

Children's Right to Education and Democratization of Schools¹

(Shantha Sinha)

Protection of Right to Education

The way a nation deals with its children, looks after them, nurtures them, brings them up, educates them decides whether that nation will have a large majority of citizens living with dignity, self esteem and feeling secure, who not only demand but also contribute, not only assert their individual rights but also observe their collective obligations. Realizing this, our Constitution has specially provided a few articles concerning the welfare of children. Perhaps as Constitutions go this is somewhat unique. These are articles 24, 39 and 45 of the Constitution dealing with prohibition of children from being employed in factories, mines or in other hazardous employment (Article 24), protection of the tender age of children and their development in a healthy manner with freedom and dignity (Article 39) and free and compulsory education for all children within ten years of the promulgation of the Constitution (Article 45). The last article has been further reinforced by the judgment of the Supreme Court in 1993 in the Unnikrishnan and others Vs. Government of Andhra Pradesh case in which the Supreme Court observed that the obligation to provide free and compulsory education has been converted into an enforceable right by efflux of time. This judgment of the Supreme Court has in 2002 become embodied in the 86th amendment to the Constitution of India that guaranteed the right to education as a fundamental right to children in our country by inserting article 21A that reads '*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.*' In discussing appropriate legislation to implement the right to education, two issues have cropped up.

1. How to force the centre and the states to allocate and spend the necessary financial and other resources to ensure that every child is in school receiving quality education up to the age of 14 years?
2. How to bind the State to provide for all that is necessary to make it possible for children their right to education?

This implies that the State must make all arrangements to ensure that all children are in schools and not at work and this right of children is protected and is delivered in the framework of the values of equity and justice. The State has yet to fulfill its obligation of translating this commitment to reality and in ensuring that every child is indeed in school.

Barriers in government schools

There are innumerable barriers that poor children must overcome to join schools and continue to be there without any disruption. Firstly, they have to combat a pervasive social atmosphere that tolerates children not being in schools. This also has an impact on school participation of those children who are already in schools. Since there is neither

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shock nor outrage that children are not attending schools the State policies too lack commitment for guaranteeing children their right to education and there is thus a general complacency of the education system. This is reflected in the weak provisioning of infrastructure, school teachers, classrooms, toilets, drinking water, text books and all other supplies that are essential to define schools as schools.

Secondly, schools are not equipped to appreciate the difficulties of the first generation learners. As a consequence, children are subject to insults and corporal punishments for not doing their homework, coming late to school, not wearing a school uniform, non-payment of school fees and other school charges and so on. Children and their illiterate parents also find it difficult to cope with the myriads of procedures, rules and regulations that govern the school system and are therefore pushed out of schools, for reasons such as being unable to procure a medical certificate after a long absence due to illness. They find it difficult to get caste and income certificates when seeking new admissions or even the right kind of documentation for obtaining a transfer certificate. In fact, their families are totally unaware of the rhythm of quarterly, half yearly and annual examinations and often allow the child to be absent from school for attending a wedding, or a festival or go on a pilgrimage and are not able to give an explanation for such an absence. Instead of orienting the parents to alter the remnants of social and cultural practices and convince them regarding the routine of a school and the discipline of learning, there is an absence of sensitivity to the predicament of the first generation learner for whom school going is yet to become a matter of culture and habit that can be taken for granted. The life of a child in a formal school is therefore precarious.

Thirdly, the policy framework too is not whole-hearted as it does not plan for retention of every child from the time of joining school until they finish school. The country has for one whole decade through the Sarva Shiksha Abhiyan (SSA) focused attention on the primary schools first. It is now waking up to the fact that the elementary stage and secondary stage of education is also important. In other words in fragmenting the stages of education thus, and paying attention to one stage alone it has ceased to provide for education adequately for children who are in the school net. Many children, especially girls, do not continue to study after class five because there are no institutional arrangements for ensuring a flow of from one stage to the next. Focusing on one stage of education after the other may have sounded practical for the policy makers but certainly not for that set of children who perforce discontinued education because it was not anticipated that these children would need to continue to study in higher classes.

This is in sharp contrast to the situation of middle class children who are assured continuance in school education as a matter of norm. It is anticipated that once children enter the portals of private schools it is unthinkable that she should stay at home and not go to school. Even when the child moves from one school to another in case of a transfer, all procedures and protocols are maintained to ensure that there is no loss of time lest the child loses an academic year. This concern is seldom demonstrated in a similar fashion for children of the poor, when they are pushed out of schools or have to move from one stage to another, or when they move out of their villages along with their parents who migrate.

Therefore the journey to reach up to class 10, is against all odds for poor children. Only 37% of children who have been enrolled in Class I in the year 1992-93 have survived to take the Class X public examination in 2001-02 .The successful accomplishment of class X has been even more difficult for girls where only 35% have made it. The failure of a majority of children is certainly indicative of the pathology of the school system in the country today and not that of the incapacities of the children themselves.

