

## **REPORT ON THE RIGHT TO EDUCATION:**

### **INDIA**

#### ***Acknowledgements***

This research was undertaken by BHRC member Miss Jaspreet Kaur Matharu (JKM). The opinions presented here are sole responsibility of the author.

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#### **INTRODUCTION**

1. In 2011 and 2012 JKM undertook research in Mumbai to investigate the right to education and why less than half of children in India between the ages of six and fourteen attend school. The aim of this report was to investigate why so few children benefit from the education system and to establish what can be done to improve this situation. The research was conducted through meetings with educational professionals, visiting a variety of State schools and going into the slum communities to talk to the people who are directly affected by the problem. The findings of these are outlined below.
2. The report concludes by outlining recommendations for India based on the aforementioned observations and from analysis of the relevant legislative instruments. The locations of this research's sources are all in the capital of India, Mumbai. This area was chosen as the problems with education are at its worst here, and the child population and proportion of people living below the poverty line, is at its highest. The sources were selected to provide a balanced overview of the situation in the capital of India, accordingly comment is not made on the situation in other or rural areas; Thereby JKM's analysis and recommendations are based on a sample of educational observation provided through India's central government, namely the Municipal Corporation.

#### **OVERVIEW OF THE RIGHT TO EDUCATION IN INDIA**

3. Between 1992 and 2010 India has created, signed and ratified a number of documents establishing a fundamental right to education for children. The relevant provisions are as follows.

##### **INDIA'S LEGISLATIVE FRAMEWORK**

##### **Overview of The Constitution of the State of India**

4. The Constitution of India is divided into sections which include fundamental rights (Part III), directive principles of state policy (Part IV) and fundamental duties (Part IVA.) The fundamental rights provide for the basic human rights of all Indian citizens. The directive principles act as guidelines for governance, which States are expected to apply when writing and passing law. The fundamental duties consist of eleven “moral obligations” for citizens to live by, their objective being to uphold a spirit of patriotism within Indian society. Both the directive principles and fundamental duties are not legally enforceable, unlike the fundamental rights.

#### **The Constitution of the State of India**

5. The relevant provisions of the Constitution of India are set out below. The background to Article 21A, which contains an enforceable right to education, is considered below under the heading “Case law”:

#### **PART IV: DIRECTIVE PRINCIPLES OF STATE POLICY, Article 41:**

*“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”*

#### **PART IV: DIRECTIVE PRINCIPLES OF STATE POLICY, Article 45:**

*“The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”*

6. In 2002, the Constitution of India (by the 86<sup>th</sup> Constitution (Amendment) Act 2002) inserted the following provisions which changed education from a directive principle of state policy to a fundamental right. The relevant provisions are listed below:

#### **PART III: FUNDAMENTAL RIGHTS, Article 21A:**

*“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”*

#### **PART IVA: FUNDAMENTAL DUTIES, Article 51A(k):**

*“It shall be the duty of every citizen of India— who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”*

## INDIA'S INTERNATIONAL OBLIGATIONS

7. The first document that was ratified by India for the provision of the right to education was the 1989 UN Convention<sup>1</sup>, which India signed in 1992. This afforded all children, including disabled children, effective access to education. It sought to regulate attendance, reduce dropout rates and tailor education to individual student's talents and abilities. The relevant provisions are:

### Article 23:

*"1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*

*3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development*

*4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."*

### Article 28:

*"1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*

*(a) Make primary education compulsory and available free to all;*

*(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*

*(c) Make higher education accessible to all on the basis of capacity by every appropriate means;*

*(d) Make educational and vocational information and guidance available and accessible to all children;*

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<sup>1</sup> The United Nations Convention on Rights of the Child (1989)

*(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

*2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*

*3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”*

Article 29:

*“1. States Parties agree that the education of the child shall be directed to:*

*(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*

*(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*

*(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*

*(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*

*(e) The development of respect for the natural environment.*

*2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”*

8. The next relevant United Nations document was the Convention on the Rights of Persons with Disabilities, which promoted equal opportunities for disabled children and also specifically provided for an inclusive education system. India was one of the first countries to ratify this in 2007. Of particular note are Article 7 and 24:

Article 7 - Children with disabilities:

*“1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

Article 24 – Education:

“1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual’s requirements is provided;
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

- b. *Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;*
- c. *Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.*

*4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.*

*5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.”*

#### **INDIA’S NATIONAL OBLIGATIONS**

- 9. In 1995 India furthered the right to education specifically for disabled children by passing The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995). This was India’s first piece of national legislation that considered the right to education. The act ensured that children with disabilities were provided free, compulsory education until the age of eighteen and promoted the creation of State specialist schools all over the country:

Chapter V, section 26: Appropriate Governments and local authorities to provide children with disabilities free education, etc:

*“The appropriate Governments and the local authorities shall –*

- a. *Ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;*
- b. *Endeavor to promote the integration of students with disabilities in the normal schools;*
- c. *Promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;*
- d. *Endeavor to equip the special schools for children with disabilities with vocational training facilities.”*

10. In 2002 education was made a fundamental right by charter through a national alliance following the movement started by a Supreme Court judgement<sup>2</sup> in 1993. Subsequently the Constitution of India was amended<sup>3</sup> to provide for free education for all children between the ages of six and fourteen. The duty to provide this was also placed upon parents and guardians. Consequently this led to the enactment of the most significant piece of legislation on education in India - the Right of Children to Free and Compulsory Education Act (2009) - which came into force in 2010, an Act dedicated to the absolute and immediate pursuit of this right:

Section 3(1):

*“Every child of the age six to fourteen shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.....Provided that a child suffering from disability, as defined in....the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act 1996, shall have the right to pursue free and compulsory elementary education....”*

11. Under the following sections<sup>4</sup> the appropriate government and local authority were required to:

Section 8(f):

*“Ensure and monitor admission, attendance and completion of elementary education by every child.”*

Section 9(c):

*“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.”*

Section 11:

*“With a view to prepare children above the age of three for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.”*

12. The Act also placed an obligation on teachers:

Section 24(1):

*“A teacher...shall perform the following duties, namely:-*

*(a) Maintain regularity and punctuality in attending school.....”*

13. Although a comprehensive Act, a lot of its most important provisions merely mirrored those outlined in previous documents, mentioned above. However the impact of an Act solely dedicated to this right was a significant message to India, as to the importance of education. The Act<sup>5</sup> made free education for six to fourteen years olds compulsory and made provisions for the prohibition against discrimination of

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<sup>2</sup> Unnikrishnan J.P. vs. The State of Andhra Pradesh (1993)

<sup>3</sup> The insertion of article 21A by the 86<sup>th</sup> Amendment to the Constitution Act of India (2002)

<sup>4</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>5</sup> The Right of Children to Free and Compulsory Education Act (2009)

disadvantaged children, with immediate effect. However the Act has been extensively criticised for its rushed drafting and its many loopholes as a result of the minimal reviewing it received before being passed. For example section 11<sup>6</sup> suggests appropriate governments “may” provide free pre-school education for children aged three to six, however this is not an absolute requirement.

