



# Out of school children in India - a Minor Field Study in Uttar Pradesh and West Bengal

The legal protection of marginalised children's right to elementary education.

Eleonore Lindén & Tina Sheikhi

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Supervisor: Per Bergling

*'If we want to reach real peace in this world, we should start educating our children'*  
**- Mahatma Gandhi**

## **Abstract**

The right to education is recognised by governments worldwide, and is expressed in numerous international human right treaties. With the establishment of the United Nation Convention on the Rights of the Child, State Parties are bound to undertake all appropriate legislative and administrative measures to implement the articles of the treaty in national legislation. Article 28 express the right of all children to receive a basic elementary education, however, the high amount of out of school children worldwide still remain a high concern by the global community. The most affected group in this regard is children from disadvantaged groups of the society. In view of the large social disparities in the Indian society, we have analysed the implementation of the Indian legislation ensuring that every child of the age of six to fourteen years shall have the right to free and compulsory education. We have studied relevant national law and policies, in addition to international law, and analysed the main social obstacles keeping children from disadvantaged groups out of school in the states of Uttar Pradesh and West Bengal. We believe that India has taken necessary legal and political actions to adopt appropriate rules with the aim to ensure that all children are entitled to a free and compulsory elementary education. Nonetheless, we note that India face major challenges in the process of implementing sustainable legal frameworks and national policies nationwide.

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## Abbreviations

ASSI	Asian Sahyogi Sanstha India
CRC	The Committee on the Rights of the Child
GI	Group Interview
IIC	Individual Interview Child
IIG	Individual Interview Governmental School
IIP	Individual Interview Private School
MDGs	Millennium Development Goals
MHRD	Ministry of Human Resource Development
MWCD	Ministry of Women and Child Development
NCPCR	National Commission for Protection of Child Rights
NGO	Non-Governmental Organisation
NPC	National Policy for Children
NPE	National Policy on Education
RTE Act	The Right of Children to Free and Compulsory Education Act
SC	Scheduled Castes
SDGs	Sustainable Development Goals
SMC	The School Management Committee
ST	Scheduled Tribes
UIS	UNESCO Institute of Statistics
UN	United Nations
UNCRC	The Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund

# 1 Introduction

According to United Nations Educational, Scientific and Cultural Organization (UNESCO) and the UNESCO Institute for Statistics (UIS), 124 million children and young adolescents in the world are currently out of school. A goal of universal elementary education was included in the previous Millennium Development Goals (MDGs), which had its final year in 2015. The aim was to enrol all children in the world in school before the end of 2015<sup>1</sup>, however, this is still far out of reach. The Sustainable Development Goals (SDGs) is a new attempt to combat human rights related issues issued by the international community<sup>2</sup>, and includes goals concerning the high amount of children worldwide who do not attend, or drop-out of school.<sup>3</sup>

India has one of the largest education systems in the world. In total there are around 26 million students registered in public and private schools between first and sixth grade.<sup>4</sup> An estimation made by United Nations Children's Fund (UNICEF) indicates that more than six million children were out of school in India during the same period.<sup>5</sup> India has undertaken several steps towards achieving the goal of universal elementary education, and we observe a decline in the amount of out of school children in comparison to previous years.<sup>6</sup> Yet, the high rate of out of school children in India is a major global concern.

A high per cent of the out of school children in India originates from the poorest groups of the society.<sup>7</sup> Children from these areas either live in temporary homes located in slum areas, at railway stations, on the streets, or in other unsafe, life-threatening environments with or without their family.<sup>8</sup> Most of the marginalised children work as beggars, vendors, rag pickers or helpers in small road shops.<sup>9</sup> The living conditions speak for itself: the lack of food, drinking water and sanitary facilities leads to a poor quality of health and nutrition. Conditions like this puts the child in vulnerable situations where drug, sexual and other types of abuse are risks of their every day life.<sup>10</sup> The living conditions that exists in India are part of the problem that prevents the achievement of universal elementary education. National

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<sup>1</sup> UNICEF Global initiative on Out-of-School children, 2014, p. iii.

