

# THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

## Judicial Intervention in Policymaking: The Uniqueness of Right to Education in India

**Mamta Viswanath**

Research Scholar, Savitribhai Phule University of Pune, Ganeshkhind, Pune, Maharashtra, India

### **Abstract:**

*This paper underlines the importance of Right to Education (RTE) as a public policy in education and indicates at the unique way of policy-making in India. A Judge-made law known as the Unnikrishnan Judgement, 1993 initiated policy-making. Literature survey of work in Education demonstrates that the available information and body of research chiefly dwell on the theoretical aspect of Education and are broadly from educational, legal, sociological, philosophical and economics perspective. It does not consider policy implications and fails to highlight what kind of positive changes legislation can bring about in education. This paper attempts to fill this gap. Past policies in education, NPE 1968 and NPE 1986 are evaluated to find shortcomings at policy level. The RTE is briefly analysed and some policy options available using Amartya Sen's Capability Approach and best suited to education are suggested for effective policy-making.*

**Keywords:** Right to education, public policy, fundamental right, elementary education, policy-making

### **1. Introduction**

The Right to Education is the latest fundamental right given by the Constitution of India to its citizens.<sup>1</sup> It is one of the important avenues for promoting India's development. India became one of 143 countries to guarantee the Right to Education to the children of 6-14 years of age on 1st April 2010. A unique constitutional phenomenon took place when for the first time a right from part IV (Directive Principles of State which are not enforceable in courts) was put in part III and made enforceable as a fundamental right. Directive principles of state policy<sup>2</sup> are a set of instructions flowing from the sovereign people of India to the state directing it to do make specific arrangements towards welfare. These are fundamental principles to be followed by the state when devising public policies. These are binding on the legislature, the executive and also the judiciary but are not legally enforceable. It means that if a state fails to take into account any of these principles while formulating a policy or violates a principle in day to day administration or fails to protect the people's rights connected to a certain principle; no one can take a legal recourse as redress. As these principles are not valid legally and not enforceable in any court of justice they are known as mere pious aspirations of the founding fathers of Constitution of India. Thus with RTE a new beginning has been made in the direction of legally recognizing socio-economic rights.

The Right to Education Act is one of the first legislations in the world which makes the government responsible for ensuring enrolment, attendance and completion of elementary education. The provision of reservation of 25% seats at first standard level for the disadvantaged groups at even unaided and private schools are a major pro-poor step. Under this provision the elite government schools like Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools and the private schools will have to provide a 25% of seats in class 1st starting from the academic session of 2011 free of cost for the children belonging to the disadvantaged and the weaker sections.<sup>3</sup> The fees of these children will be borne by the government. Till they complete elementary education, which is eighth standard, their parents would not have to spend on education. For the first time the Government of India has come out of the self-imposed restriction of giving reservation on the basis of one's caste. This has been a case of 'radical social engineering' with the aim to make a more 'egalitarian society'. The affirmative action is based on the principle of 'social integration'.

Education is one of the most important Human Development Indicator and acts as the mirror to the nation's progress. India is ranked at a low 134th among 187 countries in terms of Human Development Index. ([www.hindustantimes.com/...human-development-index/Article1-764](http://www.hindustantimes.com/...human-development-index/Article1-764), 2nd Nov 2011). This necessitates a comprehensive study from a public policy perspective to find solutions to an unacceptable malaise. According to Thomas Dye, whenever there is political or social crisis, it is the moral duty of the political

<sup>1</sup>Original fundamental rights bestowed by the Indian Constitution are Right to Equality (Articles 14-18), Right to Freedom (Articles 19-22), Right against Exploitation (Articles 23 and 24), Right to Freedom of Religion (Articles 25-28), Cultural and Educational Rights (Articles 29 and 30), and the Right to Constitutional Remedies (Article 32).

<sup>2</sup>The Directive Principles of State Policy are inspired by the Irish Directive Principles of Social Policy.

<sup>3</sup>Chapter IV, Responsibility of Schools and Teachers, Section 12, (b) and (c) of RTE Act 2009

scientists to suggest appropriate public policies. Apart from this, the policy studies can also be applied and used to inform political discussion, promote political awareness among masses, and add to the effectiveness of public policy (Dye, 2002). The Right to Education can bring significant benefits to the individual and the country as a whole. It is not only a right in itself, but also an enabling right. If people have access to education, they develop skill, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of rights that they hold and government's obligations. It promotes peoples' communication skills to demand these rights, the confidence to speak in various forums, and the ability to negotiate with a wide range of government officials and power holders. (Millan /Action Aid) Legislation makes education and schooling a justifiable right which means that people can seek judicial remedy if access to education is not provided by the government. No central or state government can ignore education anymore and are bound to make adequate financial and administrative support to provide equitable and quality education.

### *1.1. Defining RTE*

The Right to Education can be defined as a fundamental right which can be claimed by a citizen and the government can be held accountable if access to education is denied. The Right to Education means that all those who do not have access to education have been violated and discriminated against. The Right to Education means that governments and international communities can be held accountable for not providing access to education. (Taylor /Action Aid) According to the Amman Affirmation, 1996, the Right to Education is the right to participate in the life of the modern world through access to education. For education to be a meaningful right it must be available, accessible, acceptable and adaptable. The concept of these 4A's was developed by the former United Nations Special Rapporteur on the Right to Education, Katarina Tomasevski, and it is one of the best ways to assess education as a right and act whenever and wherever violations take place.

By Availability it is meant that education is free and government-funded and that there is adequate infrastructure and trained teachers able to support education delivery. By Accessibility it is meant that the system is non-discriminatory and accessible to all and that positive steps are taken by the government to include the most marginalized. By Acceptability it is meant that the content of education is relevant, non-discriminatory and culturally appropriate, and of quality, that the school itself is safe and teachers are professional. By Adaptability it is meant that education can evolve with the changing needs of society and contribute to challenging inequalities, such as gender discrimination, caste discrimination and that it can be adapted locally to suit specific contexts. (Tomasevski, 2001)

### *1.2. Status of Right to Education at International Level*

The Right to Education has been universally recognized since the Universal Declaration of Human Rights in 1948. Article 26 of the Declaration proclaims that: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among racial or religious groups..." The Right to Education has been enshrined in various international conventions including the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), 1979, and The Convention of the Rights of the Child (CRC), 1989. Vast majority of countries have signed up and ratified UN conventions on the Rights of the Child and 76 countries give full constitutional guarantee to the Right to Education, 28 countries give partial constitutional guarantee to the Right to Education. (Annual Report of Special Rapporteur on the RTE, U.N 2001) Many countries have provided legislative and administrative frameworks to ensure that these rights are realized in practice.

- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 Articles 13 and 14 of the covenant detail formulations for the right to education. Article 13 contains a general statement according to which everyone has the right to education and that education should contribute to the full development of the human personality. Article 14 requires each state party that has not been able to secure compulsory primary education free, to undertake, "within two years, to work out and adopt a detailed plan of action for the progressive implementation ... of compulsory primary education free of charge for all."
- Convention of the Rights of the Child (CRC), 1989 Articles 28 and 29 of the Convention of the Rights of the Child deal with the right to education. Article 28 specifies that school discipline should be administered in a manner consistent with a child's human dignity. Article 29 stipulates that the education of the child shall be directed towards the development of the child's personality, talents and mental and physical abilities to their fullest potential.
- The Convention on the Elimination of All forms of Discrimination against Women (CEDAW), 1979 Article 10 contains provisions for equal access to career and vocational guidance and to studies at all educational levels; access to the same curricula and examination; elimination of stereotyping in the roles of men and women, also the same opportunities to benefit from academic scholarships.

### *1.3. Regional Instruments*

The right to education is recognized and guaranteed under several regional human rights instruments also including the African Charter on Human and Peoples' Rights (Art. 17), African Charter on the Rights and Welfare of the Child; the American Declaration of the Rights and Duties of Man (Art.12) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (Art.13); the European Convention on the Legal Status of the

Migrant Workers (Art. 14 & 15); and the Framework Convention for the Protection of National Minorities (Art. 13 & 14) .(Morka, U.N)

Most of the countries giving constitutional right of education have followed the strategy of official legislation first and actual reforms second. A good example is Mexico. On the other hand, some countries like Nicaragua implemented important changes in school governance with hardly any legal framework. Both of these strategies have benefits and shortcomings. (Gershberg ,1999 ). According to the political setup and social conditions of the country a specific approach to educational reforms may be adopted. Another example of right to education guaranteed by constitution is South Africa (1996, Constitution), section 29. (Berger, 2003).The Constitution of Ireland guarantees not only primary but elementary as well as secondary education through Article 42. The Right to Education is bestowed by the Belgian Constitution through Article 24 and the Dutch Constitution through Article 23.<sup>4</sup>

#### *1.4. RTE in India*

India is a signatory to three key international instruments that guarantee the right to elementary education – Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966 and the Convention on the Rights of the Child, 1989. Article 21A of the Indian Constitution guarantees every child between the ages of 6 to 14 with a fundamental right to education, which the State shall provide ‘in such manner as the State may by law, determine’. Several bills have been drafted in order to implement Article 21A, but could not be passed. Finally, the RTE Bill 2009 was passed and came into force with effect from 1st Apr 2010. So far, in India educational reforms have been made without a legal framework. With the RTE legislation a much needed legal framework is drawn.

## **2. Methodology**

This study draws from the research work to evaluate the changes in school education with the implementation of Right to Education Act, 2009. 50 non-structured informal interviews with important stakeholders in school education sector including teachers, school principals, SarvaShikshaAbhiyan officials, teacher-training instructors, research scholars, parents and educationists were conducted. Primary data regarding present status of school education, implementation of Right to Education in last three years, shortcomings and possible positive outcomes was collected from 90 respondents through school surveys using a detailed questionnaire and direct observation. Secondary material was gathered from research journals, books and worldwide web.

The selection of schools to be surveyed for the purpose of this research study was done with the objective of arriving at a sample which is fairly representative of different kinds of schools-government schools, government-aided schools and private schools, city schools, schools situated at the outskirts of city limits and schools situated in slums. Both at Pune and at Guwahati a random sample of schools was prepared. A total of thirty schools have been selected –20 in Pune city [Maharashtra] and 10 in Guwahati metropolitan area [Assam] for periodic surveys and study. These are a mix of Private, municipal schools, elite or convent schools, Kendriya Vidyalayas, government schools and provincialized schools [Assam]. Also, the medium of instruction ranged from Hindi, English, Marathi, and Assamese to Bengali. The study attempts to find out the ways in which the RTE is unique and different from the previous policies; what were the reasons NPE 1968 and NPE 1986 failed to achieve their set targets and what are the implications of judicial intervention in policymaking.

## **3. Literature Review**

Prominent writers and scholars like Niranjana Aradhya and Aruna Kashyap, Anjini Kochar, G. Sadasivan Nair, Shantanu Gupta, VijayshriSripati and Arun K. Thiruvengadam, L.C Jain, Pankaj S. Jain and Ravindra Dholakia, Praveen Jha and PoojaParvati, R.M. Pal, Vinod Raina, Krishna Kumar, Anil Sadgopal, to name a few, have extensively worked in the field of education. Gradually, quite a lot has been written regarding RTE but for the fact that a vast majority of research brings forth insights from education, law, economics and sociology perspective. Kochar writes about various emerging challenges for Indian Education Policy (AnjiniKochar, 2001). Nair comments on right to education and judicial activism (G.Sadasivan Nair, 1977). Gupta attempts to find out the different strategies and approaches to realize right to education in India (Shantanu Gupta, 2009). Jain and Dholakia demonstrate the feasibility of implementation of RTE Act (Jain and Dholakia, 2009). Pal asserts that to deny Right to Education amounts to human rights violation. (R.M. Pal, 2001)

Aradhya and Kashyap attempt a comprehensive study of RTE in making as a constitutional right. The authors detail the history of evolution of elementary education beginning from the pre-independence era to the 2006 model bill on RTE. A framework based on human rights perspectives is outlined and suggested for elementary education promised as a fundamental right by the Indian Constitution to the children of the ages between 6-14 years. This framework is inspired by the works of Katarina Tomasevski, former UN special rapporteur on Right to education and AsbjornEide. (Aradhya and Kashyap, 2006)

Anil Sadgopal, as the co-president of All India Forum for RTE, sent an appeal letter to the President Mrs.PratibhaPatil requesting to send the bill back for amendments. He was of the view that the bill diluted free education and denies free education to children compelled to go to private schools on account of low quality provisions of the government schools. The bill failed to integrate disabled children into regular schools. It would also promote the free-market, school voucher and PPP through 25% reservation of seats in private schools. (Anil Sadgopal, 2009a) Why cannot the government take full financial responsibility instead of making reservations? This had been a persistent question in the educational debates. (Anil Sadgopal, 2009b)

<sup>4</sup>See [www.st-ab.nl/wetgrondwet.htm#23](http://www.st-ab.nl/wetgrondwet.htm#23)

Jha and Parvatianalyse the reasons for the government to drop the 2006 bill was strong lobbying and opposition by the private schools against the provision of 25% reservation of seats without fees. In any case, dropping the bill also amounted to legislative fraudulence as the Model Bill is not legal and cannot be enforceable. It did not have the features of the Common School System, which could ensure uniform quality education for all. Also no suggestions were made to amend the Child Labour Act, 1986. (Jha and Parvati, 2010)

