

# **CCS LEGISLATIVE ANALYSIS**

## **January 2004**

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### **The Free & Compulsory Education Bill, 2003**

### ***Will We Ever Learn?***



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## Overview

Every civilised society aims to educate every one of its children. This commitment however should not be about just enacting well meaning legislations and amendments to the constitution. Good intentions are a starting point but ultimately results matter. We must look for creative and innovative ways of fulfilling our promise of quality education to the next generation.

We at the Centre for Civil Society believe, based on our philosophy and well founded research, that the education system based on competition and choice is the most efficient as well as effective way to ensure sustainable delivery of quality and affordable education to all. On the supply side, there must exist competition among various institutions of learning to deliver the best educational service, driven by service to society, or by honest profit, or by any other noble goal. Where as on the demand side, every parent—rich or poor—must have the freedom to choose the type of education and the institution where her child will be educated.

In public policy terms this would require that the license-permit-raj that exists as barriers to starting schools and other educational institutions be abolished to increase the number and quality of such institutions. Also, the poor parents who cannot afford to send their child to school must receive direct help from charity organisations and government in the form of education vouchers—cheques that can be encashed only by educational institutions. Such direct help, in the form of education voucher, will be a far more effective vehicle for the utilisation of taxpayer resources for education than the indirect way of government building and managing schools.

We believe that legislation by government must promote the public policy goals stated above. *The Free and Compulsory Education Bill, 2003* does not meet these goals, and does serious damage to areas of education where some degree of competition and choice exist. The Bill requires that all private schools must reserve upto 20% of seats for poor children that will be selected by education authorities. It does not address in any way the rot that exists in government run school systems and to make matters worse, puts the same government officials, who manage the existing decrepit schools, in charge of a large portion of private schools. Such a bill will not achieve the noble goal of educating every child. It will also guarantee further politicisation and corruption of our education system.

Unfortunately, some well-meaning people and organisations support this Bill. Given their influence in the area of education, they can make a big difference in the way education policy is crafted and implemented. We believe that their support for the Bill, out of frustration or principle, would seriously damage the very cause we all share—quality education for all children.

It is time to promote and implement an education policy that fosters competition and choice. This must be done sooner than later since any bill that is passed into law, which takes education in the wrong direction, will not only be a setback for our cherished goals but will also make it difficult to implement any future reform. All individuals and organisations who find merit in our argument are urged to join together to form an effective coalition for meaningful educational reforms. Please contact us to take the reform ideas further:

### **Education Choice Campaign**

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## Highlights of the Education Bill

The complete version of *The Free and Compulsory Education Bill, 2003* is too long to be included here. Hence highlights of the Bill are given below. For the latest version of the Bill please visit [http://www.ccsindia.org/edu\\_policy.htm](http://www.ccsindia.org/edu_policy.htm)

### Chapter II: Basic Provisions Regarding Free and Compulsory Education

#### 6. Admission in approved schools

No child shall be denied admission in an approved school located in such vicinity of his place of residence as may be prescribed.

#### 14. All schools to seek recognition

(3) New schools shall be established after commencement of this Act only after obtaining recognition from a competent authority.

### CHAPTER III: Authorities for Achieving UEE

#### 16. Habitation-level Elementary Education Authority (HEEA)

(8) The HEEA shall constitute an Attendance Committee and such other Committees as may be prescribed and as it may deem fit.

#### 17. Local Elementary Education Authority (LEEA)

#### 18. District Elementary Education Authority (DEEA)

#### 19. Metropolitan Elementary Education Authority (MEEA)

#### 20. State Elementary Education Authority (SEEA)

(1) The Government of every State and of every Union Territory having a legislature shall constitute a State, or as the case may be, a Union Territory Elementary Education Authority (SEEA/UTEAA) with the following composition, namely:

- |       |  |                               |
|-------|--|-------------------------------|
| (i)   | The Chief Minister                                     | Chairman                      |
| (ii)  | The Minister in charge of Elementary Education         | Vice-Chairman                 |
| (iii) | Ministers in charge of the following subjects, namely: |                               |
|       | (a) Finance  | (b) Women & Child Development |
|       | (c) Welfare of SCs                                     | (d) Welfare of STs            |
|       | (e) Welfare of the Disabled                            | (f) Sec & Higher Education    |
|       | (g) Sports & Youth Affairs                             | (h) Public Health             |
|       | (i) Rural Poverty Alleviation                          | (j) Urban Poverty Alleviation |
|       | (k) Labour   | (l) Planning                  |
|       | (m) Info & Publicity                                   | (n) Info Technology           |

Members

- (iv) Two members of the Legislative Assembly and, in the case of States having a Legislative Council, one member of the Legislative Council, to be nominated by the Speaker and the Chairman respectively.

