

# Legislative Brief

## The Right of Children to Free and Compulsory Education Bill, 2008

The Bill was introduced in the Rajya Sabha on December 15, 2008 and was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi).

The Standing Committee is scheduled to submit its report within three months.

Please see our Legislative Brief on the draft [Right to Education Bill, 2005](#).

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### Highlights of the Bill

- ◆ The 86th Constitution Amendment Act, 2002 requires the State to provide free and compulsory elementary education to all children. The Right of Children to Free and Compulsory Education Bill, 2008 seeks to give effect to this Amendment. All children between the ages of six and 14 years shall have the right to free and compulsory elementary education in a neighbourhood school.
- ◆ No child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. Schools may not screen applicants during admission or charge capitation fees. A child who completes elementary education shall be awarded a certificate.
- ◆ Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools, and unaided schools shall admit at least 25% of students from disadvantaged and economically weaker groups.
- ◆ A person who wants to file a grievance claim shall submit a written complaint to the local authority. Appeals shall be decided by either the State Commission for Protection of Child Rights or the specified authority.

### Key Issues and Analysis

- ◆ There are no specific penalties if the authorities fail to provide the right to elementary education.
- ◆ Both the state government and the local authority have the duty to provide free and compulsory elementary education. Sharing of this duty may lead to neither government being held accountable.
- ◆ The Bill provides for the right to schooling and physical infrastructure but does not guarantee that children learn. It exempts government schools from any consequences if they do not meet the specified norms.
- ◆ The constitutional validity of reservations of seats in private schools for economically weaker sections could be challenged.
- ◆ Minority schools are not exempt from provisions in this Bill. It is possible that this will conflict with Article 30 of the Constitution, which allows minorities to set up and administer educational institutions.
- ◆ The Bill legitimises the practice of multi-grade teaching. The number of teachers shall be based on the number of students rather than by grade.

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

In the 1993 case of *Unnikrishnan vs. State of Andhra Pradesh*, the Supreme Court ruled that “the citizens of this country have a fundamental right to education. The said right flows from Article 21.”<sup>2</sup> The Supreme Court also noted that the right to education was not an absolute right, and ruled that every citizen of India should have the right to free education until 14 years of age. The 86<sup>th</sup> Constitution Amendment Act, 2002 added Article 21A to the Constitution which requires the State to provide free and compulsory education to all children from the age of six to 14 years. It also modified Article 45 (directive principles) to instruct the State to provide early childhood care and pre-school education.

In 2005, the government circulated a draft of The Right to Education Bill<sup>3</sup>, which would implement the 86<sup>th</sup> Constitutional Amendment. A High-Level group created by the Cabinet later decided that the financial implications of the legislation were too high, and the government did not introduce the Bill in Parliament.<sup>4</sup>

The Right of Children to Free and Compulsory Education Bill, 2008 seeks to give effect to the 86<sup>th</sup> Constitutional Amendment. It details the responsibilities of the central and state governments, teachers, parents, and community members in ensuring all children between the age of six and 14 years receive free and compulsory elementary education.

### Key Features

#### Right to Free and Compulsory Elementary Education

- The Bill provides that children between the ages of six and 14 years have the right to free and compulsory education in a neighbourhood school. The government shall ensure that all children have this right. Children with disabilities including mental illness, mental retardation, blindness, and hearing loss, shall also have this right.
- A child above six years of age who is not enrolled in school or was unable to complete his education shall be enrolled in an age appropriate class. Furthermore, these children have a right to receive special training in order to reach their peer group level. Elementary education shall be free until completion, even if the child is older than 14 years.
- No child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. A child who completes elementary education shall be awarded a certificate as prescribed.
- No child shall be subject to physical punishment or mental harassment. Those officials that contravene this provision shall be liable for disciplinary action under the applicable service rules.

