



“Need to ensure that every child is in school under the Indian Right of Children to Free & Compulsory Education (RTE) Act”

1. **Key thematic focus of this submission:** This submission by CIVIC-Bangalore:
 - a. Examines the inadequacies in the formulation and implementation of the Right to Free & Compulsory Education Act 2009 (RTE Act) of the Government of India because of which more than 35 million children are still out of school in the whole of India; and
 - b. Reports on a pioneering initiative through a Public Interest Litigation (PIL) in the High Court of Karnataka State which enables the Fundamental Right to Education of all children by addressing the deficiencies in the RTE Act.
2. **Reference to 3rd UPR recommendations on India:** This submission is in response to the following recommendations made in the 3rd UPR Report on India:
 - a. Point 161.182 - Continue its efforts to ensure that all children have access to education at all levels and all categories (Lao People’s Democratic Republic);
 - b. Point 161.189 - Continue to ensure access to education for all, especially children of scheduled castes and tribes (Holy See).
3. **Background to India’s Right to Education Act as a Fundamental Right:** When the Indian Constitution was framed in 1950, free and compulsory education for all children 0 to 14 years was embedded in Article 45 which was only a Directive Principle of State Policy and not a justiciable right. However, it had prescribed a time-frame of ten years within which this goal was to be achieved. But free and compulsory education for all children 6 to 14 years was made a Fundamental Right by the insertion of Article 21A under Article 21, the Right to Life, in the Constitution of India through the 86th Amendment to the Constitution in December 2002, based on Supreme Court orders. The Right to Free & Compulsory Education Act (RTE Act) was passed by the Government of India in 2009. Hence, ensuring the Right to Education was not a mere Directive Principle of State Policy any more, but a justiciable Fundamental Right. So, it would mean that any child out of school is being deprived of its very Right to Life and ensuring the Right to Life is a mandatory duty of the State.
4. **Statistics on out-of-school children:** A news report in the Business Standard dated November 16, 2018, on a PIL seeking implementation of the Right to Education Act in the Supreme Court cited the figure of 35 million poor children who were out of school¹. Out-of-school children (OoSC) figures by UNICEF, UNESCO and the

¹ https://www.business-standard.com/article/current-affairs/don-t-expect-miracles-says-sc-refusing-to-hear-pil-on-rte-implementation-118111601083_1.html

government also vary from 9 million upwards. A Ministry of Human Resource Department (MHRD) document on “Guidelines for Special Training of OoSC” dated 8.10.2013 says there is a “high presence of SC, ST, street children, orphans/homeless children, migrant children, denotified/primitive tribal groups etc.” among OoSC.²

5. **No standard definition of an OoSC:** There is no standard definition of who is an OoSC in India as this varies from state to state. “A child 6-14 years of age will be considered out of school if he/she has never been enrolled..... or if after enrolment has been absent from school for a period of 45 days or more”, says the above-mentioned “Guidelines for Special Training of OoSC”. Karnataka, for instance, had a definition of a drop-out as: “*Any child remaining absent in excess of 60 days in any academic year..... and not presenting himself to school thereafter*”. In Gujerat it is absence for two months. Hence there are no reliable data on the exact number of OoSC. **But this points to the fact that no action was needed to be taken by any official to bring the child back to school over long periods of many months by the States.**
6. **Definition of compulsory education:** The term ‘compulsory education’ as defined in the RTE Act places an “obligation” on the government, among others, “to ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years”; and ensure that “the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds”.
7. **Poor implementation of the Fundamental Right:** Whether the number of OoSC is 9 million or 35 million, the fact remains that these are very huge numbers. The above statistics point to the fact that the situation on the ground has not changed as a result of a Directive Policy of State Policy being elevated to the status of a Fundamental Right. It is still ‘business as usual’ as even today:
 - a. The word ‘compulsory’ is being understood as mere ‘persuasion’ and if persuasion fails, the child is allowed to stay out of school;
 - b. No one is held responsible for this violation of the child’s Right to Life. The RTE Act holds no specific official accountable for ensuring that every child is in school;
 - c. The RTE Act imposes no penalties or punishment on any government official for a child out of school, though it is now a state responsibility to ensure that every child is in school.
 - d. There is no protocol prescribed in the RTE Act for any official to follow on how he has to ensure the Right to Education of an OoSC;
 - e. There is no mechanism prescribed to overcome the common reasons of economic, social and cultural barriers that prevent a child from attending school.