Members

- (v) Presidents of District Panchayats and Mayors/Presidents of Municipalities to be nominated by the State/U.T. Government in such numbers and in such manner as may be prescribed  
Members
  - (vi) Upto six members to be nominated by the State/UT Government from among Experts and Activists in the field of Elementary Education  
Members
  - (vii) Two members to be nominated by the State/UT Government from among experts in Management & Finance  
Members
  - (viii) Two members to be nominated by the State/UT Government to represent the teaching profession (incl. teacher educators)  
Members
  - (ix) Upto three members to be nominated by the Central Government  
Members
  - (x) Secretary to the State/UT Government in charge of Elementary Education & Literacy  
Member–Secretary
- (2) If an appropriate government has established an autonomous society for implementation of programs connected with free and compulsory education throughout the State/UT with the Chief Minister as its Chairman, then, notwithstanding anything contained in sub-section (1) such appropriate government may designate such autonomous society as the SEEA for the purposes of this Act.
- (3) Subject to the over-all responsibility of the appropriate government in this behalf, the SEEA shall be responsible for ensuring proper implementation of this Act and for achieving free and compulsory education in the State/Union Territory in the shortest possible time, and shall, towards that end, perform the following functions, namely:
- (i) Aid and advise the appropriate government in the discharge of its responsibility under sub-section (1) of section 3, and to exercise such powers and discharge such functions in this behalf as the appropriate government may delegate to the SEEA,
  - (ii) Support DEEAs and MEEAs in performing various functions assigned to them under sections 18 and 19, respectively,
  - (iii) Formulation of policy, laying down of priorities, raising of public awareness, and mobilisation and allocation of resources for free and compulsory education at the State level

**Chapter V: Trial and punishment of offences under the Act**  
**29. Penalty for contravention of Section 7**

- (1) If any person contravenes the provisions of Section 7 he shall be punishable with a fine which may extend to One Thousand Rupees and in case of continuing contravention, with an additional fine not exceeding Rs 50/- for each day during which such contravention continues after conviction for the first of such contravention.

## **Chapter VI: Miscellaneous**

### **31. Obligation of recognised schools**

- (1) The DEEA shall have powers to direct recognised but not substantially aided schools located in the district to give admission, in such manner as may be prescribed, without liability to pay any fees or any other charges, to children from families below the poverty line living in the district;

Provided that any such direction shall apply uniformly to all similarly-placed recognised schools in the district;

Provided further that no such direction shall be given to a school which has not yet completed five academic years since the start of its functioning;

Provided also that no recognised school shall be required to admit children under this section in a number exceeding 20% of the total strength of the school in any class. Children to be admitted in a school under sub-section (1) shall be chosen by the LEEA of the local area in which the school is situated, in the manner determined by the appropriate Government, from among children belonging to families below the poverty line living in the local area.

- (2) Children to be admitted in a school under sub-section (1) shall be chosen by the LEEA of the local area in which the school is situated, in the manner determined by the appropriate Government, from among children belonging to families below the poverty line living in the local area.
- (3) On receipt of directions under sub-section (1), the school concerned shall admit students selected under sub-section (2), and shall provide free education to them upto class VIII or such lower class upto which education is imparted in the school, subject to the students satisfying such conditions as may be prescribed.
- (4) If any school fails to carry out a direction given under sub-section (1), read with sub-section (3) above, then the appropriate government or the competent authority shall take such action, including withdrawal of recognition, against the school and in such manner as may be prescribed.

### **34. Protection of action taken in good faith**

No suit, prosecution or other legal proceeding shall lie against the Central government, an appropriate government, any officer or employee of such government, any person authorised by such government or by an authority constituted or designated under sections 16-20 of this Act, for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

## **Will HEEA, LEEA, DEEA, MEEA, SEEA Improve Education?**

The Free and Compulsory Education Bill, 2003 does not address the two most critical criteria for education reforms—competition and choice. Instead it creates several layers of new bureaucracies—HEEA, LEEA, DEEA, MEEA, SEEA! The fundamental assumption of the Bill that education can be improved by anointing more *babus* to tighten controls over private schools defies common sense and general experience. Which world do the drafters of the Bill live in?