#### Curriculum and Recognition

- The appropriate government (central or state government) shall specify an academic authority to develop the curriculum and evaluation procedure for elementary education. The academic authority shall consider Constitutional values, child-centred and trauma-free learning, and instruction in the mother tongue when developing the curriculum.
- The Bill requires all schools to comply with pupil-teacher ratio norms. All private schools must also comply with infrastructure and teacher norms, failing which, they shall lose their recognition (and need to shut down).
- No school shall be established or recognised unless they satisfy these norms. Schools already established shall have three years to comply. Recognition shall be withdrawn only after schools have had the opportunity to represent their case. The penalty includes fines of up to Rs one lakh or Rs 10,000 per day for continuous infractions.

#### Responsibilities of Schools and Teachers

- The Bill states that government schools shall provide free and compulsory education to all admitted children. Similarly, aided schools shall provide free and compulsory education proportionate to the funding received, subject to a minimum of 25%.
- Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools, and unaided schools shall admit at least 25% of the students from SCs, STs, low-income and other disadvantaged or weaker groups. Unaided schools shall be reimbursed for either their tuition charge or the per-student expenditure in government schools, whichever is lower.
- The Bill requires teachers to attend regularly and punctually, complete curriculum instruction, assess learning abilities, hold regular parent-teacher meetings, and any other duties as prescribed. Teachers are prohibited from giving private tuitions and undertaking non-teaching duties except for census, disaster relief, and election work.

- Schools shall constitute School Management Committees (SMC) comprising local authority officials, parents and guardians, and teachers. The SMC shall monitor the school and utilisation of government grants, prepare a school development plan, and perform any other functions as prescribed.

## Government Authorities and Committees

- The Bill demarcates functions of the central and appropriate governments and the local authority.
- The central government shall constitute a National Advisory Council of 15 members from the field of elementary education and child development. The Council shall advise the government on the implementation of the Bill.

**Table 1: Responsibilities of Government Authorities**

Authority	Functions
Central Government	(i) Create a national curriculum framework with assistance from the academic authority; (ii) develop and enforce teacher training standards; (iii) provide state governments with technical assistance for innovation, research, and capacity building; (iv) amend the schedule by notification.
Appropriate Government	(i) Provide free and compulsory elementary education for children ages 6-14 years; (ii) ensure compulsory admission, attendance, and completion of elementary education; (iii) provide for availability of neighbourhood schools; (iv) prevent discrimination of children from weaker sections or disadvantaged groups; (v) provide infrastructure including staff equipment, teacher training facilities, special student training facilities, and school building; (vi) ensure admission, attendance, and completion of elementary education; (vii) maintain quality education as per the standards and norms specified; (viii) ensure timely prescription of curriculum and courses; and (ix) appoint an academic authority.
Local Authority	(i) Provide free and compulsory education and a neighbourhood school to every child; (ii) ensure children from weaker sections are not discriminated against or prevented from completing elementary education; (iii) maintain records of all children up to 14 years; (iv) ensure admission, attendance, completion of elementary education, infrastructure, teaching training facilities, and student training facilities; (v) ensure timely prescription of curriculum and courses; (vi) provide admission for migrant children; and (vi) monitor schools and decide the academic year.

Sources: The Right of Children to Free and Compulsory Education Bill, 2008; PRS.

## Admissions and Transfers

- For admissions purposes, a child's age shall be determined by a birth certificate or another document as specified. A child shall not be denied admission for lack of age proof. Furthermore, a child shall not be denied admission even if it is requested after the start of the academic year.
- The Bill prohibits schools from using a screening process for admissions or from charging a capitation fee. Both offences are punishable with a fine.
- A child required to move shall have the right to transfer to any state or local government or aided school. Lack of a transfer certification shall not be grounds for denying or delaying admissions.

## Grievances

- The National Commission for the Protection of Child Rights (established by the Commissions for Protection of Child Rights Act, 2005) shall review the safeguards for rights provided under this Act, investigate complaints, and have the powers of a civil court in trying cases. The appropriate government may also constitute a State Commission for Protection of Children Rights to carry out these functions.
- Any person wishing to file a grievance claim shall submit a written complaint to the local authority, which shall make a decision as early as possible. Appeals shall be decided by either the State Commission for Protection of Child Rights or the specified authority.
- Prosecution of offences for capitation fees and recognition require the sanction of an officer authorised by the appropriate government.