14. Additionally, almost all provisions of the Act can be overlooked with the absence of any consequence. The Act only provides for one penalty - a fine if a capitation fee is collected for admitting a child to a school. The findings section of this report outlines a number of breaches of this legislation unfortunately none raise any consequences under the 2009 Act.

#### **Case law:**

15. As soon as India signed the UN Convention<sup>7</sup> in 1992, the Supreme Court of India passed a historic judgment in the case of *Unnikrishnan J.P*<sup>8</sup>. The facts of the case concerned several private colleges in India who charged capitation fees from students seeking admission. The management of these institutions sought enforcement of their right to business in this manner, as State laws had begun to regulate capitation fees to uphold the underlying objective of free education. The petition from these institutions was dismissed, and the Court held that the commercialisation of education (i.e. profit making) was now to be prohibited. This meant that educational institutions were now unable to claim any return on investments. The Court then proceeded to examine the nature of the right to education within both the fundamental rights and the directive principles in the Constitution of India. The Court held that education for children up to the age of fourteen is implied under the right to life and personal liberty provided for in article 21,<sup>9</sup> but that this right must be understood within the context of articles 41 and 45<sup>10</sup>, when read together, which provide for free and compulsory education for children up to fourteen to be in place within ten years from the commencement of the Constitution. The reasoning behind this was that every child has a right to free education up to the age of fourteen, however *beyond this* the right must be subject to the limits of the economic capacity of the State – which is mentioned in articles 41 and 45.

16. The Court averred fundamental rights (article 21) and directive principles (article 45) are “supplementary and complementary to each other,” and that education fell into the right to life and personal liberty (article 21) for two main reasons. The first, being that as its classification as a fundamental right, this meant that breaches of the right to education could now be enforceable in court, unlike article 45 alone, which is a directive principle and unenforceable. The second reason was that the Court felt that there must be a reason that article 45 was the only directive principle with a time limit. The ten years it specifies had (at that point) elapsed thirty four years previously. The Court held that this had effectively converted the non-justiciable

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<sup>6</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>7</sup> The United Nations Convention on Rights of the Child (1989)

<sup>8</sup> *Unnikrishnan J.P. vs. The State of Andhra Pradesh* (1993)

<sup>9</sup> The Constitution of India

<sup>10</sup> The Constitution of India



right to education into an enforceable right, meaning that it would now have to come under the fundamental rights section of the Constitution.

17. Under this reasoning the Court passed its judgement making education a fundamental right under article 21, which led to this right being placed on election manifestos and Common Minimum programmes. This new movement, triggered by this judgement, is widely believed to be the reason for the insertion of a specific educational provision under the fundamental rights section of the Constitution, being the creation of article 21A in 2002.

## **FINDINGS**

18. This research was investigated through meetings with educational professionals – both those working for the government and those in the voluntary sector – and visits to all the types of schools that the government provide for; being pre-schools, mainstream Municipal run schools and specialist State schools for disabled children. These sources were chosen to obtain insight in to the full spectrum of State education in India and accordingly act as a good sample and balanced overview of this research’s subject matter. The findings are as follows.

### **Meetings:**

#### ***Meeting with CRY, Mumbai***

19. JKM was fortunate enough to carry out this research with some assistance from the Non-Governmental Organisation (“NGO”), CRY. This NGO focuses on implementing changes into underprivileged children’s lives, through restoring their human rights by taking a holistic approach. CRY aim to build “good equity” networks with the education authority, through working with and not against the system, in a non-confrontational manner. Extensive changes in the education system have been made through CRY’s recommendations (such as the amendment of the Constitution) highlighting both their importance and potential in the education sector. JKM met with representatives of this NGO to find out more about the problems with education in India from their extensive experience with affected families and their dealings with education and government officials. The summary of this meeting follows.
20. They began by highlighting the crux of the issue, by stating that the government has a duty to be accountable for providing education, as taxes that all employees pay, provide for this right. The main problem in their opinion is that the Indian education system is yet to establish accountability and transparency. For example, the school officer system provides for comprehensive reports on all schools to be compiled. However, individuals cannot access these reports and the inspections are infrequent. Many schools therefore slip under the radar and the officials focus on enrolment target numbers – not why so many children are not in school. School officers are required to monitor all aspects of learning and complete school audits, which is often not done, although there is supposed to be a grading system coming in to place in the near future.

21. Other problems include the parent teacher associations that the current system provides for, which on the whole are not set up. In summary, in CRY's opinion, there are no gaps in the law itself, the gaps lie in the implementation of the law.
22. CRY also pointed out the main groups of children who encounter further barriers in accessing education:
- i. Young carers who are required to stay at home;
  - ii. Certain castes/family trades. This is a particular problem in rural areas, where the widespread opinion is that certain families trades do not require an educational background, therefore children of those families need not attend school;
  - iii. Children who have to work. Parents rely on the small income their children generate and sometimes they rely on their child's labour itself in eliminating the need to pay an employee to help them in their trade;
  - iv. Culture. Children from some religious backgrounds are prevented from being admitted to certain schools. The reason for this is unclear;
  - v. Social class issues, in particular when children come from low income families;
  - vi. Gender issues; female children often take a care giver role in looking after their families. Many believe that girls do not require an education, as when they get married and join their husbands family the only skills they need are ones of domesticity;
  - vii. Disabled children. They are technically not supposed to be kept out of the education system or suffer any type of discrimination. Children who have physical disabilities alone are supposed to be in mainstream State schools, however this is often not the case. The few disabled children who are admitted to mainstream schools are not given enough time and attention by their teachers, and bullying is a massive problem leading to many dropping out. CRY has a training scheme for student teachers to spot the signs of bullying and also raises awareness amongst parents.
23. CRY pointed out the worst barrier to education is if a child is both disabled and poor. In their opinion, there is a lack of State-run specialist schools, so disabled children are either kept out of school completely or have to attend an expensive private school. Even where attendance at a specialist public school is possible, they are often far away and provide a poor level of education, a consequence of there not being enough of them, and their curriculums not being regulated like mainstream schools'. CRY's opinion was that there needs to be more State specialist schools, providing a higher standard of education and with increased parental input.
24. Additionally it was added that the distance from home to school sometimes prevents parents sending their children to receive their education – this was due to legitimate fears of human trafficking, especially in slum communities where children walk over train tracks to reach their schools.
25. A lack of awareness on parents behalf's about the education system is also believed to contribute to the substantial number of children who are not receiving education. The findings of this report are from observations from the State of Maharashtra, one of the most progressive States in India, close to the commercial capital of India. CRY commented that this is noteworthy because if this is the situation there, then imagine the exasperated situation in more traditional States such as Jharkand or Orissa.

26. In concluding the meeting JKM enquired as to what solutions CRY provides in response to these obstacles. The approach of the NGO was extremely impressive. CRY sends children who have to work either to night school, or morning/afternoon shift schools, allowing time for education whilst continuing to generate the small income such families depend on. CRY further pointed out that education is the *only way* for lower caste and impoverished children to escape their underprivileged roots.