The Bill takes what is already a sad situation and makes it far worse. It does not empower the parents to choose. Instead it empowers government and other third party officials to impose arbitrary and vague directives. It does not transfer scarce taxpayer resources meant for education to poor parents. Yet it continues to pour money into failed government schools. To add insult to injury, it puts the same inept government education officials, who are responsible for the current state of government schools, in control of private school resources. The Bill will ensure the beginning of the end of better quality of private education.

### **Unfunded mandate—I Mandate, You Pay**

For a grandstanding politician at the national level this Bill is a dream come true. He gets to preach the highest and noblest of intentions and better yet, place the punishments and moral indignation for failure squarely on the backs of parents. In terms of funding education, in other nations, this Bill would be called an **unfunded mandate**. That is when a government passes laws and expects lower level governments to implement it, without the needed funds. The proposed law improves upon this sleight of hand. It expects private schools to dispose what the government proposes. The Bill requires private educational institutions to set aside upto 20% of their seats for children of below poverty line (BPL) families. This saves the government from doing the unpopular things like raising taxes or cutting government spending in other areas to fully fund their mandate. The thankless task of raising additional resources, by raising tuition for existing students, is left to the private schools.

### **Rampart Corruption**

The incentive for corruption and arbitrariness in the envisioned system is staggering. Simply put, this Bill has so many holes and loopholes to drive a fleet of school buses filled with extortionist government officials through it. The government, after having retreated from the lesser commanding heights of running bakeries and steel mills, is now clawing its way back to the higher heights of more complex tasks, like micro-managing private educational institutions.

Private educational institutions are held in high esteem in India. Competition, sense of higher purpose among the founders and administrators of these school and parental preference and choice are among the main reasons for their success. But a very important reason that is often overlooked is the relative autonomy of these private educational institutions. This Bill is a direct assault on that autonomy and integrity.

Local education authorities will decide the percentage of seats to be reserved upto a maximum of 20. One must ask: What are the incentives on the part of public officials to extort money with the threat of imposing higher quota on the school? What are the incentives for the schools to bribe the officials to keep the quota low?

Even at the maximum of 20%, not every child will find a seat in a private school. Public officials will decide which child gets in. Before handing over such power and discretion to public officials, the supporters of the Bill must ask: What are the public officials' incentives to reward the truly deserving poor children? What are the incentives for parents of "undeserving" children to bribe officials to get their children admitted into private schools, free of cost, under this scheme? If past is any guide, the people left out will be the very people meant to benefit.

The insidious consequence of such schemes is the growth of government bureaucracies required to monitor and micromanage the system. Such systems need more and more inspectors even just to maintain a semblance of working. Bigger bureaucracies, corruption, and wastage of taxpayer resources are the few guarantees of this roundabout way of trying to help the poor.

### **Politicisation of Education**

There is another very pernicious certainty that should not be overlooked. Passing of this Bill will put government literally in control of upto 20% of seats in private schools. This would surely worsen the problem of politicisation of education. Governments already control the curriculum in private schools. Putting the government in charge of the physical resources of private schools is a very unwise move. Would the vote bank politics, as in other government-controlled services, determine admissions to schools?

### **Overburdening Private Schools**

Honest supporters of this Bill must acknowledge the real cost to private schools, monetary and otherwise, associated with the proposed law. They must address why any private school would invest funds into school infrastructure and operations and then give a large chunk of it away for free. Parents, who send their children to private schools and pay tuition and other fees, must seriously ponder how the school will find additional funds, space and other resources. Parents who complain about high school costs today are in for a rude awakening once this Bill becomes the law. Ultimately, they will pay for the cost of extra students. They will subsidise BPL children in the form of higher tuition fees and over-crowded classrooms. All the while paying taxes to the government supposedly for the education of BPL and other children. Double taxation indeed!

It is unlikely that schools would take away admission from existing students to make room for the BPL students. This means that almost overnight schools would have to expand their capacity in terms of funds, space, and teachers. In practice, the schools would most likely learn a few days before the academic year about the proportion of BPL children they need to take for that year. Imagine the mad scramble to get the infrastructure ready for the extra students. Would this serve the cause of quality education for all? Or may be the Bill envisions that the existing students would be dropped to make room for the BPL students, who would then enroll in the vacant government schools. Would the parents of these dropped students sit quiet? The government would have a huge problem on its head. Or it would have a huge opportunity to milk these parents to get their children back into their private schools.