## Finances

- The Bill states that the central and state governments shall share financial responsibility. The central government shall prepare estimates of expenditures and provide the state government with a percentage of these costs, in consultation with the state government.
- The central government may request the Finance Commission to consider providing additional resources to the state governments in order to carry out provisions of the Bill.
- The state government shall be responsible for providing the remaining funds needed to implement the Bill.

## PART B: KEY ISSUES AND ANALYSIS

### Ensuring of Right

The Bill seeks to implement the fundamental right to elementary education. However, there is no specific provision in the Bill that penalises any violations of this right. In recent Acts such as the Right to Information (RTI) Act and the National Rural Employment Guarantee Act (NREGA), the relevant government officer is required to address all complaints within a stipulated time period. In the case of RTI, a public information officer is subject to a daily penalty of Rs 250 if the reply is given past thirty days from the request.<sup>5</sup> There are no similar penalties in this Bill.

Furthermore, the Bill places the onus on the government to ensure enrolment of all children, but does not identify which government agency will be responsible for this task. It is unclear how the appropriate authority will ensure and monitor that working children and children living on the streets without a parent or guardian will be enrolled in school.

Both the appropriate government and the local authority share responsibility of providing free and compulsory education to every child. Sharing of this duty may lead to neither government being held accountable.

### Learning Outcomes

Schedule & Clause 24

The Bill provides for the right to schooling and physical infrastructure but does not guarantee the quality of education. Even the teacher’s duties are only related to punctuality, attendance, etc, and not to learning achievements of their students. Despite a number of government programmes including Sarva Shiksha Abhiyan, data shows that many students are performing well below their grade levels. Table 2 highlights achievement levels of class five students from the National Council for Education Research and Training.

**Table 2: Average Percentage Marks of Class Five Students in Selected States**

State	Language	Mathematics
Andhra Pradesh	55	44
Arunachal Pradesh	61	53
Assam	49	40
Bihar	65	63
Chattisgarh	50	38
Delhi	63	48
Gujarat	56	48
Haryana	60	53
Himachal Pradesh	50	34
Jammu and Kashmir	50	36
Karnataka	59	46
Kerala	55	36
Madhya Pradesh	58	49
Maharashtra	62	44
Orissa	61	47
Punjab	58	50
Rajasthan	61	49
Sikkim	50	41
Tamil Nadu	71	58
Uttar Pradesh	50	38
West Bengal	71	60

Source: NCERT study cited in “Quality related interventions under SSA”, July 2007.

Clause 16

Secondly, no child shall be held back until completion of elementary education. This could result in children reaching the 8<sup>th</sup> standard without achieving certain learning outcomes. Indeed, some studies show that despite a high pass rate of 95%, the learning outcomes for fourth and fifth standard are much lower than the norms.<sup>6</sup> The Bill does not address this problem nor does it require schools to provide any remedial training for students performing below their peer group. It also does not give parents and guardians the option of voluntarily holding their child back in school.

Some countries mandate independent assessments. For example, under the No Child Left Behind Act of the United States, schools are required to implement an annual assessment in reading and mathematics for third to eighth standard students, and tests at three grades for science. There are consequences if schools fail to meet the minimum test scores. Some of these include free tutoring, public school choice, school restructuring, firing of teachers, or school closure.<sup>7</sup>

### Constitutional Validity of Reservations

#### Private Schools

Clause 12(c)

The Bill reserves 25% of seats in central government and private schools for the disadvantaged and economically weaker communities. The constitutionality of this provision could be challenged. The 93<sup>rd</sup> Amendment to the Constitution permits reservation for SCs, STs and socially and educationally backward classes but not for economically weaker sections. Also, schools will be reimbursed only to the extent of the average per-child expenditures in state government schools, and some schools may find this scheme financially unviable.

**Table 3: Schools and Enrolment 2007-08**

Type	Number of Schools	Enrolment I-V Class	Enrolment V-VIII Class
Government Schools	1,002,915 (80%)	101,153,429 (76%)	32,498,650 (64%)
Private Schools	243,895 (20%)	32,736,432 (24%)	18,353,943 (36%)

Sources: DISE 2007-08, NUEPA; PRS.