***Meeting with the Head Education Officer, Thane Municipal Corporation, Pach Pakhadi***

27. JKM met with the Head Education Officer for the Thane region of Mumbai, who is responsible for the approximately one hundred schools in this area. The role of the education officer is to raise awareness of loopholes in the law on education and promote the implementation of the right. The officers also are to promote equal opportunities through the inclusion of disabled children (as far as practicable) in mainstream State schools. The aim of this is “all learning together, albeit at a range of levels.”

28. The officer was extremely late for the meeting and cut it from the allotted one hour to twenty minutes. He did not introduce himself or talk unless asked questions. He answered and made several mobile phone calls during the meeting and did not directly answer any of the questions put to him. One method of avoidance was to say it was not within his job remit to answer and reluctantly gave phone numbers of his colleagues who were “more apt to comment.”

29. JKM asked specifically about the provisions in place for disabled children being taught in mainstream schools. The officer explained that there are mobile teachers for these children, who assess the children’s needs and provide assistance such as walking sticks and hearing aids. When asked for evidential records of this, assurance was given that mobile teachers were carrying out their duties fully. However it was revealed this scheme is completely un-documented and there are no consequences for inaction.

30. The officer averred he has been going into underprivileged communities to encourage children to enrol into schools, resulting in the enrolment of 183 children as part of a recent CRY drive to promote education. The CRY representatives present at the meeting disputed this. They put it to him that they had also gone into these communities and found only 58 children were enrolled - the remainder had not yet been admitted into schools or given their uniforms. When asked where the remainder of these enrolment forms were, the officer did not fully explain. What did emerge was that the forms had been passed from CRY to him, with the task of securing parents’ signatures to complete enrolment. Bizarrely, these forms had subsequently been passed to an unidentified colleague of the officer. The reason given for this was that the colleague lives close to the relevant community and it was more convenient for them to deal with the forms. The explanation for why these children are not yet in school was “lack of co-operation from parents in signing the forms.”

31. There are 27 items that the government must provide for all school attendees, which costs approximately 2500 Rupees (£35.46) per student. The items are:

1. Shoes
2. School bag
3. Tiffin box
4. Water bottle
5. Uniform - 2 pairs
6. Socks
7. Handkerchief
8. Ribbon
9. Raincoat
10. Graph book, 196 pages
11. 1-line, 66 page notebook
12. Drawing book - 40 pages
13. Square line book
14. 4 line notebook
15. 196 page notebook
16. 96 pages notebook
17. 66 pages notebook
18. 40 pages notebook
19. Science journal
20. Textbooks
21. Pencil
22. Compass box
23. Colour box
24. Colour brush
25. Palette
26. Scale
27. Rubber

32. Where students are partially enrolled (as described above), the schools can keep the money allocated to them; in the case of large numbers of students, this can soon total a significant amount. When asked to discuss this matter further and also to account for these failings, the officer abruptly ended the meeting.

#### **Visits to schools:**

##### ***Visit to Kalwa Pre-School – Aanganwadi, Kalwa***

33. JKM visited a pre-school called an “Aanganwadi,” traditionally found in rural areas and in isolated communities. The children were between the age of three and six and the pre-school was in the centre of a

slum community called Kalwa. The only requirements for admission were that the children must be able to sit up on their own and also have sufficient bowel control. Although there are only a few pre-schools like these in slums, the government funds it from a district level scheme, in this case by the State of Maharashtra. There was a dirt floor, no seats or lighting and a tin roof with plastic walls.

34. The visit took place whilst the children were learning on individual blackboards with chalk and abacuses', they were then read a story by the teacher, ending the session by singing a prayer song before their lunch. There were twenty four children in the class, with only one teacher, however more children came in and out during the visit. The teacher said the government was trying to get another teacher to assist her, however this was dependant on securing funding. A representative from CRY explained the background to such pre-schools and their importance. Social interaction is a key benefit and schools like these are these children's first step into education. The children get a meal here too, although looking at what was given, the government allocate a very small budget to this – the lunch was a small handful of puffed rice. Water is also to be provided from a hygienic tank, which was in the one room that this pre-school operated in. The room also is used for maternal care, such as ante natal check-ups, and the giving of health and nutritional advice. There are no toilet facilities in this pre-school, or in the whole slum area which thousands of people reside in.

***Visit to Jidd Special School, Thane Municipal Corporation, Thane (West) and meeting with the Headteacher – Mrs Dharmaveer Anand Dighe***

35. Following the problems highlighted in the education of children with disabilities (from JKM's meeting with CRY), a visit was arranged to a State specialist school for disabled children. The school is run by a semi-governmental local body—the Municipal Corporation—so the students do not pay fees and admission is upon production of a medical certificate. This body is akin to a local council in England; it receives funding from central government. The school is a day school founded in 1985 for five students with physical impairments, but there are now 132 students who mainly suffer from mental impairments. There are nine teachers. JKM met with the headteacher, Mrs Dharmaveer Anand Dighe, who explained the background to schooling for disabled children and to her school.
36. Mrs Anand Dighe began by explaining that primary education in India is compulsory for disabled children. Her school, however, goes further, providing primary and secondary education and, where possible, vocational training according to a mainstream curriculum, with mainstream examinations. This is because the headteacher aspires for her students to receive the same education as other students, as this will logically prepare them best for the outside world, post-education.
37. In 1985 this school was the first of its kind to provide special education for children with orthopaedic handicaps, and in 1990 the Schools' Commissioner refused permission to widen the school's scope to include children with mental impairments. The headteacher steadfastly challenged this decision although it took until 1995 to obtain approval from the relevant educational body. It was not until 2001 however, that the school finally received the appropriate backing to fully establish the new school model. Throughout this

period there were difficulties in obtaining the co-operation of the authorities, who, on the whole, opposed her decision to encompass a broader scope of disabled children in this school.

38. In 2000 this school went above and beyond their obligations to its students. The school initially shared its premises with the *Sunita Singhania Hospital*, a specialist unit for orthopaedics. The school sent one student per month to the unit to receive corrective surgery for their disabilities. Initially, the main condition of the students was polio, which affects nerves, muscles and growth, affecting basic mobility such as walking. Quadriplegia or paraplegia typically occurs from this condition. This corrective surgery meant that the disabilities caused by the polio were being resolved therefore the school had fewer students. Accordingly, and due to demand from local parents, it was decided the school should open a unit for children with mental impairments.
39. There is a society in Mumbai which focuses on education for physically disabled individuals, who did a study finding that the majority of families of disabled children in Mumbai could not afford to pay school fees. This highlighted to the headteacher the need for the authorities to provide what they are supposed to - free education for children of all needs. This was not the only area of conflict. Mrs Anand Dighe's decision to teach in classes of fifteen (enabling the maximum amount of students to benefit from specialist education without disrupting their learning) was at odds with the views of their local government commissioner who wished to enforce the government's guidelines that for every eight disabled children there must be one teacher. However, the headteacher was able to successfully challenge this decision. The effect of this has been a notable improvement in the financial stability of the parents (by providing them with more time to work); a result with multi-faceted benefits for the local community.
40. A parent body for the school has run since 2002, making this school the first specialist one of its kind in Mumbai. The headteacher has faced criticism from some of the local community who cannot understand how she does not have a financial agenda, nor fully appreciate the only agenda she has being her student's welfare. Her background is interesting, having taken the education authority to the Supreme Court in 1994 after they refused to let her teach children with disabilities, which is what she was trained for. She presented her case successfully to the Court who heard how in her opinion she was put in a position which did injustice to the education system through working in mainstream education when she had undergone specialist training.
41. JKM observed that this school provides an incredibly supportive environment. The students met are cheerful individuals who enjoy attending this school. The school runs as follows. Transport collects and drops students to and from school. School hours are the same as mainstream schools—10am to 4pm—and free food is provided. Rules are tight but fair. When a new student enrolls, their parents are initially allowed to sit outside the school to ease their (or their children's) concerns. After this, parents are not normally allowed on school grounds. The school teaches in individual genders, further split into three groups ranked by IQ: B Primary, Primary and Vocational. There is a three-month trial for every student to integrate into the school before full admission.