Sripati and Thiruvengadam trace the constitutional history of RTE underlining significance of Article 45 and efforts to implement it. The Supreme Court finally took the initiative in this direction and the constitutional amendment bill 1993 was brought. The new development was heavily criticized by the NGOs, civic groups and various other institutions. (Sripati and Thiruvengadam, 2004)

Apart from these recent works in education regarding the RTE various scholars from different fields have studied school education issues at national and international level. Gunther and Hohenmaier make a comparative study of social and educational policies in advanced industrial societies. He finds that education in most of the western societies is accepted as a major entitlement. In the United States public education plays a major role towards welfare policies. Public education, thus improves people's quality of life and also promotes nation's socioeconomic development. (Gunther and Hohenmaier, 2002)

Research by economists brings out the relation between education and public subsidy. This free education is in effect going to perpetuate social disparities. The whole mechanism favours students from well-to-do families who can afford direct cost of preparation for exams and indirect cost of forgone earnings while the student is at school. (Psacharopoulos, 1977) Also, field level cross-country study reveals that subsidy at the first level of schooling seems to be an equalizer, but at the second level it is not equalizing in the Less Developed Countries. (Rati Ram, 1982)

Sharma underlines the fact that lack of professionalism affects not only the quality of the whole schooling institution but also the process of education delivery. (Sharma, 2000) Tilak examines the financial and material incentives provided by the Indian government. It is found that this public provisioning is plagued with various ills and huge gaps persist on the basis of gender and region. (Tilak, 1996)

Santosh Mehrotra refers to the 1990 meet at the Jometien, Thailand, where developing countries committed to achieve Universal Primary Education by 2000. This aim could not be achieved as in the year 2000 about 145 million children were out of school. Yet there were few high achieving countries which could improve access to basic social services, health and education. He studies ten countries - Cuba, Costa Rica & Barbados, Botswana, Mauritius & Zimbabwe; Kerala and Sri Lanka, Malaysia and the Republic of Korea, already examined by the UNICEF. There are common elements of education policy fuelling these countries' development and also lessons for other countries to learn from. In all these countries the state supported basic social services and there was a synergy noted between health and educational interventions. But all the policies adopted by the high achievers have been ignored by other countries. (Mehrotra, 1998)

Eric A Hanushek asserts that around the world the governments have been increasing investments in schooling through inputs like lowering class- sizes or tightening the requirements for teaching qualification. In the bargain, incentives within the schools have been ignored resulting in continued quality problems. This is a clear contrast between input policy and output or incentive policies. This incentive policy is of three types—merit pay for teachers; privatization or contracting arrangements with rewards based on outcomes and expanded choice of schools by the students. (Hanushek, 2003)

Krishna Kumar notes tendencies of children dropping out of primary and secondary stages, dominant and economically stronger sections of society using states resources to consolidate their dominance and the system which protects class interests. (Krishna Kumar, 1998 a)

Keith Watson has noted that history of colonialism made many countries of the European Economic Community face an influx of immigrants/workers from South Europe, North Africa, the Caribbean and the Indian sub-continent. In these multi-cultural societies there is a growing concern of the need to provide equal educational opportunities as it is considered a human rights issue. The Soviet Union, India and China didn't have to deal with sudden influx of immigrants but had diverse ethnic, religious, linguistic and cultural minorities within their country for several centuries. Here, the state decentralized power and administration to provincial states. But in countries like Malaysia, Indonesia, Thailand, United States of America, Canada, and Britain it is concluded that there can be no common policy towards education in multicultural societies since they vary in their origins and their problems. (Watson, 1979)

C H Dobinson, while studying the UN's stand on education reported that the delegates of smaller countries at UNESCO's first General Conference (1946) had emphasized the need to educate the illiterate and poor parts of the world. Gradually the allocation of funds on education increased. Fundamental education is the minimum education aimed to help children and adults who could not have formal education, to understand their immediate environments, rights and duties as citizens and to participate more effectively in the economic and social progress of the country. (Dobinson, 1953)

Desai says that children dropping out of school and not even completing primary school are a harsh reality in India. High drop-out rate reflects badly when compared to other Asian countries like Malaysia and Sri Lanka where almost all children complete primary schooling. As educational supplies influence the academic performance heavily the policies need to subsidize these provisions and also include free mid-day meals, uniforms and text-books to keep children in school as long as possible. (Desai, 1991)

Krishna Kumar found that in the Indian education system limited space is given to the teachers as the text-books are central to the system. All subjects need to be taught following a text-book and teacher must complete the prescribed syllabus in time. Other resources are not available in majority of schools or the teacher hardly gets to use these as they might get damaged etc. Final assessment is also made during year-end exams based on the text-book only. Teachers' grounding in modern child-centred pedagogy and improvements in infrastructure of schools can dilute the text-book culture and improve quality of schooling. (Krishna Kumar, 1988 b)

Sandhya Sangai details the aim of SarvaShikshaAbhiyan which was to sustain the gains of District Primary Education Project and to accelerate the rate of access, enrolment, retention and achievement of children. Various strategies helped raise the achievement levels of children in fundamental subjects like math and languages and provided self-appraisal mechanism and also got success in getting support from the community. The experience gained from Children Language Improvement Program provided basis for launching CLAPS, Children Learning Acceleration Program for sustainability and READ [Read Enjoy and Develop]. (Sandhya Sangai, 2008)

Rajiv Bansal found that like any other state in India, Nagaland was plagued by various problems in its education system. The government of Nagaland enacted the 'Nagaland Communitisation of Public Institutions and Services Act 2002', to cover power, water, health and education. The act empowers the community to own, manage and control government schools as their own by vesting them with legal powers and responsibilities. The Educational Quality Improvement Program [EQUIP] a joint partnership venture of Government of Nagaland and UNICEF was launched in August 2002 to bring qualitative improvement in school education. The program of communitisation was a big success and was dovetailed with SarvaShikshaAbhiyan to become ideal vehicle for its effective implementation. (Bansal, 2005)

Birger Frederickson discusses the Universal Primary Education and the progress made by developing countries in achieving this goal during 1960-80. Despite growth in enrolment, the goal of UPE has not been achieved because of high population growth, high levels of repetition and drop-out. At this rate it is felt that the goal of Universal Primary Education would not be reached by the end of the century. The situation in terms of capacity of schools vis-a-vis population growth is assessed. To reach Universal Primary Education before year 2000, many countries will have to reduce unit costs of primary education. (Frederickson, 1983)

Subbarao and Raney examine the role of female secondary education to and in combination with health family planning programs along with policies which reduce fertility and infant mortality. The analysis shows that female secondary education, family planning and health programme all affect fertility and mortality and the effect of family female secondary education is very strong. (Subbarao and Raney, 1995)

Mary Arends-Kuenning and Sajeda Amin have studied Bangladesh, one of the first few countries to implement school incentive programs. In Food for Education, poor families were given wheat so that their children attend school. Secondary School Scholarship Program, funded by the World Bank was meant for girls attending secondary school. They were paid cash stipend monthly and their fees were waived and further, their parents must promise not to marry them off before the age of 18 years. The impact of these programs was positive on gender disparity and child labour. (Kuenning and Amin, 2004)

Thus, this literature review reveals some relevant studies in RTE and many more in education in general, though not necessarily from a public policy perspective. Various issues regarding achieving universal primary and elementary education, schooling costs affecting poor, teacher training, professionalism in teaching, dependency on text-books, problems of multi-cultural societies, education as an entitlement and a human right, importance of female education, decentralization and the like are discussed in isolation. On the other hand the literature regarding RTE is mainly critical about the policy content and poor infrastructure which poses a big challenge for effective implementation of otherwise a good-intentioned policy.