#### Minority Schools

In the case of minority schools, the 25% reservation requirement may contradict Article 30 of the Constitution, which states “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.” The draft 2005 Right to Education Bill previously provided an exemption to minority schools. The 93<sup>rd</sup> Amendment also explicitly excludes minority institutions from reservations.

## Norms for Schools

### Government Schools

Clauses 18 & 25 Government schools do not need to meet any norms except the pupil-teacher ratio, and there are no consequences for failing to meet this basic norm. Only private schools are subject to losing their recognition and shutting down if they do not comply with norms for pupil-teacher ratio, infrastructure, and teaching.

### Multi-Grade Teaching

Schedule The Bill legitimises the practice of multi-grade teaching. The number of teachers shall be based on the number of students rather than by grade. For example, the norm specifies two teachers for schools with first to fifth grade having less than 60 students. This implies that teachers will be required to teach multiple levels simultaneously.

## Implementation

### Neighbourhood School

Clause 8(b) The 2005 draft Bill defined neighbourhood as the areas around the residence of a child as may be prescribed. It also defined a neighbourhood school as one located within the child's neighbourhood of residence. In the 2008 Bill, the term neighbourhood is used, but no definition is given. This may lead to lack of accountability.

### Teacher Training

Clause 26 The appropriate authority shall ensure that the number of vacancies at a school does not exceed 10% of the sanctioned teaching staff. There could be a shortage of trained teachers. Approximately 45% of all elementary schools teachers do not have even a Bachelors degree.<sup>8</sup> The Planning Commission states that the District Institutes of Education and Training (DIETs) "have not justified their existence in terms of outcomes in spite of their existence for over two decades."<sup>9</sup>

### Financial Estimates

Financial Memorandum The government is required to reimburse unaided schools for per child expenditures and provide resources for school infrastructure, teacher training, additional teachers, school resources, etc. In June 2005, the Central Advisory Board of Education (CABE) Committee estimated that the average additional financial requirement was between Rs 54,000 crore and Rs 73,000 crore per year for six years. This is approximately 1.1%-1.5% of GDP. This Bill does not provide any financial estimate. The Financial Memorandum states that "it is not possible to quantify the financial requirement on this account at this stage."

**Table 4: Estimates of Additional Funding Requirements**  
(Rs crore)

Committee	Amount Required
Draft 83rd Amendment Bill, 1997	40,000 over 5 years
Tapas Majumdar Committee, 1999	1,36,922 over 10 years
93rd 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.

## Accountability

### Grievance Redressal

Clauses 31 & 32 The Bill stipulates that the local authority shall receive grievance complaints regarding schools, teachers, etc. The local authority (e.g. panchayat, municipal authority, etc) will be both the implementing agency and the authority for grievance redressal. This could lead to a conflict of interest. Secondly, for offences related to capitation fees and recognition, the complaint must first be sanctioned by an officer appointed by the appropriate government. This could lead to shielding of influential schools from being prosecuted. Finally, the Bill does not provide a time limit for addressing complaints.

### School Management Committees

Clauses 21 & 22 The School Management Committee is responsible for creating the school development plan and monitoring school grants and expenditures. The 2005 draft Bill gave the SMCs the power to distribute teacher salaries and deduct pay based on absences and utilise grants for school maintenance. These powers have not been incorporated in this Bill.

Currently, some states such as Karnataka have constituted SMCs, which include representation from students, parents, teachers, health workers, anganwadi workers, NGOs, elected officials, and donors.<sup>10</sup> Some studies have shown that the SMCs have increased accountability and decision making capabilities, and provided a forum for both parents and students to express their views.<sup>11</sup> Unlike in Karnataka, this Bill does not include student representatives or other community members in the SMC.

## Comparison of 2005 Right to Education Bill

The 2005 Draft Right to Education Bill proposed a series of measures to provide free and compulsory education to children. Table 2 captures some of the key differences between the 2005 draft Bill and the 2008 Bill.