42. 95% of the students families are below the minimum income group in India and the headteacher makes allowances for this, for example by providing the students with two uniforms per year. Whilst JKM was in this meeting a local woman visited to ask the headteacher if she could assist the school in anyway, the headteacher refused the offer of financial help, categorically saying she only accepts support or gifts that individuals want to specifically give such as food, toiletries and clothes. The headteacher said that her refusal of money was because the school receives satisfactory funding, making this school rare in this respect - many disabled children are not as fortunate as these students, in receiving such a high level of not only education but also compassion. It is impressive that the school uses a mainstream curriculum, as it respects their student's intelligence, and realistically there is no reason they should be treated differently.
43. The school is modelled around the 1995 Act<sup>11</sup> and makes full provisions for children to access appropriate education in a suitable environment. The headteacher noted that there are problems after the students leave when they are 18 years of age, in integrating into the outside environment. Some of this comes from the students returning to a home where their parents have passed away, or have even deserted them because of their disabilities. She explained that in her experience it is parents *especially* who do not understand the nature of disability. According to her understanding, parents believe that it is not their responsibility to help support their children but that of the State, which is why a high proportion of these parents fail to acknowledge their children and sometimes go as far as to disown them.
44. The school is trying to resolve this with the local government by proposing to build a residential home for their ex-students to live on site. The aim is threefold - to provide a vocational training centre, to provide workshops for these individuals to exercise and practice these skills, and to provide a home for them. The headteacher is confident the government will grant the finances for this as people are not putting bids in for projects such as these. JKM also got the impression that some of this confidence may stem from her being known by the local commissioners as an individual who will strive to improve the lives of her students, regardless of government opposition. Recently when one student was orphaned before the completion of his education, the headteacher decided to keep him in the school for a further few years as she did not feel comfortable in sending him into the world of employment yet. This example is indicative of the sensitive and compassionate ethos that underpins this school.
45. The vocational centre at the school teaches all students arts, crafts, housekeeping, catering, car washing, gardening, pottery and bead making - which aims to create transferable skills to help facilitate future employment. From this vocational training, recently three ex-students are now employed as cleaners at doctor's surgeries.
46. The school also runs fifteen centres in the Thane area of Mumbai for vocational training for over-eighteens to help build self-esteem, independence and skills for integration with the wider world, post-education. The centres are disability specific and comprise of two centres for individuals with hearing impairments, four centres for the mentally impaired, two therapy centres and seven purely vocational centres for any ex-

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<sup>11</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995)

students of the school. Each centre has between ten and fifteen individuals attending and is run by local people, however due to participant's ages they do have to pay.

47. There are still significant challenges to this establishment from the government but JKM's initial observation was accurate – the local government has encountered the headteachers perseverance for her students enough now that they facilitate her requests and have come to trust her judgment. Furthermore the budget the headteacher submits to the government is so low (she asked for ten hundred thousand rupees this year) that the education authority told her to have more, which she refused because she *didn't need* any more. She acknowledges that the school is fortunate as they are provided with a lot through kindness and voluntary donations. Accordingly, the government is no longer the biggest challenge she thinks her school faces, she thinks it is the parents. The school tries to make them understand the long term implications of supporting a disabled child/adult, but many “live for today” due to the abstract poverty they live in. She reiterated that parents with children who have psychological problems leave it to society to sort out, feeling they are not their responsibility. The school in asserting its essential compliance, judges every action within individual's circumstances, hence if parents fail to abide by school rules then the child may not be allowed to attend the school. An example of this was given – they give students eight days to get on the school transport and on the ninth day the bus will cease to collect them. This is because it is a waste of the schools resources and also of local tax payer's money.
48. JKM also had opportunity to talk with a teacher of the school, also trained in specialist education, Mrs Archana Shete. JKM enquired about the problems the school faces from the government. Mrs Shete said a serious concern is the lack of assistance provided for their students in re-joining society, post education. Her solution to this would be to remove the barriers that the disabled face in India in obtaining employment. She further elaborated that skilled people are doing unskilled jobs due to the lack of employment opportunities currently available, therefore their ex-students find it even more difficult to find work. Mrs Shete is planning to set up a carpentry class at the school which will help enhance student's employment prospects, which the school will not need government permission for. Another challenge, she explained, is the lack of continuation of what the school teaches students, as what they learn at school is not implemented properly because parents often do not follow up their obligations or show an interest in their children's education.
49. The school is supported heavily by various NGOs, which provide equipment such as gas stoves, pressure cookers and playing equipment. While JKM was visiting she had opportunity to observe a birthday ceremony with a special lunch for all the children, which a NGO provide every month. JKM's observation of this highlighted the soaring level of social inclusion that is exercised towards the students here, they help arrange the chairs and the few who are confined to a wheelchair are brought into the ceremony by other students. There were nineteen children with birthdays in that month and when the students learned it was also JKM's birthday, they insisted she join them on stage in cutting the cake.
50. This visit illustrated the high level of dignity and respect the students are given in this schools environment. There is a clear level of discipline enforced, however it is a constructive type which teaches social responsibility. In conclusion of the meeting, the headteacher asked JKM to be a patron of their ladies society,



which is a group formed for mothers of the students, who are suffering with mental health problems as a consequence of being rejected by society. The reason for this rejection is because they have given birth to a disabled child, even some of their own husbands blame them for their children being disabled. Last year one mother drove her car off a cliff with her two disabled children in, who were students of the school, killing all of them due to the isolation and rejection she and her children had encountered. Her death left behind a husband and another child, who did not suffer from any disability, highlighting the stigma and treatment by some of society towards disabled individuals.

