue should be available. They removed and inserted a sub clause saying this should be done as far as possible.

The other important point is that on financing. The centre has to bear the extra cost.

Next issue relates to teachers. They should have the same salary throughout the country. There should be no transfers. They will be under SMC. There will be NCTE norms. The teachers who do not have these NCTE qualifications have to have it with the expenses being borne by the government or the school. Teachers unions have welcomed this. The capacity of states to create teacher of these norms is low. West Bengal has the capacity to create only 4 percent teachers with NCTE norms.

It was suggested that all the children are put on a online data base including information relating to pulse polio, mid day meals scheme etc., and anyone in the country

should be able to download the information. Once this is done, then every citizen will be a monitor. This should be a demand that NGOs should make. The data entry should be done by a private body not the government.

On the issue of money, government cannot abdicate. It has given a right so it has to implement it.

Mr Mathew pointed out that we should concentrate our energies not in making another Bill, but coordinate what is available with the civil society. Or should we think in terms of a parallel Bill? To this, the consensus that we should just give recommendations. Whether the government will listen to the recommendations is an issue. Mr Mathew pointed out that the recommendations have to be in legal language that is acceptable. The numerous recommendations have to be given in the Bill form.

Vinod Raina held that another NGOs Bill should not be made and will not work. What should be done is to take points from the other Bills but give the recommendations right now. Use public forums to get support so that there is more and more public pressures on them. Further the changes we make we should take the political parties into confidence.

Finally it was suggested that everyone can send suggestions and this will be put together to make final recommendations to the government.

Mr Peter thanked all for their presence and active participation, and the panelists, especially Mr Vinod Raina for his presence from beginning to end and for the insights he provided.

14.11.05