**Table 5: Comparison of the 2005 Draft Bill & 2008 Bill**

	2005 Draft Bill	2008 Bill
<b>Non-Enrolled Children</b>	Non-enrolled children between 7-9 years of age shall be enrolled in a neighbourhood school within one year of the Act; Non-enrolled children between 9-14 years of age shall be put into a special programme in a neighbourhood school or an age appropriate school within 3 years	A non-enrolled child above 6 years shall be admitted in an age appropriate class and have a right to receive special training as prescribed
<b>Completion of Elementary Education</b>	If a young person is unable to complete elementary education by the age of 14, he shall continue in the school until completion or 18 years of age.	A child shall be entitled to free and compulsory education until the completion of elementary school even after 14 years of age
<b>Responsibilities of Parents &amp; Guardians</b>	If a parent or guardian does not enrol his child in school, the school management committee shall require the parent to perform compulsory community service by providing child care in the school	No penalty provision
<b>School Management Committees</b>	Monitor the functioning of the school, manage government school assets, ensure teachers are performing their duties, distribute teacher salaries based on attendance, and utilise grants for school maintenance	Monitor the school, prepare a school development plan, monitor the utilisation of government grants, and perform any other functions as prescribed
<b>Teacher Appointments</b>	Teachers in state schools shall be appointed to a school by the local authority or SMC and will not be transferred to another school	No provision
<b>Disciplinary Action</b>	No child shall be held back or expelled until the completion of elementary education except through an order of the School Management Committee	No child in school shall be held back or expelled until the completion of elementary education
<b>Grievances</b>	The central government shall constitute a National Commission for Elementary Education which will monitor implementation, recommend corrective measures, and act as an ombudsman for grievances	The Commission for the Protection of Child Rights shall examine the safeguards for rights, recommend measures for implementation, and decide appeals for grievance cases
<b>Powers to Amend</b>	The National Commission for Elementary Education, in consultation with the central and appropriate government, may amend the Schedule	The central government may amend to the Schedule

Sources: Right to Education Bill, 2005 and the Right of Children to Free and Compulsory Education, 2008.

### Notes

1. This Brief has been written on the basis of The Right of Children to Free and Compulsory Education Bill, 2008, which was introduced in Rajya Sabha on December 15, 2008 and referred to the Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi). The Standing Committee is scheduled to submit its report in three months.
2. Writ Petition (Civil) No 607 of 1992, Unnikrishnan vs. State of Andhra Pradesh.
3. See the Nov 2005 draft of the Right to Education Bill, 2005  
[http://www.prsindia.org/docs/bills/1167478440/bill83\\_2006123083\\_Right\\_to\\_Education\\_Bill\\_2005\\_draft\\_14Nov05.pdf](http://www.prsindia.org/docs/bills/1167478440/bill83_2006123083_Right_to_Education_Bill_2005_draft_14Nov05.pdf).
4. See "The Right to Education will have to wait for the rains", Economic Times, May 5, 2008.  
<http://economictimes.indiatimes.com/articleshow/msid-3010412,prtpage-1.cms>.
5. See Clause 23(6) of the National Rural Employment Guarantee Act, 2005 & Right to Information Act, 2005.
6. See "Flash Statistics 2007-08", District Information System for Education, National University of Educational Planning and Administration, <http://www.dise.in/>.
7. K-12 Education: Highlights of the No Child Left Behind Act of 2001, CRS Report for Congress, February 28, 2005.
8. Teacher-Related Indicators 2007-08, District Information System for Education, See <http://www.dise.in/ar2005.html>.
9. 11th Five Year Plan, Education, Planning Commission, Government of India.
10. SMCs in Karnataka are broadly responsible for: (i) functioning of schools; (ii) participation of community members regarding access, enrolment, retention and quality issues; (iii) mobilize local resources; and (iv) motivate teachers to deliver quality education.
11. Niranjanaradhya, V.P., Accountability and Transparency in School Education: School Development and Monitoring Committees in Karnataka, Centre for Child and the Law, National Law School of India University.

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