***Visit to Kumari Savatiri Bai Thakur, Thane Municipal School, Anand Nagar, Kalwa***

51. This school is in the same slum community, Kalwa, as the pre-school visited and is also funded by the local Municipal government. It was founded in 1977. They have a mixed gender morning and afternoon school and children are to attend just one of these, the ages ranging from six to twelve. This visit included of meeting with teachers and the headteacher (Mrs Kamal Rajesh Ghedgad), observing all the classes that were in session and seeing lunchtime. The school needed massive electronic renovations but was waiting for the allocation of funding from the government – the school commenced as usual despite the high level of dangerous health and safety issues. The school currently had a single toilet, although they were in the process of building one on each floor. Until completion of this, children urinated in front of the school in the open and very public main street. Understandably this raises high concerns of the vulnerability that comes from such exposure and the potential for exploitation from passers-by.
52. The teachers were extremely cooperative in answering questions and displayed honesty and openness, even when asked about challenging issues. The school has records of two hundred and fifty five female and two hundred and fourteen male students, with only fourteen classes taught by eighteen teachers. The majority of the students reside in the nearby slum, which the teachers reported can cause behavioural issues due to the high drug abuse problem there. The school offers a vocational course for girls which is limited to only forty participants, due to financial constraints. The course they currently offer is tailoring, which is for one session per year over a three month period, with only three sewing machines. When asked about these limitations the headteacher explained that the government only funds the course in this capacity although they would like to expand this scheme to more of the students. Girls who attend this course do it one hour before school, prior to attending their regular lessons. The headteacher pointed out that she personally buys the materials needed for this class as the funding given is insufficient to even cover these. For the scheme to work ideally they need fifteen machines, which would ensure the tailoring training is taught effectively.
53. The headteacher explained that the meal they provide to the students is given at the end of lessons to ensure the students actually stay. The government also funds for a snack to be given at break times and a container for their lunch to be stored in. The school is required to give records of attendance to the government and a full attendance record results in a gift for that particular student.
54. When asked about the children attending this school, thirteen students were said to be disabled. However when this was clarified, this referred to students with eyesight problems - the school has no students with

physical disabilities. The school sends and pays for these students to get spectacles and then they return to education as normal. The reason for the split session school is to facilitate students working. These children choose which session to attend, unfortunately the school has no authority to prevent them from working. The headteacher avers that any child can attend her school – no birth certificate is needed for any Municipal schools. The children who are born in slums often are not born in a hospital therefore their births are never registered.

55. It seemed that the staff did everything they could to provide the best and most inclusive education for their students. JKM enquired as to the teachers and headteachers recommendations for improvement. Many of their restraints are said to lie with the limitations imposed on them by the government. The students get one uniform per year, if this is damaged they have to attend in their own clothes. The school does not get additional money for having additional students, the only extra assistance the government provide is more food.
56. Health care is unfortunately another neglected area, with no school nurse, and only one health check-up per year due to financial constraints. The teachers aver this is way lower than necessary and more health checks are needed to prevent illness amongst the students. Other problems include students coming to school not bathed, which the school resolves by giving out toiletries – also serving as an incentive to attend school. Some female students are responsible for the care of their siblings; so the school allows these siblings to play at the back of the class, enabling the girls to receive an education whilst fulfilling their responsibilities. Many students are reported to have social problems such as using rude language, the teachers believe they pick this up from their community. They are against using any physical force against these students, even though hitting a student in an Indian school is not illegal. Therefore if there is use of bad language the students are suspended and return when they have resolved the issue.
57. Attendance is an enormous problem, on the day of the visit three hundred and eighty nine children were present and one hundred and eleven were absent. There were a variety of reasons for the absence, however the teachers believe they all stem from the absence of retribution for non-attendance. Many of the students in this school have an increasingly sporadic attendance, attending whenever they feel like it. Below is a table showing the number of students in each class under a single teacher. The two most experienced teachers in the school (both with at least eighteen years of experience) have full attendance in their classes. The observations of all the classes demonstrated this may be due to the experience and higher quality of teaching that these teachers exercised compared with the other teachers in the school.

<b>Class</b>	<b>Number of children</b>	<b>Age group</b>	<b>Number of teachers</b>
1	27	8-10	1
2	39	9-10	1
3	41	10-11	1

4	63 <i>(double class as teacher was on census training)</i>	12-13	1
5	45	13-14	1

58. The teachers think there would be great benefit from having more subjects covered, as at present the lessons only include very basic subjects. The subjects taught are English, Marathi, Hindi, social sciences (history, civics and geography), science (triple combined) and mathematics. There are no IT, music, PE or art lessons due to the lack of finances available to employ appropriately qualified teachers. The school has three computers all of which do not work - the government is reported to be reluctant to repair or replace them. The consensus of opinion amongst the staff, is that widening the subjects offered will not only brighten their student's futures, but also enable them to learn new skills and develop talents.

### **ANALYSIS**

*"The United Nations is a living symbol of pluralism. It has weathered many storms. It is the vehicle through which our combined will and efforts to address global challenges **must be articulated and implemented**. Unless we rise to the task, we would bequeath to succeeding generations a world of diminishing prospects..."<sup>12</sup>*

59. JKM is incredibly grateful for the high level of co-operation, assistance and honesty that the representatives of the schools visited and CRY displayed in assisting this research. Particular admiration is acknowledged toward the aforementioned individual's attitudes and approaches in light of the massive constraints faced in the education system. The way these individuals strive to get the best out of the limited resources they are given is both humbling and inspirational.

### **Legislative limitations:**

60. India's education legislation and international obligations have significant loopholes and lack accountability for the eventuality of these regulations either being ignored or abused. For example, article 51A(k)<sup>13</sup> places a duty on parents and guardians to provide opportunities for education for their children. However this research has highlighted that many parents living below the poverty line are massively oblivious to this obligation, nor do they have avenues to enquire about enrolment. Consequently this provision is widely ignored with no consequences on parents and guardians. The majority of these parents when spoken to were widely unaware that education is a free, fundamental right for their children. Understandable when viewed alongside the abstract poverty many live in, with a lack of media presence, whereby base survival is

<sup>12</sup> Statement by H.E DR. Manmohan Singh, as Prime Minister of India, at the general debate of the 63<sup>rd</sup> Session of the United Nations General Assembly, 26<sup>th</sup> September 2008

<sup>13</sup> The Constitution of India

the main focus of daily life. This lack of awareness contributes massively to the large number of children who are not in education and this needs to be addressed as a matter of urgency.