### 3.1. Theoretical framework- The Capability Approach

Nobel laureate Amartya Sen has developed the Capabilities Approach<sup>5</sup> which can assess the success of development initiatives and social policies. He states that it is essential to go beyond the conventional development targets and measures of success [e.g. in the form of commodities, goods and services] to evaluate improvements to human potential. According to this perspective, development is the process of developing the capabilities of people by increasing the options available to them. Capabilities of people can be multiplied by focusing on the freedoms realized through the conventional outcomes rather than just on the outcomes themselves. The freedoms generated are their new capabilities which can help them in choosing a life they want. The stress is laid on the individuals and their options. This approach turns development results into means for development rather than ends to development. (Sen, 2000)

In analysing the right to education, he argues that even though formal guarantee of human right to education is given, it can remain unrealized in countries where factors like custom, choice, inhibition or expectations from the girls can hinder their school attendance. (Sen, 2000, p. 632-651) It offers grounds for positive obligations on the part of the government of that of assistance and aid on one hand and negative obligations of omission and restraint. When the 'capabilities freedoms' are recognized and valued, the other associated claims on others to respect, to defend and to support 'capability freedoms' can be made.

According to Sen, poverty is 'capability deprivation' when seen and understood from a broader perspective. As education is itself a 'capability' and central to realising all other capabilities and also as education when seen from the viewpoint of equity and rights calls for government action; this is the only way to tackle poverty. Market mechanism cannot ensure equity or protect rights so the government has to take the prime responsibility of providing school education. He goes on to explain the importance of article 45 of Indian Constitution [Directive Principles] asserting that these rights strengthen the bargaining power of the disadvantaged and further the values of solidarity and citizenship. (Dreze and Sen, 2002)

<sup>5</sup>Though not a fully developed theory, the Capability Approach is a useful paradigm in assessing social policies and has been employed by various scholars. See Clark, DA, 2005, The Capability Approach: Its Development, Critiques and Recent Advances, Global Poverty Research Group, Economic and Social Research Council, GPRG-WPS-032, University of Manchester, U.K. Also see Vizard, P, 2005, The Contributions of Prof. Amartya Sen in the Field of Human Rights, Centre for Analysis of Social Exclusion, CASE, paper 91, London

The capabilities of people can be maximized through capacity building initiatives by the government. The policymakers have to find out ways by which community experience can be utilized at all levels of policy-making process. Also important are the ways in which the policy-making processes may help in building capacity of all social sectors so that these support one others' activities and aim towards more effective policy-making and good governance. Capacity building is concerned with the ways the citizens can come together as a community to actively participate along with the government agencies and policy makers in discussions as well as problem solving. (Dodd and Boyd, 2002) The community doesn't sit outside the ring as a special interest group lobbying for its interests but comes forward to 'doing and shaping the course of action' with the government.

The main strengths of this approach are in offering a broad informational base of evaluation, emphasis on people, deliberative democracy, public participation in making goals, making choices and shaping policies.

### 3.2. *Evaluating NPE 1968 and NPE 1986*

The past helps us to understand the present. Before we begin to describe the current education policy, it is important to look into the past policy and trace the evolution to the present day. This historical analytical method will also help us to understand how the policies were formulated; the institutions and people responsible for the policy making process; impact of the policies on the society; how effective or successful were the policies; and what were the reasons for failure. This understanding is essential to appreciate the evolution process as well as the need for reforms and changes. The present system of education originated during the British Raj in the beginning of the 19th century. This formal schooling system was primarily established to produce a literate workforce, easy to communicate with and administer upon. Stress was laid on basic numeric skills and English language. This served their purpose as this system could supply them with lower level administrators, clerks and a military convenient to train as well as maintain economically. As the aim was to serve their own interest, least attention was paid to the areas of access to and expansion of education.

Under the chairmanship of Dr. D.S Kothari in 1964-65, an Education Commission was appointed by the government to advice on national pattern of education. This was the first education commission of independent India which dealt with education as a whole and emphasized on the role of education in national reconstruction. The National Policy on Education, 1968 was the first coherent policy of Indian government on education. A noteworthy recommendation of this policy was the concept of a Common School System. According to the report a Common School System of public education should be functionalized in the place of the present system which divided the management of schools into a large number of bodies whose functioning had been proving to be inadequate. The move was to bring different kinds of schools –government and government –aided under one common system. This was thought to level the prevailing disparity in educational access and in the long term would go on to transform the Indian society. The aim was to provide education of equitable quality to the masses .The commission criticized the public schools and stated:

“The system of schools largely reserved for those who have the capacity to pay high fees was transplanted in India by the British administrators and we have clung to it so long because it happened to be in tune with the traditional hierarchical structure of our society.” Further it noted that “what is worse, this segregation is increasing and tending to widen the gulf between the classes and the masses”.

A review of the status of education system was undertaken by the Ministry of Education along with the National Institute of Educational Planning and Administration. This was initiated with deep interest by the then Prime Minister, Mr. Rajiv Gandhi. There was a nation-wide debate on different aspects of education and the need for reforms. A status paper, 'Challenge of Education-A Policy Perspective', was circulated by the Ministry of Education, Government of India with the aim of reviewing the present system of education. The Policy paper was also discussed in the parliament. This resulted in the implementation of National Policy on Education 1986. The NPE 1986 and its revised policy formulations [1992], envisaged the goal of Education for All. The Ministry of Education was renamed as Ministry of Human Resource Development. Efforts were made towards a National System of Education with common education structure and internalize an elementary education i.e., 5 years of primary education, 3 years of upper primary or middle school and 2 years of high school or secondary school. The education was to be based on a National Curriculum Framework. The common core of this framework included history of India's freedom movement, the constitutional obligations to promote India's common cultural heritage, egalitarianism, democracy and secularism, equality of the sexes, protection of environment, removal of social barriers, and observance of the small family norms and inculcation of the scientific temper. The central government launched the SarvaShikshaAbhiyan in 2001 with the goal to universalize primary education by 2007 and elementary education [grades 1-8] by 2010. Specific aims of SarvaShikshaAbhiyan were to bring all children to school through formal schools as well as Education Guarantee Centre, Alternative Schools or 'Back to School' camp by 2005. It was felt urgent to bridge all gender and social gaps at primary stage by 2007 and elementary education level by 2010. The school system would work towards universal retention by 2010. The public policy models adopted by the Indian governments have been based on bureaucratic and public choice model (Mishra,1998). The bureaucratic model looks at public policy as a continuous process to address the needs of people. This model serves good in attending to routine problems. But it fails when socio-economic and political issues requiring high involvement of bureaucrats as well as politicians come up for trials.