² https://www.education.gov.in/en/sites/upload_files/mhrd/files/upload_document/OoSC.pdf

- f. **So, despite the Constitutional Amendment and the RTE Act, free and compulsory education for all children continues to remain a “pious wish” and an inaccessible Fundamental Right for millions of children in the country, as statistics reveal.**
8. **Lacuna in the RTE Act:** The above is a result of the following lacuna in the RTE Act: Section 9(c) of the RTE Act says: “ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds”. But no mechanism has been delineated in the Act on how this is to be done.
9. **Only a ‘curative’ approach foreseen:** The only solution provided when a child is found out of school, as per Section 4 of the RTE Act, is as follows: “Where a child above six years of age has not been admitted in any school or though admitted could not complete his or her elementary education, then, he or she shall, in order to be at par with others have a right to receive special training....”. In a report to the High Court of Karnataka on 12.04.2019 in the suo motu PIL (WP 15768/2013), the Commissioner for Public Instruction refers to the Guidelines of the Ministry of Human Resource Development (MHRD) for mainstreaming OoSC. The MHRD Guidelines call for conducting surveys of OoSC once, at the end of the calendar year in December, and mainstreaming OoSC through ‘bridge’ and ‘remedial’ courses, usually held during the summer holidays. This means that children who were not enrolled at the beginning of the academic year, or who dropped out in between, will not be tracked until they become long-term drop-outs and hence require “bridging or remedial courses”, which is a “curative” and “rehabilitative” approach. The bridging programme is like bailing out water with a ladle while the boat is filling up through leaks. It is necessary to plug the ‘leaks’ first, otherwise any amount of bridging programmes will be futile.
10. **Remedy for the Lacuna - Suo motu PIL taken up by the Karnataka High Court in 2013:** Given the above context, a Public Interest Litigation (PIL) was taken up suo motu by the Karnataka High Court after a news report appeared in a newspaper, ‘The Hindu’, on 31 March 2013, titled “The Glitches that dog RTE implementation”, that 54,000 children were still out-of-school in Karnataka State despite the fact that Right to Free & Compulsory Education for children between 6 to 14 years was made a Fundamental Right. The Executive Trustee of this Contributing Organisation, CIVIC-Bangalore, impleaded herself in the suo motu PIL taken up by the High Court of Karnataka as party-in-person and has been making several submissions to the High Court of Karnataka and seeking directions to the State with the aim of getting the government to ensure that every child is enrolled, all are retained through a “preventive protocol” and all receive education as is their Fundamental Right.
11. **Main submissions made to the High Court by Contributing Organisation:**
- a. **Need to change the definition of a drop-out:** It is questionable as to why the various definitions of a ‘drop-out’ mentioned above have allowed such long periods when the child can stay away from school. It is not a Fundamental Right to education if a child can remain absent for 60 or more days out of

about 210 school working days with no action being taken 'as per law' to bring him/her back and is against the constitutional right of a child to continuous education. That the focus should be on prevention rather than on cure has been lost sight of. Hence, there is a need to bring uniformity in the definition of a 'drop-out' to a shorter duration as prevalent in other countries which have succeeded in ensuring compulsory education.

- b. Need for a 'preventive protocol' rather than a 'curative' rehabilitative approach:** Whatever the reason for a child being out of school, its fundamental right to education needs to be protected which ensures that the root causes of the child not attending school are addressed. Despite addressing the root causes, if a child still fails to attend school, it needs to be ensured that the child is in a formal learning situation, within the shortest possible time to fulfil the state's duty to ensure that all children are in school. The aim of the preventive protocol should be to make future bridging programmes unnecessary because no child will have been allowed to become a drop-out for such stretches of time that they will need bridging.
- c. Futility of curative approach of conducting bridging programmes:** Without a preventive approach, we will continue to conduct bridging programmes forever. Attempts focusing entirely on a curative approach of rehabilitating existing OoSC can only reach limited numbers of children due to the large numbers of children involved (in millions) and the period of 3-18 months required to rehabilitate them. The Education Department's aim of bringing in "*gradualistic and incremental improvements*", is inconsistent with the concept of a fundamental right, which requires immediate action.
- d. Need for an Attendance Authority:** To make the state accountable for the implementation of the 'preventive protocol', an official (Attendance Authority (AA) needs to be appointed for every rural/urban administrative unit who will be responsible for bringing all children to school. The RTE Act does not also impose any penalties/punishments on any official for a child out of school – for violating its Right to Life.
- e. Need to assist parents of vulnerable children:** Several studies indicate that parents and children have cited economic compulsions as the main reason for children dropping out. The RTE Act has no solution to address this problem. The Karnataka RTE Rules of 2012 at Rule 4(9) merely states, for instance, that: "*The CPI (Commissioner for Public Instruction) or Local Authority shall ensure that access of children to the school is not hindered on account of social and cultural factors*". But there is nothing further in the Rules to say how the CPI or Local Authority has to achieve this. Current scholarships given by the State are too meagre to act as deterrents to a child dropping out. An alternative Scheme suggested by CIVIC-Bangalore is attached as **Annexure**.
- f. Jaap E. Doek, former Rapporteur of the UN Committee on the Rights of the Child and later its Chairman, stated in an interview to this writer in 2001 that**

when parents are poor, *“the state should develop the criteria for eligibility upon which poor parents are to be assisted in fulfilling their duties to their child.”*