61. As mentioned, the main legislation on this area from 2009<sup>14</sup> was drafted quickly and was subject to only minimal review during its passage. Accordingly many provisions of this Act<sup>15</sup> can be overlooked with the absence of any penalty, apart from the offence of collecting a capitation fee. This is a payment collected by an educational body, which has not been advertised in their prospectus, usually in exchange for admission to the institution. The findings of this report are from investigating a range of areas in education, however this type of breach was not seen, nor is it a likely breach due to the large scale of poverty that many live in; as being able to give a financial sum in this form is not a realistically possible. Section 11<sup>16</sup> also mentions governments “may” provide free pre-school education for children aged three to six, again not an absolute right.
62. The UN Convention<sup>17</sup> requires measures to be taken to encourage regular attendance and reduce dropout rates<sup>18</sup>, and the 2009 Act<sup>19</sup> places this same obligation on local authorities<sup>20</sup>, and on teachers<sup>21</sup>. In practice this is widely overlooked, demonstrated by the massive truancy and dropout rates, which can be demonstrated from one of the visits of this research where one hundred and eleven students were absent out of records of five hundred. Teachers believe lack of regular attendance is due to the absence of retribution for truancy. Accordingly children attend school when they feel like it.
63. India is also under an obligation<sup>22</sup> to facilitate access to “scientific and technical knowledge and modern teaching methods.” However the majority of the schools visited only offered the most basic subjects due to lack of finances available to employ specialist teachers. The consensus of opinion on this issue from people in the education profession was that through widening curriculum subjects, students would be able to learn new skills and develop talents. The teaching methods were very traditional, with no audio-visual ways of learning and no working computers available to students in any of the schools visited. As mentioned one of the schools does offer a vocational tailoring course; however this is seriously restricted to a handful of students due to the limited finances the government allocates to this type of scheme.
64. In conclusion it is clear that the government does not see “extracurricular subjects” or modern teaching methods as important enough to allocate sufficient funding to, even though by not offering this type of extended learning they are in breach of their legislative obligations. Lack of teachers due to insufficient funding is another massive problem, which has a significant impact on the quality of schooling. In short, it is

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<sup>14</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>15</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>16</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>17</sup> The United Nations Convention on Rights of the Child (1989)

<sup>18</sup> Article 28, The United Nations Convention on Rights of the Child (1989)

<sup>19</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>20</sup> Section 8(f), The Right of Children to Free and Compulsory Education Act (2009)

<sup>21</sup> Section 24(1), The Right of Children to Free and Compulsory Education Act (2009)

<sup>22</sup> Article 28(3), The United Nations Convention on Rights of the Child (1989)

simply not enough to provide schooling without considering the *quality* of the education provided, something which clearly needs addressing if India is to comply with their educational obligations.

### **The disabled child:**

65. The problems are perhaps worst for the disabled child, with regards to State specialist schools, integrations in to mainstream schools and to the provisions for vocational training. This is ironic when considering India's first legislation<sup>23</sup> that mentioned the right to education was in relation to this group only, and in consideration of India being one of the first countries to ratify the UN Convention on the Rights of Persons with Disabilities. This Act<sup>24</sup> of India is comprehensive in its scope for facilitating education for disabled children, with education to be free up to the age of eighteen, and it sought to create specialist schools in all parts of the country to facilitate easy access for all disabled children to attend. It also mentioned vocational training, however this was to be "endeavoured" to be done, not an absolute right. With regards toward the creation of enough State specialist schools, this research has illustrated how this is not the reality as there are few specialist schools that are not fee paying. This translates to disabled children either not going to school, or having to attend an expensive private school, or attending a specialist State school that may be far away with a poor level of education. This is because there are not enough State specialist schools and those that do exist are not required to have their curriculum regulated like mainstream schools. Additionally research by a society<sup>25</sup> for disabled rights in education found that the majority of families of disabled children in Mumbai cannot afford to pay school fees. This was confirmed by the headteacher of the specialist school visited – 95% of the families of her students are below the minimum income group in India, meaning that there is little evidence that the right to education is effectively being extended to the disabled.

66. The Act<sup>26</sup> also requires local authorities to "endeavour" to promote the integration of disabled students into "normal schools," and JKM's meeting with the education officer enquired about this. The mobile teachers scheme was explained for these students in State mainstream schools; however it is impossible to check if this scheme is carried out effectively because of the absence of documentation and the absence of consequences for inaction; another example of lack of accountability.

67. These rights were further reinforced in 2010 through the passing of the main legislation<sup>27</sup> on this area, which also reinforced the UN obligations<sup>28</sup> India had previously ratified. This further provided<sup>29</sup> that children in any disadvantaged group shall not be discriminated against, or prevented under any circumstances from receiving and completing their education. As outlined in the meeting section of this report with CRY, minority groups do, in their extensive educational experience, face massive barriers in receiving education,

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<sup>23</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995)

<sup>24</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995)

<sup>25</sup> The Society for Education of Crippled Children, Mumbai

<sup>26</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1995)

<sup>27</sup> The Right of Children to Free and Compulsory Education Act (2009)

<sup>28</sup> UN Convention on the Rights of Persons with Disabilities (ratified by India in 2007)

<sup>29</sup> Section 9(c), The Right of Children to Free and Compulsory Education Act (2009)

showing that this lack of discrimination section is not put into practice effectively, which is wholly unacceptable.

68. The UN Child Convention<sup>30</sup> furthers the provisions for disabled children in education, providing for things like preparation for employment. There is little evidence that this is implemented effectively, as although the specialist school visited has vocational training centres for ex-students they have to charge fees due to participants' ages. Teachers in this specialist area all said the same thing – the lack of assistance from the government in supporting students from specialist schools in vocational training and preparing them in general to re-join society (post education) is a serious concern. Accordingly, it is clearly of paramount importance that there be provided an accessible amount of State specialist schools which comply with India's obligations in relation to disabled children.
69. It is also necessary to mention that the problems this research highlighted with regards the barriers to education for disabled children, also come from a non-governmental source – from parents. Specialist schools noted that students do not have their education supported in their homes; consequently what is learnt at school is not implemented properly as parents reportedly do not follow up their obligations to their children. This may be because many of these parents are said to refuse to acknowledge their children's disabilities as their responsibility, but that of the State.

#### **The female child:**

70. Female children also face barriers to education, again largely from their own families. As mentioned, many still believe that girls need only domestic skills therefore education is unnecessary.
71. The government has a "1 Rupee incentive per day", for girls to attend school in rural areas. The money goes into a government bank account, held on trust for female students, however there are no records for this money. A recent public enquiry in India aimed to raise transparency of where this money goes, however produced no conclusive answers. This is unusual when viewed in light of India taking a highly active part in the drafting of the Universal Declaration on Human Rights and their specific highlighting of the need for gender equality; such as their large involvement in the establishing of *UN Women*. It is therefore necessary for India to ensure effective realisation of these rights through guaranteeing schemes such as the 1 Rupee incentive are implemented properly, to encourage girls into education.

#### **The child labourer:**

72. Another barrier to the effective provision of education is the law relating to child domestic labour, which is now illegal for under fourteen year olds. However if children are working in their homes or with the help of their families this is neither prohibited nor regulated. Many of the families of these children were reluctant to send their children to school because they rely on this small, albeit significant income, and sometimes on

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<sup>30</sup> The United Nations Convention on Rights of the Child (1989)

the labour itself. The significant problem of child labour is inextricably linked with the current shortfalls of the education system; The official literacy rate of 61% includes many who can barely write their name, and until education is **enforced** as compulsory, ending child labour looks unlikely as under fourteens' are able to continue to work without any consequences for non-school attendance. India needs to also consider the long term economic consequences of producing further illiterate generations, and must also acknowledge that it is simply not enough to legislate on education, but that this right must be implemented.

73. Furthermore, it is also in India's interests to enforce the right to education effectively. It is administratively easier to monitor school attendance than to monitor children in the workplace; as it is also to encourage parents to send their children to school rather than force employers not to hire children.