<sup>2</sup> In this case referred to as the majority group of governments and people of the world.

<sup>3</sup> SDGs, [<http://www.un.org/sustainabledevelopment/development-agenda/>], 2016-12-27.

<sup>4</sup> MHRD Report NPE, 2016, p. 37.

<sup>5</sup> UNICEF, State of The World's Children Country Statistical Information, 2016.

<sup>6</sup> UNESCO, [<http://tellmaps.com/uis/oosc/#!/tellmap/-528275754>], 2016-12-27.

<sup>7</sup> UNICEF Global initiative on Out-of-School children, 2014, p. vii.

<sup>8</sup> Ibid., p. 53.

<sup>9</sup> Ibid., p. 34.

<sup>10</sup> Ibid.

legislation has been adopted with the purpose to prevent this great amount of out of school children. Albeit, it seems that the Indian society has a long way to go before it can change old patterns, and before all children can benefit from legal initiatives safeguarding their right to free and compulsory elementary education.

## *1.1 Purpose*

The purpose of this thesis is to analyse the implementation of the provisions in The Right to Education Act concerning children from disadvantaged groups in Uttar Pradesh and West Bengal, India. This will be studied in view of the existing social obstacles keeping these children from attending and/or completing their elementary education. We will analyse the effectiveness of the implementation based on relevant international law and development goals, in addition to national policies and programmes. We will lastly examine and discuss the outcome of our study by suggesting relevant legal amendments.

The following questions will be answered in order to achieve our purpose:

- How effective is the implementation of the provisions in the Right to Education Act and related policies and programmes concerning children from disadvantaged groups?
- What are the main social obstacles preventing children from disadvantaged groups to attend and/or complete their elementary education?
- What legal changes can be made in order to increase the amount of children attending school from disadvantaged groups?

## *1.2 Method*

We have carried out the core parts of this study in India. Our purpose has been to observe the reality of various social factors affecting the implementation of the legal provisions we have examined.<sup>11</sup> A qualitative method has been used in the process of interpreting and understanding the contrast between law and reality. By understanding existing social factors in selective parts of the society, we have been able to draw conclusions in light of the academic knowledge we have obtained. This study has proven to be an active learning process, which is a vital aspect in the use of a qualitative research.<sup>12</sup> In order to present a study that reflects the reality, the social factors behind the legal problems have an essential part of this essay. This information has been gathered through personal observations and

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<sup>11</sup> Burgess, 2000, p. 79.

<sup>12</sup> Rossman and Rallis, 2012, p. 5.

interaction with people living in the society, in addition to individual and group interviews. To understand the legal framework in India we have used a legal method in view of international law. We have carefully analysed the national legislation and the objects behind its adoption, relevant case law and doctrine. The Common law system in India is different from the Swedish legal system and we have been aware of the challenges that can arise when studying legislation of such kind.

### **1.2.1 Qualitative research method**

We have used a qualitative text analysis to study the content of our material.<sup>13</sup> We decided to merely examine selected parts of documents that we found relevant for our purpose. Therefore, it has been necessary to read texts several times in order to grasp the full range of the information.<sup>14</sup> In order to ensure a relevant and qualitative analysis of our material, the sub questions related to the purpose have guided us through the process of choosing relevant parts of each text.<sup>15</sup>

The weakness of a qualitative method is that our conclusions are based on a limited range of material. Considering the geographic limitation and our use of a qualitative method, our analysis and conclusions only reflects the situation in Uttar Pradesh and West Bengal. Based on the material we have assessed in various documents concerning out of school children in India, we have been aware not to generalise our conclusions.

### **1.2.3 Individual interviews**

We have conducted qualitative interviews with selected groups of respondents with the purpose to gain a personal insight of various social aspects. By having an open dialogue with different groups of individuals, we have been able to broaden our legal interpretations.<sup>16</sup> The range of respondents of the individual interviews is limited to ten children, four school principals, and four teachers.