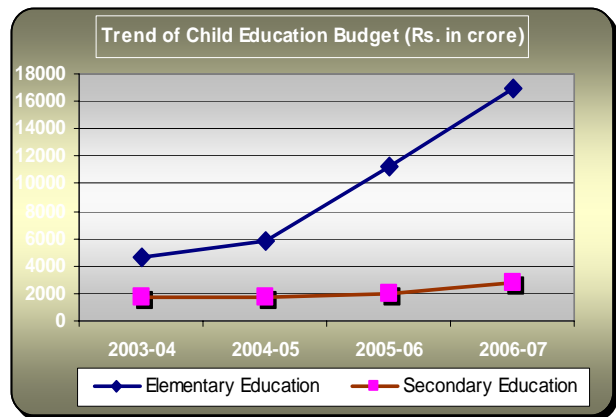
Arrival of Private Schools- and Differentiation

At the same time it must be recognized that there is an explosive demand for education today. Poor parents see that it is an indispensable asset and are willing to make enormous sacrifices for seeing that their children get educated. Realizing the potential of education the poor have accessed government schools reposing faith in them. However in comparison the response of the government has been tardy and slow. The yearning of the poor for educating their children has been systematically ignored. Instead of increasing the investments in education the State has actually depleted its allocations and resources.

BUDGETS ON EDUCATION

Year	Budget Allocation (Rs. In crore)		
	Elementary Education	Secondary and other Education	Total Child Education
2004-05	5752.53	1735.32	7487.85
2005-06	11219.79	1968.57	13188.36
2006-07	16895.06	2771.21	19666.27

Source – HAQ, Centre for Child Rights



A trend observed in financing of education in India after 2001-02 (when Right to Education was made a Fundamental right) is that the while allocation for Elementary Education increased it did not do so correspondingly at the Secondary stage. At the same time even with an increase in budgets at elementary stage, it is found that most of the investments were made at the primary stage alone i.e. only up to class 5 as the priority under SSA was to cover children in the primary schools. In a way, children were not absorbed in the net of the government schools after completion of class 5 resulting in the poor reluctantly abandoning government schools.

On the other hand there is an emergence of a large variety of private schools to respond to parental demand for education. This has resulted in a differentiated school system reflecting class imbalances. Thus on the one hand there are the inefficient and wasteful

government schools struggling for resources and its students continuing to attend them in full faith that it is only education that can redeem them from the world of deprivation and vulnerability. Their survival in the school system under these circumstances is not by design but a sheer accident. Amidst the huge presence of government schools, there are on the other hand, fee charging one room English medium private schools with untrained school teachers at one end of the spectrum and fully furnished air conditioned corporate schools at the other end. Private schools guided by the logic of the market have begun to sell their wares 'to each according to their ability'. Thus there are as many schools as layers in the society.

Although the number of private schools and the children attending them are still small in number (estimated at about 20%) there is a trend in more and more numbers of children leaving government schools for the private schools. Such a mushrooming of private schools has a profound impact on the society as it reproduces class inequalities, fractures society into multiple layers, freezes mobility of its citizens to move up causing divisiveness and disharmony.

This is contrary to the function that schools have always performed i.e. to bring together children across class, region, occupation, caste and other differences, to endow them with collective experiences and memories that enable socialization in a manner that allows the poor child to be on par with her peers, seizing opportunities with confidence. Schools have always been institutions for harmonizing societies and enabling bridging the gaps among its citizens and fostering equality.

The new discourse justifying private schools

The trend in the poor children accessing private schools made room for generating a public discourse that argues for private schools as being good as against government schools that are becoming more and more unaccountable and incurable. Evidence of the swarming numbers of poor children being sent to private schools is shown, to argue that private is sought after by the poor. For, it is felt that if private schools were not better off than government schools poor children would have actually stayed on in the government schools. An undercurrent of cynicism about government schools is slowly getting solidified leading to policy suggestions such as giving parents vouchers so that they can chose the schools they want their children to study in, instead of attending a non-functioning government school. This is further justified by making a virtue of competition wherein, in order to survive government schools would be compelled to perform and become accountable. There are parallels drawn in the telecom and airlines industries to substantiate this point on how efficiency was infused in these public sector institutions, once they were threatened by opening up the sector to more competent players in the market. It has been argued that government schools too have to face the jolt from the private players, just so that they become accountable.

The assumptions and basic facts that inform such arguments are seldom available for scrutiny and their veracity remains unquestioned. The statements made and the

conclusions drawn have a stamp of authority and gain the effect of ultimate truth. It must be considered, that sending their children to private schools is not the first option for poor parents as they have to make immense sacrifices to be able to pay for school fees and other charges in private schools, scrounging from their precious earnings. The outcome of the debate that private schools are viable because parents are seeking it as against government schools needs to be examined further. Such a discourse does not build the capacities of the State to deliver services, but makes it comfortable for yielding space to non-State players. This has far reaching consequences for the State and its role in protection of children's rights. More than anything else the entire debate has a function of systematically augmenting de-legitimization of government schools.