#### **The eradication of poverty:**

74. India has been a major leader in the United Nations in ensuring that the eradication of poverty and economic growth in developing countries remains a priority issue on the UN's agenda. It has also been one of the largest financial contributors to funding development issues out of all the signatory developing countries. An example of this is the one billion US Dollars India gave to socio-economic projects for the implementation of *the Istanbul Programme of Action*, to aid lesser developed countries. India needs to be consistent in applying this passion for development to its own population and its own education system. Otherwise, the eradication of poverty will not be fully possible in India.

#### **Accountability issues in the current system:**

75. The observations from this research revealed three main areas that accountability fails in the education system; through partial enrolment of students, failure to produce school reports and audits, and the absence of parent teacher associations.

76. This research has highlighted the financial incentives for the partial enrolment of children into schools. The education officer interviewed, asserted that one hundred and eighty three children were enrolled into school recently however only fifty eight children were enrolled and the remainder have not been admitted into schools or given their uniforms. Partial enrolment like this means the schools keep the money for the 27 items of uniform that students are supposed to get, equivalent to £35.46 per student. The education officers displayed a loyalty to the side of the schools and not the student's, and this is a clear contributor to why the department is not sincerely trying to enrol children properly into schools.

77. Furthermore, the school officer system requires comprehensive reports on all schools to be compiled, however these reports are not accessible to the public and school inspections are infrequent. Accordingly, many schools are seemingly invisible with officials focusing on numbers alone, not investigating why children are not in school. The school officers are also required to monitor the quality of schooling and then produce school audits, which is often not done. Assurance was given to JKM that a grading system should be coming in to place in the near future, the level of reliability of this is uncertain. All of these conclusions highlight one common observation; the Indian education system is yet to establish proper accountability or transparency.

78. Another problem is the parent teacher associations that the current system provides for, which are on the whole not enforced. The specialist school visited was the first of their kind in Mumbai to have a parent body, which is negative because this is an extremely useful association with clear benefits to children's education. In summary, the main problems lie not with the gaps in the law itself, but with its lack of implementation. A clear example of this was apparent in JKM's meeting with the education officer, who did not take accountability for any non-implementation or failures of the education system. Additionally the struggles encountered by the headteacher of the specialist school visited, demonstrate a conclusive lack of both co-operation and accountability on behalf of the educational authorities to improve school conditions and essentially abide by the legislation that affords the right to education.

### **The right to education in other jurisdictions:**

79. In concluding this research fully, consideration should be given to how the Indian Courts have dealt with breaches of its Constitution in the past, and also how the rights of the child and education have been addressed in other jurisdictions. The Indian case of Unnikrishnan J.P.<sup>31</sup> resulted in a historic judgment, as outlined in the case law section above. It involved private colleges challenging their "right to do business" which was being limited through State laws, which sought to regulate capitation fees from students seeking admission. Their right to do business was negated by the courts and it was held that commercialisation and profit making in education was now to be prohibited. The case also led to the Indian Supreme Court considering whether the right to life<sup>32</sup> guaranteed a fundamental right to education. It was held that education between the ages of six and fourteen was a fundamental and enforceable right, prompting an amendment<sup>33</sup> to the Constitution.

80. This judgment is significant to this research, as it highlights how the courts have responded when Indian legislation<sup>34</sup> has been breached and the impact of judicial decision making in intervening in fundamental rights. It also demonstrates that the Courts are willing to raise Constitutional challenges of their own law; and as a result of this, assert compliance with its true meaning, in enforcing the full realisation and implementation of education rights.

81. The right to education has been considered by Courts of other domestic jurisdictions, and also by the Inter-American Commission on Human Rights. For example, the Columbian Constitution<sup>35</sup> requires free and compulsory education, in the same way as the Indian Constitution, but between the different age range of five and fifteen. The Constitutional Court of Columbia has averred that this right *must also be read in conjunction with* their UN obligations to their children,<sup>36</sup> (obligations which India are also signatories to) and gave the example that education must also be provided to those between fifteen and eighteen years, if the

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<sup>31</sup> Unnikrishnan J.P. vs. The State of Andhra Pradesh (1993)

<sup>32</sup> Article 21, The Constitution of India

<sup>33</sup> Being the insertion of Article 21A in to The Constitution of India in 2002

<sup>34</sup> Article 21, 41 and 45, The Constitution of India

<sup>35</sup> Article 27, The Constitution of Columbia

<sup>36</sup> The United Nations Convention on Rights of the Child (1989)



concerned individual has not yet completed their years of basic education. This is to give effect to the UN Convention which defines a child as being under eighteen years of age.

82. The Inter-American Commission has also taken a similar approach, finding the Dominican Republic internationally responsible for breaching Article XII of the American Declaration<sup>37</sup> (the right to education) when it maintained a policy of school registration being upon production of a birth certificate, whilst concurrently denying issuing certificates to persons of Haitian heritage. The student concerned in this specific case<sup>38</sup> was a thirteen year old female of Haitian descent, who was expelled by her school for failing to obtain and present a birth certificate, leaving the only option for education available to her being a night class for adults. This was found by the Commission to violate the individuals' right to education under the Dominican Constitution itself and also under their international obligations of Article XII<sup>39</sup>, through being party to the American Convention.
83. These examples show how India has dealt with the failure to implement this right in the past and also how the rights of the child and of education have been addressed in different jurisdictions. When viewed in conjunction with the conclusions of this research, it highlights that it is not enough to simply legislate or be an international signatory to the right to education alone; But that this right must be actually **implemented** if India is to enjoy and fully realise the importance of education.
84. Furthermore, with acknowledging a responsibility for fundamental freedoms such as these, the Indian government has opened itself to accountability as this is inextricably linked with being a signatory to human rights obligations. In order to implement and develop this right properly, in a sustainable way, existing structures of the current system need to be reformed to ensure there will be accountability present in the future. In considering India's expressions of commitment to human rights, JKM hopes that this is fully realised through positive, sustainable changes to the current system to ensure that implementation and accountability are henceforth addressed.

### Summary:

85. As mentioned at the start of this analysis, although there are many areas for improvement, there must be recognition for the individuals who are triumphing in providing a high level of education *despite* these limitations. The schools visited have some excellent policies in place, such as a split morning or afternoon school to facilitate children who have to work to attend both work and school; siblings of school goers to be allowed to sit at the back of the class to facilitate care-givers getting an education; and in the case of the specialist school, the constant striving by the headteacher to improve the lives of her students - such as through her proposed vocational residential training centre. The individuals who get ahead are those who are inspired by equipping their students with tools for a better future, in many instances through giving their

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<sup>37</sup> The American Declaration of the Rights and Duties of Man (1948)

<sup>38</sup> *Yean and Bosico v Dominican Republic* (2005)

<sup>39</sup> The American Declaration of the Rights and Duties of Man (1948)

students an education that will mean they are able to escape the abstract poverty in which they are born in to.