### **Empower Acronyms and Punish Parents**

The Bill empowers all sorts of people, committees and authorities in the name of helping the poor:

- The Attendance Committee
- Village or Hamlet Education Committee
- Panchayat *adalat*
- Ward committees of municipalities

- Habitation-level Elementary Education Authority (HEEA)
- Local Elementary Education Authority (LEEA)
- District Elementary Education Authority (DEEA)
- Metropolitan Elementary Education Authority (MEEA)
- State Elementary Education Authority (SEEA)
- Union Territory Elementary Education Authority (UTEAA)
- Presidents of district panchayats
- Mayors and presidents of municipalities
- Secretaries of all stripes and sizes in charge of elementary education and literacy

We are not making this up; we wish we had such fantastic imagination. With the creation of all these acronyms, the poor parents will get more directives and orders. Yet it does not empower the people most interested in the poor child's education—the parents.

The authors of this Bill attempt to define all sorts of parameters and to divine all sorts of future scenarios: From how to compute a child's age to how many rooms a school must have; from issues of child labour to prescribing how to hold inquires into the attendance status of a child; from duties of a teacher to the workings of a parent-teacher association; from the responsibilities of a parent to that of the attendance committee. The breath and depth of this legislative arrogance is awe-inspiring. Yet the authors could not find a simple way to transfer taxpayers' resources to poor parents who will make the most honest and caring decision regarding their children's education. They are saying that we can trust these parents to elect the government but cannot trust them to choose right education for their children.

Any failure to educate BPL children under the proposed scheme guarantees demands for greater percentage of seats to be set aside and more laws and regulations to punish the real and imagined wrongdoers—private schools, parents, corrupt officials, and practically everyone involved. Amusingly, drafters of this Bill found it necessary to protect authorities acting in "good faith" from prosecution and punishment for failure of this policy. Apparently for government officials intentions and not results matter.

### **Questions Agalore**

There are important questions one must ask while considering this Bill.

1. How will the private school accommodate a sudden increase of up to 20% of its student body?
2. Where will the private school get the additional resources? Who will pay the higher fees and donations?
3. The Bill implies that private schools—aided and unaided—would expand their size by 20%. A school with 1000 students will have 1200 next year. The only other alternative is to discharge 20% of the existing students. Where would these students go?
4. Today a large number of students, particularly in urban areas, study in unrecognised schools. Will all these schools be closed down? How will the students of these schools be accommodated into existing recognised schools?



## **Fundamentals of Education Reform: Choice and Competition**

The importance of education in a child's life cannot be exaggerated. We hope that the day is not far away when every child in India would be able to attend a school of their parent's choice, irrespective of their ability to pay for it. We hope that poor parents, like other parents, would be able to enjoy the immense benefits derived from a school system based on parental choice and competition among schools.

A good school system would satisfy two criteria. One, from the supply side, existence and quality of schools should depend only on the number and judgement of the customers—the parents who pay the tuition. Two, from the demand side, customers—the parents—should have the opportunity to choose from multiple options and the ability to pay the costs associated with educating their children.

The first criterion can be satisfied only when entry barriers are non-existent—no license-permit raj. Entrepreneurs, motivated by profit or providence, should be free to start schools and provide education without having to jump through endless regulatory hoops and greasing countless palms. Today, instead, they face discriminatory laws and regulations that apply only to private and not to government schools.

The second criterion requires concerned citizens to focus on just one group—poor parents, since other parents can already afford to send their children to the school of their choice. To address the fact that poor parents do not have the money, private and governmental institutions can provide education vouchers—cheques that can be encashed only by educational institutions. Poor parents pay schools with vouchers and the schools cash the vouchers with issuing agencies, which can be public or private. With education vouchers, poor parents have the same choice as the rich parents. If they are not satisfied with the school, they can take their child elsewhere, along with the voucher. This creates every incentive for the school to provide quality education that will retain students. It is the competition among schools for vouchers that will produce adequate number of quality schools.

The contrast between the performance of private and government schools has been vividly brought forth in the government sponsored Public Report on Basic Education in India (PROBE) in 1999. It paints a very bleak picture of the "functioning" of government schools for the poor. When researchers called unannounced on their random sample of schools, only 53 percent had any "teaching activity" going on. In 33 percent of the schools, the headteacher was absent. Alarming, the team noted that the deterioration of teaching standards was not due to disempowered teachers, but instead could be ascribed to "plain negligence." They noted "several cases of irresponsible teachers keeping a school closed ... for months at a time," many cases of drunk teachers, and headteachers who asked children to do domestic chores. Significantly, the low level of teaching activity occurred even in those schools with relatively good infrastructure, teaching aids and student-teacher ratios.