### 3.3. *Input-Output Model*

The Input- Output model of public policy as shown in Fig.1 was used in the later years wherein demands are placed and support is extended in the form of political socialization, interest groups activities and political dialogues. This model was extensively in use till 1990s as there had been tremendous increase in the number of interest groups and political parties.

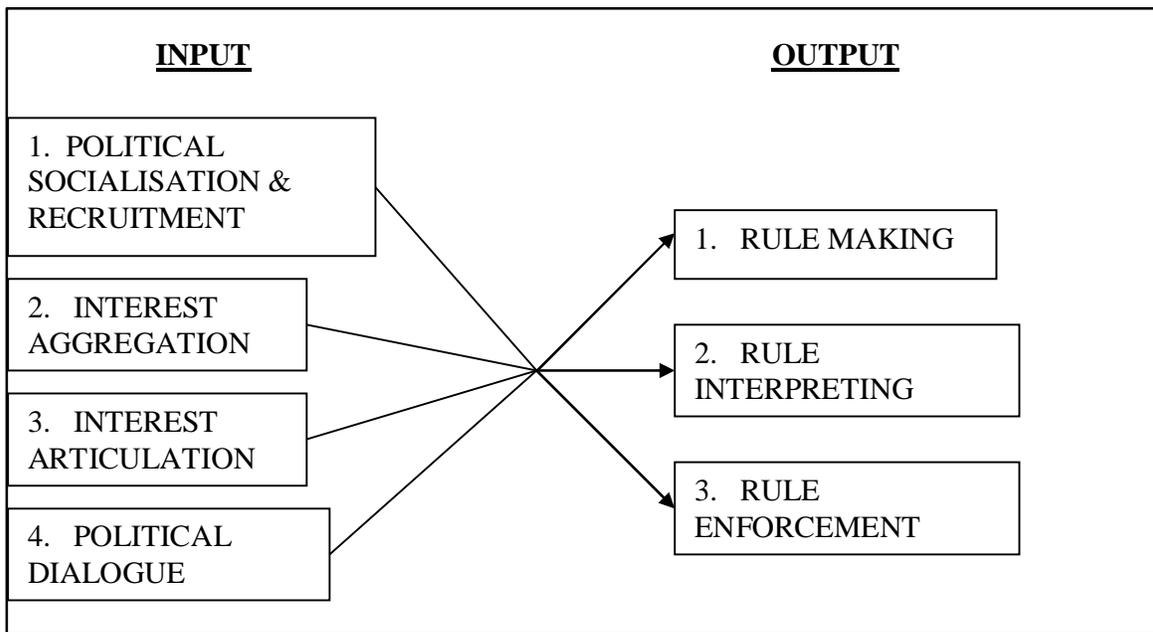


Figure 1: INPUT-OUTPUT MODEL (Mishra, 1998, p.117)

3.4. Feedback Model

The Feedback model as shown in Fig.2 details the informal side of policy-making process as well as its implementation. Here, the factors like demands, resources and support emanating from the political parties are taken as inputs, and policy outcomes in the form of decisions, impacts and actions are taken as outputs. In India, this model has been used for public policy formulation and implementation.

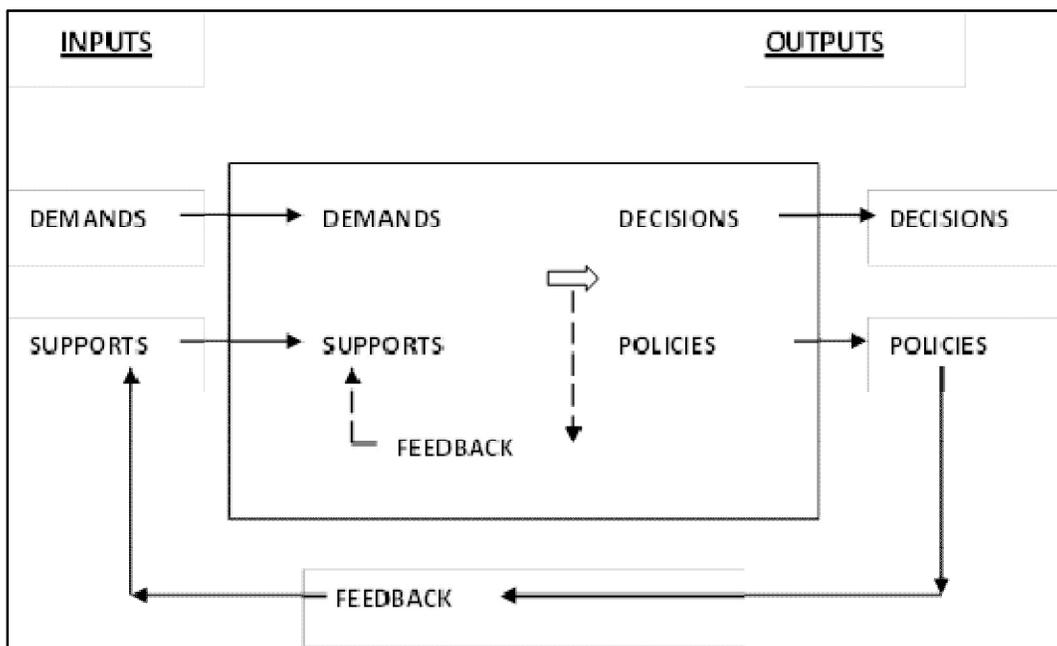


Figure 2: FEEDBACK MODEL (Mishra, 1998, p.117)

By using these models the whole policy-making and implementation suffers a setback as the approach is wrought with problem of high degree of informality. This informal attitude prevents fuller comprehension of the policy processes. To improve schooling system we have to understand the relationship between income, productivity and economic growth and the quantity of schooling of individuals. The government under public pressure has been gradually increasing investment in school education through inputs like opening new schools, strengthening the infrastructure, providing mid-day meals etc. But these are not adequate and ignore the incentives within the schools (Hanushek, 2003). This has resulted in continued policy failures as the system has not been able to attract adequate number of professionally qualified teachers. Teachers being important pillars of the system have been totally ignored.