Building citizens through inclusive education

Most private schools in the country today are guided by the logic of the market and have emerged as commercial ventures, small or big, successful or limping projects. This scenario is vastly different from the private schools which had earlier emerged to serve the educational needs of children and were non-profit organizations and charitable trusts that depended on State aid. Now in the framework of market, services are offered to such children who can buy education. Like any other product, it is packaged and begins to tell that a good school is children in school uniform, tie and shoes, English medium, competition and home-work, discipline of learning and if better endowed, it is picnics, computers and the state of art technology. In their urge to acquire the 'brand' product as any consumer, the clients begin to spend more than what they can actually afford just as consumers of any commodity in the market. In this sense education is becoming a commodity for sale and transaction, available only for those who can afford it.

Encouraging private schools as commercial enterprises compromises the principle of universality as it offers services only to those who can pay for it. Thus those who are deprived and marginalized are automatically out of its net. If left unregulated, the higher end suppliers would foster further exclusion, and thus reinforce class differentiation. The rich and the poor would never meet and there is every possibility of widening the gap. It would operate inadvertently as a system of hidden apartheid. This is contrary to the very tenor of schools that have always been institutions based on universalistic principles, nurturing equity and social justice and fostering inclusive democracy.

It is in this context that it becomes imperative to see the role of schools as institutions that are indispensable for creating conditions for an inclusive democracy and as instruments for building capacities of the citizens. In a situation where children from the neighborhood join schools in that locality, and when equal standards are maintained in all schools in all neighborhoods, creation of citizenship and not consumers is fostered. The very act of studying along with their peers in the neighborhood, transcending class differentiation integrates children into a web of interaction, encouraging them to utilize creative modes of thinking and pursuit of knowledge. They enable children transcend their immediate environs and locate themselves in the context of a reality which is informed by a sense of larger society and its complex milieu. Thus the first step towards

equity and bridging the gaps in the social and cultural hierarchies are actually addressed in schools that provide access to all in the neighborhood, without spelling out preferences of any kind. Under such a circumstance, children aspire for similar kind of learning regardless of their class or cultural background.

Inclusive Education-Rights based perspective

The essential principle that guides State schools is that of inclusion as it cannot deny any child her right to participate in the school on any grounds. When it falters and creates structures and processes in a manner that children are excluded, the solution would be in reforming its system, rethinking its policies on education, making greater investments, embedded in a legal and normative framework as enshrined in the Constitution of India and taking forward the mission of schools for an inclusive democracy. Consequently schools become instrumental in democratising distribution of all those resources [technical and social skills, certificates, general capacities] enabling improvement of life chances and opportunities. In this sense education is a great levelling process and a prerequisite for creating 'citizens'.

This implies that the State must provide for services to protect the rights of all children. It must lay down absolute standards for what constitutes a school in terms of education, infrastructure, teachers and all other facilities and ensure that they are guaranteed. Rights based discourse shifts the terms of debate to evolving a framework for the State to play a crucial role in creating conditions for galvanizing the energies of all, including the private to provide every child education of equitable quality and access. In emphasizing the State as the essential guarantor of right to education, private schools too would have a role to play in ensuring that every child is in school. State would have a role to bridge the gaps in both the government run as well as private run schools and improve their standards.

The successful accomplishment of ensuring that children's right to education is guaranteed would need a wholehearted attempt by all forces/institutions, both within the government and those that lay outside. All have a role to play in this. The commitment to provide education for each and every child in the country must therefore become pervasive and indeed an obsession. In fact there has to be an agreement that there is a role for all the institutions and the battle is in arriving at this agreement and commitment for children. This would require firmness in wading through the logic of market and profitability that has unfortunately seeped into the delivering of services in education. This is certainly not an easy task. But the debate must go on and capture the imagination of one and all into partaking in the project of universalisation of education in India. If this goal is clear, then the arguments that emerge and the difficulties that are stated will be seen as a justification for maintaining the status-quo, which is denial of right to education to the children in our country. On the other hand if it is understood that children's rights have to be protected no matter what, then there would be solutions to make it practical for the rights to be enjoyed.

Education being a public good must nurture and enhance the principles of inclusion, non-discrimination, equity and justice. It cannot be a commodity for sale and transaction

available only for those who can afford it. It must be an entitlement and a right that is guaranteed by the State. In a context when it is becoming an acceptable discourse to run down the State giving it a cause to abdicate its responsibilities, there is a need to constantly bring to the fore the rights based perspective that resonates with the values of democracy, justice and equity as enshrined in the Constitution of India.