When carrying out our individual interviews, we have used a semi-structured interview form that ensures a balance between flexibility and structure. This type of interview is characterised by the open nature of the conversation, and allows the researcher to lead the interview by

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<sup>13</sup> Justesen and Mik-Meyer, 2011, p. 103.

<sup>14</sup> Esaiason et al., p. 210.

<sup>15</sup> Ibid., p. 215-216.

<sup>16</sup> Ibid., p. 253.

asking general questions followed by related follow-up questions. By using key words to assist the respondent to answer the questions, we were able to ensure that the full scope of each question was covered.<sup>17</sup> The advantage of using a semi-structured form is the possibility for each respondent to formulate his/her answer freely, rather than being restricted to answer detailed questions that would result in narrow answers.<sup>18</sup> We explained how the outcome will be used, and stated that each respondent will be anonymous. Both before and during our interviews we made sure to have an objective approach towards the content of each answer. When conducting all of our interviews we ensured to leave out possible prejudice opinions that can affect the analysis of the content.<sup>19</sup>

The children participating in our interviews are between the ages of six to fourteen years. All of them are living in homes managed by Asian Sahyogi Sanstha India (ASSI) and are currently enrolled in school. They originate from less privileged communities and the majority did not receive an elementary education before moving to the ASSI homes. The purpose of interviewing children was to identify the main obstacles preventing them from attending and/or completing their elementary education. All children answered the same questions and were not forced to share information they felt uncomfortable expressing. Due to their young age and the sensitive character of our topic, we decided to introduce the interview by having a general conversation about topics they found interesting. During the interviews we included easy-going questions in order to facilitate the process for each child.<sup>20</sup> The credibility of the content from the interviews has been considered. The selection of children was based on their maturity and mental stability, however ASSI employees informed us that children may compose stories in order to suppress their past. The interviews with all children were conducted in their homes in order to create a comfortable atmosphere where each child felt secure to share their story.

Interviews with teachers and principals were held with the aim to gain knowledge about the work carried out with marginalised children in various schools and the implementation of the RTE Act. By interacting with school managements from both governmental and private schools we were able to receive insight from two different aspects.

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<sup>17</sup> Gillham, Bill, 2008, p. 103.

<sup>18</sup> Ibid., p. 106.

<sup>19</sup> Ibid., p. 104.

<sup>20</sup> Källström Carter, 2015, p. 73-75.

We received assistance from ASSI employees to translate questions and answers in all of our ten interviews with the children. We were also required to use a translator during one individual interview with a governmental school. We did not find the language barrier a major issue when conducting our interviews, we were however aware of the probability of miscommunication.

#### **1.2.4 Group interviews**

We invited ASSI employees in Uttar Pradesh and West Bengal to participate in in-depth group interviews. This specific group of respondents meet children from disadvantaged groups in their daily work, and they hold valuable knowledge and experience about the difficulties that these children face in their daily struggle to survive. The purpose of the group interviews was to create an open dialogue where the respondents could share their experience about the situation of out of school children.<sup>21</sup> The group interviews were conducted in the cities we visited during our stay in India, and each group consisted of five to ten employees. The duties of a facilitator were divided among ourselves in order to ensure a coherent structure and efficient discussions in each group interview.<sup>22</sup> By using this open form of interview, we were able to grasp a broader range of opinions in relation to our study. The involvement of a larger amount of people in one interview further resulted in valuable discussions, and identified both disagreements, as well as shared opinions about the topic.<sup>23</sup>

### **1.3 Material**

In order to successfully carry out our study, it has been necessary to examine relevant international law and global frameworks concerning children's right to education. We have mainly analysed the Convention on the Rights of the Child (UNCRC) and periodic reports presented by the Committee on the Rights of the Child (CRC) related to the implementation of the UNCRC in India. We have also been guided by the SDGs when analysing the development and enforcement of international law and policies in India regarding children's right to education.

In relation to national legislation, the Constitution of India and The Right of Children to Free and Compulsory Education Act (RTE Act) have been our main sources. Two different RTE

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<sup>21</sup> Gillham, Bill, 2008, p. 95.

<sup>22</sup> Ibid., p. 94.

<sup>23</sup> Ibid., p. 100.

