

ALL INDA FORUM FOR RIGHT TO EDUCATION

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An Appeal

To,
President of India
Rashtrapati Bhawan
New Delhi

August 07, 2009

Respected Madam,

Sub: ‘The Right of Children to Free and Compulsory Education Bill, 2008’ – Appeal for sending this anti-Constitutional, anti-child and anti-education as well as pro-privatisation and pro-commercialisation Bill for reconsideration.

On behalf of several democratic organizations and groups, along with many eminent intellectuals and social activists, across the country, we draw your kind attention to ‘The Right of Children to Free and Compulsory Education Bill, 2008’ recently passed by the Parliament. It is our considered view that **the Bill is anti-Constitutional, anti-child and anti-education**. In addition, **several of its provisions promote privatization and commercialization of school education**.

For the past four years, we have repeatedly appealed to the Central Government to replace the earlier drafts of the Bill as well as the Bill finally passed by the Parliament with a Bill drafted in the framework of ‘**Common School System based on Neighborhood Schools**’. This is the only framework which would ensure education of equitable quality to all children in consonance with the principles of equality before law (Article 14), guarantee against discrimination by the State (Article 15-1) and equal opportunity in public employment (Article 16) as enshrined in the Constitution.

However, to our utter disappointment, the UPA Government did not heed the democratic voices in the country. The appeal for wider public debate on different provisions of the Bill has been invariably turned down. The relevant Parliamentary Standing Committee which examined the Bill earlier this year also ignored democratic submissions. The Union Government is rushing ahead with its 100-day neo-liberal agenda embedded in privatization and commercialization of education. Our appeal to the Lok Sabha Speaker on 23rd July 2009 for returning the Bill to the Parliamentary Standing committee for holding Public Hearings was also ignored. Please note that **not one Public Hearing has been held since the drafting of the Bill began in November 2004** in the CABE Committee under the chairpersonship of Shri Kapil Sibal, the then Minister of State for Science and Technology.

We bring to your kind notice that the Bill, instead of giving Fundamental Right to the children, deprives them of the Fundamental Right inherent in the Constitution as declared by the Supreme Court through its historic Unnikrishnan Judgment (1993). The Supreme Court stated that ‘free and compulsory education’ is a Fundamental Right of all children “until they

complete the age of fourteen years” (including the children below six years age) by reading Article 45 of Part IV of the Constitution in conjunction with Article 21 (Right to Life) of Part III. However, the Bill passed by the Parliament will result in (a) more than 17 crore children below six years of age losing their Fundamental Right to balanced nutrition, health care and pre-primary education; and (b) the government being assigned arbitrary powers to provide free and compulsory education to more than 19 crore children in the 6-14 year age group “in such manner as the state may by law determine” (Article 21A), just as the government has been doing for the past sixty years. The afore-mentioned conditionality in Article 21A, though not notified as yet, has been (mis)used the Central Government to dilute and distort the Fundamental Right of the children even for the 6-14 year age group through the said Bill.

We hereby underline the following serious lacunae and contradictions in the Bill.

This Bill,

- *allows* the authorities to dilute the meaning of FREE EDUCATION in an arbitrary manner; in addition, *denies* FREE EDUCATION to those children who have been compelled to go to private schools due to rapidly deteriorating quality of education in the government schools;
- *distorts* the concept of Neighborhood School recommended by the Kothari Commission (1966) and resolved by the Parliament in the National Policy on Education-1986 (as modified in 1992), thereby authorizing the government to arbitrarily force the poor children to study in inferior quality schools;
- *maintains* Sarva Sikhsha Abhiyan’s discriminatory multi-layered school system;
- *permits* the government to build schools of entirely unacceptable, ambiguous and sub-standard norms and standards;
- *continues* with inferior quality education for almost three-fourths of the children, particularly girls, disabled and severely disadvantaged categories;
- *misconceives* the universally acknowledged concept of disability and *fails* to provide for norms and standards necessary for integrating disabled children into regular schools and classrooms;
- *undermines* the universally accepted pedagogic role of mother tongue in acquiring knowledge and learning languages other than one’s mother tongue, including English;
- *discriminates* between the children studying in government schools and the private unaided schools in various ways, particularly by providing for deployment of the government school teachers for non-teaching tasks. This is bound to lead to further deterioration of the quality of education in the government schools, making private schools, both aided and un-aided, even more expensive and inaccessible to a wide section of the society. The worst sufferers of such discrimination will be the girls, thereby leading to increased gender disparity;
- *aims* at demolishing the government school system under the pretext of providing free education to the weaker sections on 25% of the seats in private schools. On several grounds it is clear that this misconceived provision would not give any benefit whatsoever to the deprived children even in the short term;
- *legitimizes*, through the above-named provision of 25% reservation in private schools, the ‘free market’ policy of school vouchers and Public Private Partnership;

- *refuses*, by not including the financial estimates for implementation of the Bill in the Financial Memorandum, to explicitly accept the full obligations of the Bill and
- *promotes* unregulated privatization and commercialization of school education.

The following three cynical objectives of the central government can be identified in tabling such a misconceived Bill:

First, abdicating its Constitutional obligation for providing free and compulsory education of equitable quality;

Second, demolishing the government school system, except the schools of specified categories (Kendriya Vidyalayas, Navodaya Vidyalayas, XI plan's 6,000 model schools, and similar elite schools of the States/UT governments); and

Third, increasing the pace of privatization and commercialization of school education.

We have been for long urging upon the Union Government to,

1. replace the pending Bill with a new Bill drafted in the framework of the **'Common School System based on Neighborhood Schools'** in consonance with the basic spirit and principles enshrined in the Constitution;
2. review the 86th constitutional amendment Act (2002) with a view to providing a Fundamental Right to **free and compulsory education of equitable quality to all children until the age of eighteen years i.e. until class XII** without any conditionality whatsoever;
3. incorporate a **Constitutional guarantee within the Bill for providing adequate funding** for the entire school system. This is precisely the implication of a fundamental right.
4. include in the Bill a provision **to completely ban all forms of privatization and commercialization of education**, especially Public Private Partnership, adoption of schools by private agencies and voucher schools;
5. **hold public hearings** in all district headquarters of the country in a democratic and transparent manner in the process of drafting a new Bill.

As submitted to you in the beginning, the Union Government neither heeded the democratic voices nor responded to the widely articulated public concerns. *We, therefore, urge upon you not to accord your assent to the aforesaid Bill and return it to the government for reconsideration and making essential changes in the present Bill or drafting a new Bill afresh in consonance with the basic spirit and the fundamental principles enshrined in the Constitution.* In the meantime, the holistic Fundamental Right already available to the children under the Constitution shall prevail.

With hope and trust for your urgent intervention,

Sincerely Yours,

sd./-
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Bhopal, Madhya Pradesh

sd./-
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Hyderabad, Andhra Pradesh

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1. Prime Minister of India
2. Leaders of Opposition Parties
3. Chairperson, National Commission for Human Rights
4. Chairperson, National Commission for Protection of Child Rights