### *3.5. Reasons for Policy Failure*

#### 3.5.1. Outdated Truancy Model of Education System

As the schooling system during the pre-independence was meant to cater to the requirements of the British administration and access was limited to a few, strict policing was used. The students' absence was punished severely with fines as well as physical beatings. In this truancy model, provisions are made to monitor and punish defaulting children and parents. In the whole process the cause for truancy is not tackled with as the state/government does not take upon itself to redress the root cause of truancy, i.e., poverty. Rather it was one of the ways to ensure that the access to education is limited. This should have changed after independence as India had its own democratic government. To the dismay of many, Indian governments continued to follow the same model with only incremental changes. The schools were still concerned with monitoring attendance rather than providing enabling environment fit to realize universal primary/elementary education by tackling problems of child labour, child marriage, inadequate housing facilities, malnutrition, unemployment etc. This model is outdated and doesn't fit in with the independent and welfare state's agenda of nation's development. Also, it is not consistent with a rights-based approach to education.

#### 3.5.2. Incremental Policies

Existing programs and policies are considered as a baseline and so the new programs or policies just increase provisions, decrease or modify the current program. Policy options and responses are based on uncertain information as the problems are ever-changing. The situation is such that one right solution cannot be found; further marring the chances for major reforms. Only policy adjustments can be brought about and revised time to time. The gradual increase in investment in school education through inputs like opening new schools, strengthening the infrastructure, providing mid-day meals has not brought about desired results. (Hanushek, 2003)

#### 3.5.3. Lack of Requisite Information

When the planners and policymakers don't gather required information they cannot assess the situation very well, neither can they relate education to issues like social transformation and human resource development. Piecemeal approaches like Operation Blackboard, District Primary Education Program, and Sarva Shiksha Abhiyan can only bring marginal improvements whereas the requirement is of changing the orientation of the system backed by inputs from teachers, parents, scholars, academicians, along with the experts and bureaucrats.

#### 3.5.4. Inadequate Resource Allocation

Government statistics show that between 1951 and 1955, public expenditure on education was less than 1 per cent of the total GDP of India. (Department of Education [Govt. of India] Selected Educational Statistics 2000-2001). Even after education was made a concurrent subject and the central government took up its responsibility, the central government gave no priority to education and continuously invested a less than 3 percent of the GDP. Till date no central government has been able to allocate 6% of the total GDP of India promised so very often. SarvaShikshaAbhiyan is criticized as being anti-poor and delegitimizing the government school system through cost-cutting measures like Multi-grade Teaching and employing Para-teachers. (Aggrawal, 2005) With the Structural Adjustment program and the government accepting foreign loans for social sectors like education also the investment has been not adequate.

#### 3.5.5. Mismatch between Requirement and Provisions

In 1964, after a comprehensive analysis of the education system built by the British and the aspirations of the masses, Dr. Kothari recommended a Common School System. This was to strengthen the government schooling and level the diverse society. These recommendations were never implemented. Instead we have programs funded by the International Monetary Fund and the World Bank and policies dictated by market forces. As a result the government schools have deteriorated but the private schools charging heavy fees in the form of capitation fees and donation have mushroomed. These schools serve only the rich and the poor are left at the mercy of non-functioning government schools.

#### 3.5.6. Institutional Malpractices

Beginning with fake registrations of buildings, overestimation in works and construction, to projecting inflated figures of enrolment for financial-aids or salaries of the teachers, wastage and pilferage in mid-day meal provision, multi-level teaching, Para-teachers go on to weaken the public trust in government schooling system. Instances of overloaded teachers employing a high school pass-out to teach students for a lowly salary also abound.

#### 3.5.7. Lack of Political Will

After independence, that is from the year 1947 to 1968 there was no national policy in place which is a clear indication of low priority given to education. Not only this, reputed economist, Dr. L.C Jain, in his study of annual national budgets remarks that during 1951-1961 the provision of article 45, which directs the state to endeavour to provide, within a period of ten years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of fourteen years, was not even referred to in the budget speeches. (Jain, 2000) This shows clear bias towards education as no specific finances were made available for the same. It also shows that education was not considered important for the overall progress of the nation. Later in 1976, education was removed from the State list and placed in the Concurrent list so as to give the central government a bigger responsibility in

providing education to the masses. With this also no notable change took place in the education scene—the literacy rate was only 52.21 percent in 1991. (Kumar,R 2006) Even the Right to Education could be enacted as the fundamental right after 16 years of delay as in 1993, the Unnikrishnan judgement made education a fundamental right but the legislation to this effect came through in 2009.

### 3.5.8. Lack of Popular Support

People in India galvanize into action when it is an issue of poverty, caste, religion, language, and region as is seen during elections. In absence of awareness and education, issues of welfare like health and education continue to be neglected even by the public. Lack of political voice of the poor and illiterate which constitute at least 50% of Indians and utter disregard by the intelligentsia maintains the status quo.

### 3.5.9. Unclear Policy Goals

In a populous and diverse country like India, the problems of lack of resources are endemic. The governments are giving attention to areas like trade and commerce, defence, industry, agriculture but education is hard to plan for. The goals of education in the life of nation are not clear: Is it National development? Is it Human Resource Development? Or is it Knowledge? Is the goal of education policy Economic growth? Is the goal National Integration? Or is it Poverty reduction? The goals of the education policies so far have been expansion of schooling (National Policy on Education 1968), Education for All (National Policy on Education 1986), Universal Primary Education and Universal Elementary Education (SSA 2000). All these sound similar and when the goals are not clear the policy will not be a success—no wonder that none of the education policies have achieved their lofty goals.

### *3.6. Analysing RTE and a unique way of Policymaking*

In the 1993 Unnikrishnan Judgement<sup>6</sup>, the Supreme Court of India held that the citizens of this country do have a fundamental right to education. The above said right, flows from Article 21 which guarantees right to life to all the citizens. This right to education is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. Further, Chief Justice LM Sharma, Justice P Jeevan Reddy, Justice Pandian, Justice SP Bharucha concurred saying:

'Right to education is not stated expressly as a Fundamental Right in Part III of the Constitution of India. However, having regard to the fundamental significance of education to the life of an individual and the nation, right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been accepted all over the world. Without education being provided to the citizen of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail.'

This Judge-made law paved the way for legislation so that a legal framework to give effect to this right could be erected. Various legislative bills were tabled in the Lok Sabha<sup>7</sup>—Free and Compulsory Education For Children Bill, 1998, Free and Compulsory Education Bill, 1999, The Free and Compulsory Education for Children Bill, 2003 [Jun and Dec drafts], The Free and Compulsory Education Bill, 2004, The Right to Education Bill, 2005 [draft by the CABE Committee], the Model Bill 2006 and the Right to Education Bill 2008. Extensive debates ensued and finally the 2008 Bill, after some changes, was enacted as Right to Education Act, 2009. It was notified and came into effect on April 1, 2010.