Acts exists in Uttar Pradesh and West Bengal, and we have examined both of them in the scope of this study. The preparatory documents in relation to the legislation has also been analysed, such as relevant case law, the Bill to the RTE Act, and the Eighty-sixth Amendment that includes the main changes in the Indian Constitution related to the right to education in India.

We have analysed two specific national policies, namely, The National Policy for Children (NPC) and The National Policy of Education (NPE). As a complement we have used doctrine, articles, and reports related to the topic of our study. The problems that exist in relation to out of school children are global concerns and have been assessed from various aspects in well known international journals, Internet sources, and reports prepared by international NGO's. In order to grasp the accurate numbers of out of school children in the world and in India specifically, we have collected data from UIS.Stat<sup>24</sup> and UNICEF<sup>25</sup>. A vital part of our material has been the content of each individual and group interview conducted in India. After each interview we discussed and reviewed the content in order to ensure a clear and mutual interpretation that could be used in the text.<sup>26</sup> Throughout our study we have gathered our material with carefulness and evaluated each source individually to assure a qualitative analysis.

## **1.4 Clarifications**

In order to avoid misinterpretation of various terms used in our study, we will in the following paragraphs present definitions of important terminologies.

### **1.4.1 Definition of a child**

We consider a child as defined in the RTE Act; 'child' means male or female child of the age of six to fourteen years'.<sup>27</sup> Due to the fact that we examine Indian legislation, we have excluded the definition used in the UNCRC.<sup>28</sup>

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<sup>24</sup> UNESCO [<http://data.uis.unesco.org/>] 2016-12-27.

<sup>25</sup> UNICEF [<https://data.unicef.org/resources/state-worlds-children-2016-statistical-tables/>] 2016-12-27.

<sup>26</sup> Gillham, Bill, p. 113-114.

<sup>27</sup> RTE Act, 2 (c).

<sup>28</sup> UNCRC art. 1.

### **1.4.2 Appropriate government**

The RTE Act use the term ‘the appropriate government’ to explain what government or authority that has a specific responsibility. If a school is owned, established or controlled by the central government, the appropriate government is the central government. In a case of a non-governmental school, the appropriate government is the state government in the territory the school is established.<sup>29</sup>

### **1.4.3 Definition of disadvantaged groups**

We will use the same definition of ‘disadvantaged groups’ as defined in the RTE Act. A child belonging to a disadvantaged group ‘means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government’.<sup>30</sup> In Uttar Pradesh, an ‘orphan child or child belonging to parent who is HIV or cancer affected’ are also included in this definition.<sup>31</sup>

## **1.5 Outline**

The initial section of this study presents a short overview of international treaties protecting children’s rights to education in the world, such as the UNCRC and the SDGs. This is followed by corresponding national legal framework in India. The main part of this study is assessed under the third chapter, where we examine the RTE Act and special provisions protecting marginalised childrens right to education. Chapter four includes information about relevant national policies in India concerning children’s rights, and their right to elementary education in particular. In view of the legal framework, we will analyse the main social factors affecting the high amount of out of school children from marginalised backgrounds. We will further analyse if the implementation of the rules is effective. The presentation of the provisions will be incorporated with our personal analysis and interpretations. Lastly, we will conclude, analyse and discuss the outcome of this study in relation to the implementation of the national rules. We will present what measures we believe are necessary to undertake by India in order to minimise the problem of the high amount of out of school children among children from disadvantaged groups.

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<sup>29</sup> RTE Act, 2 (a) (i) and (ii).

<sup>30</sup> Ibid., 2 (d).

<sup>31</sup> Notification RTE Act Uttar Pradesh, 2012.