12. Results of the PIL: As a result of her submissions, several directives have been issued to the State government by the Hon’ble High Court of Karnataka and several changes have been brought about. Some of the achievements this PIL resulted in are:

- a. A change in the definition of a ‘drop-out’ was brought about from ‘a child that is continuously absent for 60 days’ to a ‘child that has unexcused absence of seven days’;
- b. Education Coordinators were appointed as “Attendance Authorities” to ensure accountability of the state for every child out of school;
- c. Establishment of a time-bound protocol to be followed by the “Attendance Authorities” for bringing all children, who had unexcused absence of seven days, back to school;
- d. Karnataka State’s RTE Rule 6 on ensuring that all children are in school was amended to add sub-rules 6A, 6B, 6C and 6D which prescribe the protocol to be followed by Attendance Authorities which would fulfil the state’s responsibility to ensure the Fundamental Right to Education of the child;
- e. A directive was given by the Karnataka High Court to frame a “State Policy for the Education of Migrant Children”;
- f. Committees were set up at Block and District levels to ‘Monitor the performance of the Attendance Authorities’, to be also reviewed at the State level.

13. Details of Amendment to RTE Rule 6 of Karnataka State:

- i. **Rule 6A:** Education Coordinators in every cluster designated as Attendance Authority (government official) to be accountable for ensuring 100% UEE.
- ii. To prepare list of all eligible children from the Village Education Register and Municipal Ward Education Register and notify all parents one month before school opens that they are under obligation to send their eligible child to school.
- iii. **Rule 6B:** If child fails to come to school after 7 days of the school re-opening or is absent for seven days, Attendance Authority to conduct an enquiry on reasons for non-attendance within the next 3 days. If no reasonable excuse for non-attendance exists, to issue Attendance Notice to parents.
- iv. **Rule 6C:** Reasonable excuses for non-attendance are if the child is enrolled elsewhere or has been given leave of absence, etc.;
- v. **Rule 6D:**
 - If a child fails to come to school even after Attendance Notice has been issued, the Attendance Authority, along with local body members, NGOs, etc., to counsel parents.
 - If counselling too fails, Attendance Authority to issue an ‘Attendance Order’ to parents to appear before Child Welfare Committees (CWCs) established under the Juvenile Justice Act (JJ Act).

- CWCs to conduct enquiries and provide suitable assistance to the family by sanctioning conditional benefits based on eligibility;
- if the child still fails to come to school, CWC to consider the child as a “child in need of care and protection” under the JJ Act, take charge of the child and admit it to a free government residential school; or send it to a fit institution, foster home, etc. under JJ Act.

14. **Impact of PIL:** As a result of this PIL and protocol being drawn up, more than 160,000 children were brought back to school in Karnataka State. Through this on-going PIL, continuous pressure is being applied on authorities to move towards strict implementation of the above protocol to ensure the Fundamental Right to Education of each and every child in Karnataka where no child will be out of school.

15. **Other States bereft of this protocol:** Since such a protocol is missing in the RTE Act itself, and in the RTE Rules of various States, this lacuna has led to more than 35 million children remaining out of school in the whole of India as of 2018, as per a PIL in the SC, despite the RTE Act passed in 2009.

16. **Prayer:** This submission is being made to the UN Rights Council to direct the Government of India, through the Universal Periodic Review (UPR), to fill this lacuna in the RTE Act and Rules, by incorporating the measures taken in Karnataka into the RTE Act and enable the Fundamental Right to Elementary Education of all children of six to fourteen years in all other states of India.

17. **Fulfilment of UNCRC provisions:** For the first time in the country, the above measures undertaken in Karnataka State build into the State RTE Rules the provisions of the UNCRC, especially Articles 9, 18, 19 and 20, which India has ratified and is mandated to follow. But these are missing in the RTE Act. The amended Rules (insertion of Rules 6A, 6B, 6C and 6D) issued by the Karnataka Government are herewith attached as **Annexure** to serve as a model for the entire country.

Annexure-1 – Amendments to Karnataka RTE Rule 6A to 6D
Annexure-2 – Alternative scholarship scheme suggested by CIVIC