But is there any alternative to these schools? As it happens, the PROBE report pointed to private schools that were serving the poor and conceded—rather reluctantly—that such problems were not found in these schools. In the great majority of private schools—again visited unannounced and at random—there "was feverish classroom activity." Most parents would prefer to send their children to private schools if they could afford them. Private schools, they said, were successful because

they were more accountable: “the teachers are accountable to the manager (who can fire them), and, through him or her, to the parents (who can withdraw their children).” Such accountability was not present in the government schools, and “this contrast is perceived with crystal clarity by the vast majority of parents.”

Private schools are also considerably more efficient at their task. In a study in Uttar Pradesh, Geeta Gandhi Kingdon found that average expenditure in government schools was Rs 2,008 per student, whereas private-aided schools spent Rs 1,827, and private-unaided schools spent Rs 999 and achieved far better results.

The voucher or scholarship may include resources for textbooks, uniforms, transportation, and other essentials. Since government departments decide education budgets, they are free to decide the size of each voucher. Kerala government, for instance, provides scholarships and transport subsidy to the highest number of students compared to any other state in India. Both scholarships (which are similar to education vouchers) and transport subsidy expand the range of schools from which parents can choose. Choice and competition are really at the heart of what is called the Kerala model of education.

The power of the voucher idea lies in the fact that the customer—the poor parent—is empowered, not the supplier—private or government schools. Also, where there is demand, backed by the ability to pay, there will be a supply. Ensuring that every parent has the necessary resources for education, we indirectly encourage competing entrepreneurs to supply quality education. Vouchers would get private schools open up in rural areas. Schools don't exist in rural hamlets because parents don't have the money to pay for education. Once they have education vouchers, many will rush there to open schools, just as they open grocery shops with shampoos and soft-drinks.

Empowering parents via choice and improving the quality and availability of education via competition solves the problem of students dropping out of schools. When poor parents have trust in the education system, they will find it worthwhile to invest their time and effort and keep their children in schools. No amount of directives, pleadings, or threats from government ministries and agencies can achieve this worthy goal.

## **Conclusion**

Following the trend in other walks of life, the education sector must be deregulated so as to increase competition among suppliers. To further empower the consumers—the poor parents—education vouchers must be used to increase their purchasing power. The poor parents are deserting government schools in droves for they understand the futility of centrally planned education schemes. Government agencies and NGOs who are supposedly working to promote the cause of the poor must take a cue from them. They should desist from putting more hurdles in the path of the poor.

The government that failed in producing simple goods like bread and cement, how would the same government provide complex services like education efficiently? The government that could not till the land, how would the same government train the mind? The reasons that make government incompetent in the economic arena also make it inept in the social sphere. The bureaucratic approach would actually be more damaging in social ventures than it has been to the economy.

Lawmakers and organisations who champion a command and control education system can ignore the reality and persist on fabricating more and more complicated laws, designing more intricate layers of bureaucracies, and empowering the wrong people. They can continue to devise more complex and cruel punishments for 'erring' parents, teachers, or even bureaucrats.

The poor parents have already chosen their path of educating their children with or without government help. They are overwhelmingly choosing private schools—illegal, unaided or otherwise. The rest of us should respect their choice, follow their wise lead, and empower them to exercise their choice prudently.

Well-meaning NGOs that want to make quality universal education a reality have a definite role to play. Unlike the champions of the Free and Compulsory Education Bill, 2003 who are clamoring for more centralisation of the education system and for further erosion of the autonomy of private educational institutions, they should promote choice and competition. They could provide vouchers and scholarships to needy students. A privately funded voucher program would be a perfect demonstration project. They could set up agencies to rate schools and inform parents about their options. Such rating systems would also aid schools by providing information on where to improve. NGOs could research and develop better educational aids and curricula from which schools can choose. The avenues for such NGOs to help are endless. Clearly, foisting a failed system of government education or more government control on private schools will take us in the wrong direction. We must not forget the hard-learned lessons of the license-permit-inspector raj and must champion depoliticisation, deregulation, and decentralization.

As for *The Free and Compulsory Education for Children Bill, 2003*, the women and men of India who deeply care about the education and future of our nation's children, especially the poor ones, should pray that this Bill would be put to sleep deep within the confines of the education ministry. Real empowerment lies in the other direction: depoliticise, deregulate, decentralise.

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