## 2 Children's right to education

### 2.1 *The UN Convention on the Rights of the Child*

The right to education was recognised as a human right through the adoption of the Universal Declaration of Human Rights in 1948, and has since then been reaffirmed in international and regional treaties. The UNCRC was adopted in 1989, and further strengthen and safeguard the concept of children's right to education. Article 28 states that primary education shall be made compulsory, free and available for all. The matter of education is according to the Convention not only about access, the right to education shall also be interpreted with the aims of education that is highlighted in article 29. Education should prepare children for a responsible life in a free society. The goal is to empower the child by developing his/her skills and learning capacities. The term 'education' goes beyond the formal context and should embrace a child's learning process that enable children to develop their personalities, talents and abilities both individually and collectively.<sup>32</sup> The Convention is the first international binding treaty to officially recognise the individual rights of children, and includes: civil; political; economic; social; and cultural rights of all children.<sup>33</sup> The UNCRC is a major human rights instrument for children worldwide in today's society. The treaty resulted in a document that bring issues related to children's right to the political agenda, and by the almost universal ratification the importance of children's right is given special attention.<sup>34</sup>

The Convention requires State Parties to regularly report to the Committee on the Rights of the Child (CRC) on the progress of implementing the UNCRC on national level. The Committee is the responsible body for monitoring and fostering an effective implementation of the Convention.<sup>35</sup> The CRC have noted that the diverse multicultural society and the existing social disparities in India is an obstacle that affects their work to combat socio-economic problems such as poverty, illiteracy and child labour. Since India represents an enormous proportion of the child population in the world, it remains a challenge for the country to undertake sustainable measures to protect children's rights.<sup>36</sup>

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<sup>32</sup> CRC Report, General Comment, 2002, p. 2.

<sup>33</sup> Rao, 2005, p. 2.

<sup>34</sup> Save the Children Sweden et al., 2000, p. 10.

<sup>35</sup> UNCRC, art. 43 and 45.

<sup>36</sup> CRC Report India, 2000, p. 2.

## *2.2 The Sustainable Development Goals*

The right to education has for a long period been a topic of discussion and a crucial part of the UN sustainable development agenda. There are various milestones throughout the UN history where global issues concerning education have been addressed. The latest breakthrough is the 2030 Agenda for Sustainable Development that resulted in seventeen new Sustainable Development Goals (SDGs). The new goals were decided upon by the world leaders with the purpose to ensure safer and sustainable societies worldwide. The SDGs is the following of the previous MDGs that had its final year in 2015. Countries are expected to establish national frameworks to ensure a successful achievement of all seventeen goals,<sup>37</sup> regardless the fact that these goals lack the character of a legally binding treaty. One of the new SDGs express the importance to ensure inclusive and equitable quality education, and promoting education at all levels. All children and youth, in particular in vulnerable situations, should have access to lifelong learning opportunities that will help them to gain the knowledge and skills they need.<sup>38</sup>

## *2.3 The Constitution of India*

The Indian Constitution entered into force on 26 January 1950, and proclaims the individual fundamental rights of the citizens in India.<sup>39</sup> The Constitution is based on a federal structure that includes both central and state governments. Only the central government has the right to enact national laws, however, the power is not exclusive. The authority to establish legislation in the area of education is distributed between the central and the state governments.<sup>40</sup>

The recognition of the right to education was mainly developed after India ratified the UNCRC in 1992. One milestone in the development of the right to free education in India was the outcome of two legal cases, namely, *Mohini Jain vs Karnataka* from 1992, and *Unni Krishnan vs Andhra Pradesh & Others* from 1993.

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<sup>37</sup> SDGs [<http://www.un.org/sustainabledevelopment/development-agenda/>] 2016-12-27.

<sup>38</sup> SDGs, goal 4.

<sup>39</sup> The Constitution of India, preamble.

<sup>40</sup> Rajaram, 2008, p. 33.

### **2.3.1 Mohini Jain vs. Karnataka**

In this case, a resident of the state Uttar Pradesh challenged a notification issued by the state of Karnataka that permitted private medical colleges to charge higher fees to students from other states. The Supreme Court discussed whether the right to education is guaranteed under the Indian Constitution, and held that the charging of a ‘capitation fee’ by private educational institutions violated the right to education. In the absence of an article explicitly safeguarding the right to education, the Court interpreted that this fundamental right ‘flows directly from right to life under article 21’. The Court explained that the right to life is not fulfilled without dignity, and according to the court, one is only able to obtain a dignified life through education.