The history of Right to Education in India and the run-up to the final legislation makes an interesting study in policymaking. A Judge-made Law, Judicial Activism and hundreds of Public Interest Litigation cases drove the central government to undertake an extensive legislative exercise. Traditionally, policymaking is exercised by various agencies like the legislature, cabinet, state government, boards and commissions, bureaucracy, judiciary, mass media, political parties, pressure groups etc. but the main originator of the policy is the central government or the party in power. Also, the role of other agencies and the public is very minimal. The making of Right to Education as the latest public policy shows a new dimension in Indian policymaking where the originator of a public policy was not the legislature or the executive alone. In fact it was initiated through a Supreme Court judgement, fuelled by tremendous public pressure including active campaigning of Non-Governmental Organizations and academicians which forced the central government to make a central legislation and official policy of the government.<sup>8</sup> For the first time in independent India extensive debates took place in parliament on the education policy. Mass media, electronic and print media took eager part in this exercise and people could freely express their opinion on education as a right.<sup>9</sup>

The Right to Education provides a much needed legal framework to school system. This is done with the aim to ensure that even the private schools follow certain specified norms and conditions while operating and delivering education. Only a regulatory mechanism can cater to the requirements of a system meant for equitable quality education. This right and the regulatory mechanism in education being established by the uppermost body in India, the Constitution, is the most positive feature of this policy.<sup>10</sup> Being a Right, the

<sup>6</sup>1993 Supreme Court of India Judgement, "Unnikrishnan J.P vs. state of AP& others" (SC.2178, 1993)

<sup>7</sup>Lok Sabha is the lower house of Indian Parliament. The upper house is known as Rajya Sabha.

<sup>8</sup> Various educationists, activists, NGO's and independent actors came together to build a consensus and NAFRE [National Alliance for the Fundamental Right to Education] was formed. Around 2,400 NGO's from 15 states across India united in this endeavour.

<sup>9</sup>The National Policy on Education 1968 (NPE) was formulated by instituting a commission, known as Kothari Commission. The NPE 1986, revised in 1990 was initiated with keen involvement of then PM, Rajiv Gandhi.

<sup>10</sup>The normative strength of a constitutional right will ensure that the policy does not suffer with the change in government.

second positive feature of the Right to Education is that people can claim it and take the recourse of litigation if this right is violated. The third positive impact it can have on the Indian society is that of levelling the social gaps. There would be no further requirement of reservations on the basis of caste or economic status of the people.<sup>11</sup> This right can be very meaningful if provided in letter and spirit.

#### 4. Results and findings

A field survey was conducted to evaluate the changes in school education with the implementation of Right to Education Act, 2009. The different type of schools in the two metropolitan cities of Pune, Maharashtra and Guwahati, Assam which are geographically separated Pune being in Central India and Guwahati being in North-east India. Both are educational hubs of their respective states but Pune is quite ahead due to better literacy rate and better amenities. Primary data regarding present status of school education, implementation of Right to Education in last three years, shortcomings and possible positive outcomes was collected from 90 respondents through school surveys using a detailed questionnaire and direct observation.

##### 4.1. Findings at Guwahati

###### 4.1.1. Infrastructure

The bar graph for the percentage of availability of various infrastructure like boundary wall, safe drinking water, electricity connection, mid-day meals (MDM), etc., at the schools surveyed in Guwahati is shown in Fig. 3. The infrastructural facilities affect the girl's enrolment as well as retention in the school and completing the elementary education. This is more evident in the rural areas as all the schools selected for research had facilities like separate toilets for girls'. Even the attitude of teachers interviewed showed no bias against girls' education. All believe that both boys and girls should be treated equally. They are also of the view that a safe school will promote girls education.

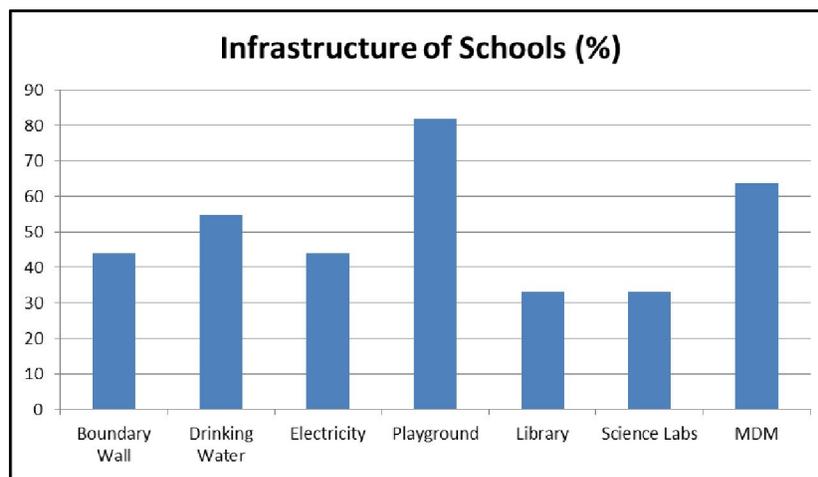


Figure 3: School Infrastructure Availability – Guwahati

###### 4.1.2. Promoting Girls' Education

The pie-chart for the response received in respect of promoting girls' education is as shown in Fig. 4.

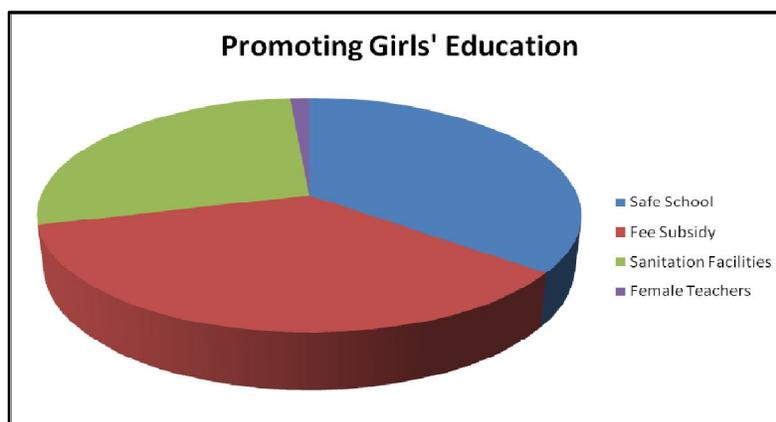


Figure 4: Response on Ways to Promote Girls' Education – Guwahati

<sup>11</sup>There was near unanimity among respondents about this provision of reservation based on socio-economic criteria.

As can be seen from the pie-chart, 32 % of the respondents opine that making school safe will encourage the parents to send their daughters to school, whereas another 32% assert that giving a fees subsidy will encourage more parents to send their daughters to school. 25% of the respondents are of the opinion that availability of sanitation facility is very important and decisive in retaining the girls in school. At the primary level female teachers boost confidence and sense of security among students and 11% of the respondents believe that their presence in the schools at primary level will promote girls' education. Here it is important to note that all respondents agree that the Right to Education and its provisions will help in removing gender disparity in schooling.