86. However inspirational these individuals are, *their efforts alone* are simply not enough; the government needs to change the ways in which the implementation of the right to education is provided for and create accountability through imposing consequences if non-compliance occurs. The local authorities in each area need to provide transparency of the system and also focus on the quality of schooling given, mainly through allocating sufficient financial support to not just the very basics. The pre-school visited had no toilet facilities at all, and one of the other schools visited had a single toilet for approximately five hundred students meaning children urinated in front of the school on a main street. The latter school also needed massive electronic renovations dependant on funding, meaning education was given in a hazardous environment.
87. Health care is also neglected, with no school nurse provided in any of the schools visited and just one annual health check-up for students, many of whom live in dirty conditions in nearby slums, often contracting flu from their surroundings. These are basic things, yet the government is failing to provide them, which is not only in breach of India's legislation and their human rights obligations, but lacks any reasonable explanation.
88. The inspirational individuals encountered in this research are indicative that change is possible here, what is needed now is for the authorities themselves to make these changes, taking this right seriously, so that children in India are given the high standard of education they are entitled to as a fundamental freedom.

## **RECOMMENDATIONS**

89. With reference to the observations and meetings from this research and the wider evidence gathered from legislative analysis, India is urged to implement the following:

### **General**

- The State of India needs to amend the legislation relating to education to make it an *absolute* right, which is able to be effectively and fully implemented. This will remove the discretion that individual States currently have, contributing to the eradication of the presently inadequate implementation and accountability issues. Furthermore, there needs to be specific accountability for non-compliance drafted into the legislation, with consequences for the eventuality of this right being breached. Potentially, a re-write of the 2009 Act<sup>40</sup> may be necessary to achieve this, as it was written quickly and reviewed minimally.
- A review of the structure of the current education system is needed, with a view to creating independence of official's roles and remove the possibility of any conflict of interests. A way this can be done is through an independent body, like OFSTED, being set up to monitor compliance of officials in the education sector and also to investigate reasons behind issues such as non-attendance and truancy.

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<sup>40</sup> The Right of Children to Free and Compulsory Education Act (2009)

Parents should be able to take the education authority to court or an education tribunal without a fee, if their children's rights have not been met. This would help to create accountability for the system and help prevent further breaches within the provision of education.

- Have a more secure system for enrolment to prevent abuses such as partial enrolment. Maybe use the aforementioned independent body to monitor compliance and ensure schools do not receive “the uniform/27 items” money unless students are actually attending their school.
- Introduce regular school inspections which are properly audited and make these reports publicly accessible. Establish the proposed school grading system as a part of these inspections. The education system needs to further establish transparency by making not only their school reports public but also their obligations to the students and its schools known.
- Establish Parent Teacher Associations with regular parental input and involvement in all schools. These meetings would benefit from being in the evening or at weekends so parents can attend without compromising any of their salary. Parents need to continue what is learned at school, in their homes, and engage fully in their children's education. This involvement also places a heightened obligation on schools to abide by the legislation relating to this area and could assist in raising the quality of education provided.
- Raise awareness of the right to education in slum communities. Parents need to be aware of the opportunities available for their children – government officials, NGO's and teachers should help promote this; however responsibility should fall mainly with the government as NGO's are already present in these communities and teachers are stretched with such large classes and lack of resources.
- Create penalties for truancy, and set up a national incentive system for attendance – i.e. full attendance results in a prize or an award.
- Allocate sufficient funding to at least the absolute necessities in schools, for things such as:
  - Electronic renovations, ventilation and general maintenance;
  - A higher standard of food for the mid-day meal;
  - Sufficient toilet facilities;
  - More than one medical check-up a year;
  - A school nurse system.
- Monitor the number of students to each teacher and allocate more teachers where needed. This research has shown that overcrowded classes are having a negative impact on the quality of education that students receive.
- Introduce modern teaching methods, such as audio visual learning methods, and provide computers or allocate funding to repair broken computers.
- Implement extra classes or further tuition for children who need more time to understand things or need to catch up.
- Introduce additional subjects through widening the currently basic curriculum to include subjects such as:
  - IT;
  - Music;

- PE;
- Art;
- And subjects which provide vocational experience such as tailoring and carpentry.
- Schools could also benefit from having NGO's visit and teach students about child rights.
- Allocate more than one uniform per year for all students. The list of 27 items the government is obliged to provide does state two uniforms are to be provided, however the majority of school goers currently receive just one.

### **Pre-school education**

- Make pre-school education compulsory. This is an individual's first step into both society and the education system and the mid-day meal provided can in some cases be the only food these children receive all day. This does not necessarily need to be compulsory from the age of three but facilitate a model that provides education for children before the age of six, perhaps from the age of four. The current pre-schools operate for a couple of hours a day, ending after the children are given lunch. This may help to facilitate parents being able to work.
- For the pre-schools that do exist, monitor the quality of these establishments. For example provide:
  - Seats;
  - Proper ventilation;
  - Toilet facilities;
  - A clean environment;
  - Improvements on the currently poor standard of food that is provided for the mid-day meal.

### **The disabled child**

- More specialist State schools need to be set up for disabled children so that all who need to, can access them without traveling a significant distance to attend.
- Provide compulsory vocational training for disabled children. The State needs to start assisting in the often difficult transition between education and employment. Without this, the legitimate aim of India's legislative and international obligations for the disabled will not be possible, which is to have an end result of equal opportunities in the workplace.
- Reform the mobile teacher scheme in mainstream schools to ensure disabled children who attend, are given adequate support in completing their education properly.
  - Also start documenting this to create accountability for this scheme.
  - Introduce a standards system in place so that the education officials can do what they are supposed to do – *promote and monitor* equal opportunities in education and enable as many disabled children as possible are able attend mainstream schools, promoting social inclusion.
  - In this, it would be helpful for schools to have a disability facility plan like England has, such as by making the building and the learning environment of every school disability friendly.

(For example establish a requirement to make all classrooms wheelchair friendly and have disabled toilets.)

- Establish Parent Partnership Associations all over the country for children with specialist needs, like there are in England. These associations have representatives who support, act and advocate on behalf of these parents to challenge issues affecting learning, such as lack of support in schools.
- Regulate the curriculum in State specialist schools in the same way that mainstream schools do. This would result in raising the standard of education in these schools, promoting equality.

### **The female child**

- Ensure the money from the one Rupee scheme for girls is given to these students, and consider increasing this extremely nominal amount so that this scheme serves as a legitimate incentive to attend school.
- Have an independent body to hold this money and keep accounts of it, which are accessible by those who the funds are for. This scheme would benefit from being widened to include non-rural areas too and would accordingly promote the importance of gender equality in the long term – as it would raise the levels of female literacy, as well as reflect the level of importance India has placed on women’s rights in their United Nations involvement.

### **The child labourer**

- Introduce more split session schools so that children who have to work can attend either a morning/afternoon/evening school session.

90. In short all these recommendations aim to do two main things; promote the right to education through making it an accessible and transparent system with accountability, and raise the quality of the schooling that students receive.

***You must be the change you wish to see in the world..***

*Mohandas Gandhi*