The Court referred to section IV of the Constitution that express the directive principles that have to be applied by India when establishing laws.<sup>41</sup> According to these principles, ‘the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to education [...]’.<sup>42</sup> In addition, the State shall, within a period of ten years from the commencement of the Constitution, provide for free and compulsory education for all children until they complete the age of fourteen years.<sup>43</sup> The directive principles cannot be enforced by a citizen, and during this time the right to education was not guaranteed as such in the Constitution. It was the opinion of the Court that the wording of the principles in section IV indicates that the authors of the Constitution intended India to provide education for its citizens.<sup>44</sup>

### **2.3.2 Unni Krishnan vs. Andhra Pradesh & Others**

This case from 1993 involved a challenge by private educational facilities to the constitutional character of state laws regulating capitation fees charged by such institutions. The Supreme Court confirmed its decision in Mohini Jain vs Karnataka and still considered the right to free education as a fundamental right under article 21 that should be read in conjunction with the directive principles concerning education. According to the Court, after reaching the age of fourteen years, children’s right to education is subject to the limits of economic capacity and

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<sup>41</sup> The Constitution of India, art. 37.

<sup>42</sup> Ibid., art. 41.

<sup>43</sup> Art. 45 was substituted by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 3, as ‘The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years’.

<sup>44</sup> The Constitution of India, art. 41 and 54.

development of the State as stated in article 41 of the Constitution. The Court explained that the right to education only is limited to children up to the age of fourteen years. Therefore, the right was not considered absolute. The findings of the Court in Unni Krishnan differ from the decision in Mohini Jain vs Karnataka that the right to education is guaranteed at all levels.

The two court decisions led to a wider interpretation of the national legislation regarding the right to education.<sup>45</sup> Through the Constitution (Eighty-sixth Amendment) Act of 2002, article 21A was added to the Constitution and finally the right to education was recognised as a fundamental right. Article 21A states that ‘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’. The Constitution further express that the educational interest of disadvantaged groups of the society shall be promoted with special care. The State shall protect them from social injustice and from all forms of exploitation, in particular people from SC and ST.<sup>46</sup> In order to achieve this, an amendment was made in 2005 safeguarding the educational interest of disadvantaged groups. It empowers the Indian government to establish legislation concerning the admission to educational institutions of citizens from disadvantaged groups in the society.<sup>47</sup>

#### ***2.4 The Right of Children to Free and Compulsory Education Act (2009)***

The Right of Children to Free and Compulsory Bill, 2008<sup>48</sup> (RTE Bill) was a first attempt by the Indian government to present a special legislation providing education to all children under the age of fourteen. This includes specific rules for children who have dropped out of school before completing their elementary education, and provisions ensuring that non-admitted children are enrolled to a class appropriate to their age.<sup>49</sup> The core belief behind the RTE Act is that a just and human society, in addition to values such as equality, social justice, and democracy only can be achieved through provisions providing compulsory elementary education to all.<sup>50</sup>

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<sup>45</sup> Bajpai, 2012, p. 6.

<sup>46</sup> The Constitution of India, art. 46.

<sup>47</sup> Ibid., art. 15 (5), inserted by the Constitution (Ninety-third Amendment) Act, 2005, s. 2.

<sup>48</sup> Bill No. LXV, 2008.

<sup>49</sup> 213<sup>th</sup> report on the RTE Bill, 2009, p. 1-2.

<sup>50</sup> RTE Bill, 2008, p. 14.