#### 4.1.3. Reasons for Drop-out

The pie-chart in Fig.5 shows the reasons for drop-out given by the various respondents.

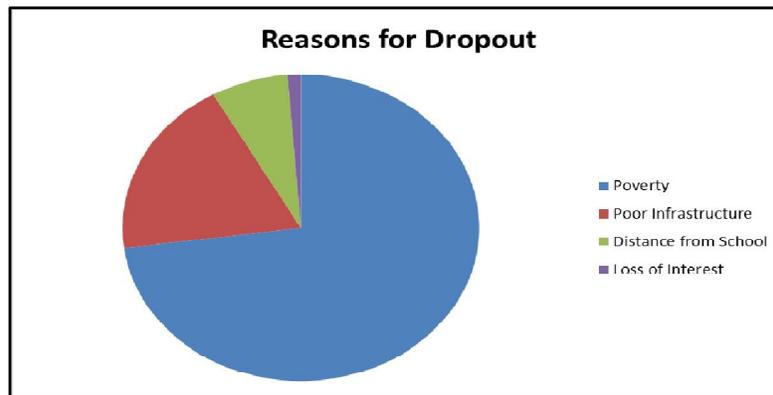


Figure 5: Reasons for dropping out of school in Guwahati

Poverty emerges as the biggest factor responsible for the children dropping out of schools and not completing even elementary education. An overwhelming 73% of respondents feel that poverty is the main reason for children not continuing their education. 19 % of the respondents feel that the long distance to schools is the reason for children dropping out of school. This is the biggest reason in the villages for the girls to drop out. The parents are reluctant to send their girls to far off schools as they are worried about their safety. 7% of the people feel that poor infrastructure of schools put off children and their parents. When the parents see the bad conditions of schools –no boundary wall for a secure school, no facilities of sanitation and drinking water and no teaching taking place, they feel the child is better off at house sharing the domestic chores or even learning to work. Many teachers and parents cite loss of interest in studies for the older children to drop out. But this percentage is as low as 1%.

#### 4.2. Findings at Pune and Comparison with Guwahati

Pune being a better metropolitan city, the availability of basic school infrastructure was found to be adequate and various measures were being taken to promote girls' education in a big way. The findings were verified from the school authorities as well as the Sarva Shiksha Abhiyan (SSA) officials at Pune. Due to better support available from the city, most of the Pune municipal schools were found to be implementing innovative schemes like outsourcing the Mid-day meal whereas in Guwahati it is being cooked in the school premises. Due to active involvement of the SSA as well as various NGOs, poverty was not found to influence the reasons for drop-out from schools at Pune. In fact there was a low drop-out percentage. However, both in Pune and Guwahati, the awareness level regarding the RTE Act is low among the teachers.

#### 4.3. Results

Fig. 6 shows the pie-chart indicating the various reasons responsible for not achieving the policy goals of universal primary education, universal elementary education and that of gender parity in school education.

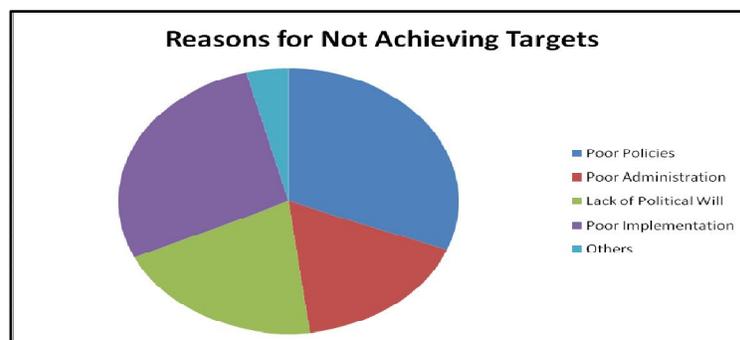


Figure 6: Reasons for not achieving universal primary education

31% of the people feel that poor policies are responsible for failure to achieve targets in school education. 28% people believe that poor implementation of the policies result in failure to reach the targets. 20% of the people feel that lack of political will causes underachievement and 17% of the people said that poor administration practices hinder the implementation of policies. The problem of blame-game is obvious as the government keeps increasing investment and renewing policies; ways and means to achieve targets but the grass-roots level administrators as well as teachers don't share the vision of the policymakers. This indifferent attitude among the people responsible for making policies successful results in poor implementation of good policies. On the other hand a good policy can turn out to be unsuccessful as it may not be realistic /practical due to ignorance of ground realities of the content of the policy, in this case, the education sector.

#### 4.4. Policy Options

The study of RTE reveals serious flaws mainly concerning the age of a child, definition of 'free education', automatic promotion up-to 8th standard, inadequate financial provision and weak enforcement. The Capability Approach, if effectively employed can transform education policy. Some policy options are suggested using this approach to policymaking.

- Amend the age-related clause in the right to education act and include 0-6 and 14-18 years.
- Amend labour laws.
- Establish integrated schools: pre-school to 12th standard according to the number of school-age children.
- Implement the Common School System in letter and spirit.
- Adopt an integrated approach to school education, adult education, youth development, workforce training and teacher training.
- Develop capacity of district administrative machinery and schools to better infrastructure and other facilities/amenities.
- Involve parents and community in school administration.
- Strengthen (NCPCR) National Commission for Protection of Child Rights.

#### 5. Conclusion

The Right to Education in India needs to be analysed from the perspective of Public Policy. As a welfare state, India is expected to provide social services like that of public education to the people. When the government plans and provides for something to the public, it becomes a public policy. Public policy is essentially 'the description, explanation of the causes and consequences of government activity'. As Right to Education Bill has been passed in the parliament and so now is a parliamentary act, it officially becomes the latest public policy on school education. A policy perspective would be able to analyse the impact of social, economic and political forces on education. Also, it would help in examining the effect of various institutions and political processes on education policy and evaluate the consequences of 'public policy on Right to Education' on society. Further, a political science scholar studies a policy for political purpose, which is to ensure that the government adopts 'the right policies to achieve right goals'. Judicial intervention and the manner in which the campaign for Right to Education has unfolded clearly make it the right subject of study from a public policy perspective. The unprecedented interest demonstrated by the judiciary indicates at the legislative lethargy and executive indifference towards the educational requirements of a burgeoning population. It took upon the cudgels of reminding the legislature and executive of their constitutional duty to respect the Directive Principles of State Policies and deliver what is already conferred by the Constitution of India. The demand for Right to Education arose because of the prevailing crisis of school education in India. The campaign for Right to Education, lengthy legislative procedure has worked to increase the awareness among masses about the state of education as well as the government's efforts to introduce a new public policy. The education policy being formulated in a rights framework through the Constitution itself has great normative value. On one hand, it prevents the government from further neglecting education, on the other, it gives the power in peoples' hands to ask for effective delivery and accountability from the authorities. Last but not the least, this judicial intervention shows new way out in framing social policies.

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