The Indian Parliament enacted the RTE Act in 2009,<sup>51</sup> and further fulfilled the objective in Article 21A of the Constitution. The RTE Act provides the right to a free and compulsory education for all children between six and fourteen years regardless gender, socio-economic backgrounds, disabilities etc.<sup>52</sup> Special protection has also been given to children from disadvantaged groups in various provisions in the RTE Act, and shall be followed by the appropriate government, local authorities and schools.<sup>53</sup>

### **3 The implementation of the RTE Act**

The government of India has taken several actions to promote the interest of marginalised children<sup>54</sup>, including adopting legislation to ensure free and compulsory education for all children nationwide and providing special provisions for children from disadvantaged groups.<sup>55</sup>

The amount of out of school children is concentrated in communities that are disadvantaged due to aspects related to religion, caste and other socio-economic factors.<sup>56</sup> These groups often face multiple disadvantages that overlap, which negatively affect their right to education and restrict them from receiving a basic elementary education.<sup>57</sup> In this study, we have found that the socio-economic factors in India strongly affect the implementation of the provisions in the RTE Act concerning children from disadvantaged groups. Poverty, child labour and lack of knowledge about the importance of education among less privileged families, are the main social obstacles keeping marginalised children out of school in Uttar Pradesh and West Bengal. In order to complete their elementary education, marginalised children need special attention and care from local bodies, schools and the government that goes beyond the formal education.

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<sup>51</sup> The RTE Act is current in all states of India, except from Jammu and Kashmir, See also the RTE Act for West Bengal and Uttar Pradesh.

<sup>52</sup> RTE Act art. 2 (c) and 3.1.

<sup>53</sup> See inter alia RTE Act art. 8 (c) and 9 (c).

<sup>54</sup> See inter alia, Rajaram, 2008, p. 65.

<sup>55</sup> Rajaram, 2008, p. 67.

<sup>56</sup> UNICEF Global initiative on Out-of-School children, 2014, p, 7.

<sup>57</sup> Ibid., p. vii.

### *3.1 Free and compulsory elementary education*

#### **3.1.1 Free elementary education**

According to the definition of ‘free education’ in the RTE Act, ‘no child shall be liable to pay any kind of fee, charges or expenses which may prevent him or her from pursuing and completing elementary education’.<sup>58</sup> Children from Uttar Pradesh and West Bengal who are enrolled in governmental schools have the right to free textbooks and school uniforms once a year.<sup>59</sup> Despite this fact, it is a financial loss for many families from disadvantaged groups to send their children to school. The costs of sending children to school becomes a major barrier for less privileged families and results in the fact that education becomes a secondary priority. The financial burden for families from disadvantaged groups contributes to the high amount of drop-outs and non-regular attendance in school. The primary priority for these families is to earn money for the household, and parents rather use their children as a source of income than sending them to school.<sup>60</sup>

#### **3.1.2 Poverty**

A shared statement among our respondents is that the poor financial conditions of marginalised children in India, is the main reason keeping them out of school. One respondent mentioned that parents do not send their children to school intentionally, so they can contribute to their source of income.<sup>61</sup> According to two respondents, they were not able to regularly attend school due to various tasks they were forced to carry out in their home, with the aim to earn money for the household.<sup>62</sup> Parents depend on their children to work for their daily survival and cannot afford to provide a basic elementary education.<sup>63</sup> In this regard, single parents are more dependent on their children to take responsibility for the family and provide for the household.<sup>64</sup> The government of India has initiated various financial incentives to support and encourage poor families to send their children to school, and many children have benefitted from these programmes. However, it cannot resolve the broader

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<sup>58</sup> RTE Act art. 3 (2).

<sup>59</sup> RTE Act Uttar Pradesh, Part III art. 5 (1).

<sup>60</sup> Human Rights watch, 2005, p. 9.

<sup>61</sup> GI 1.

<sup>62</sup> IIC 6 and IIC 8.

<sup>63</sup> Cheruvalath, 2014, p. 4.

<sup>64</sup> Inter alia IIC 1 and IIC 9.

aspect of this problem and there are still a large number of the street children, children from slum areas and other vulnerable groups who are out of school.

### 3.1.3 Child labour

Child labour is a connecting obstacle that prevents marginalised children from attending and/or completing their elementary education.<sup>65</sup> Child labour is illegal in India through The Child Labour (Prohibition and Regulation) Act<sup>66</sup> (The Child Labour Act), still it remains a major problem nationwide. As a norm, children of poor families in rural areas of India start working from an early age. This includes contributing to the household, begging money on the streets, rag picking, or carrying out more physical work. The Child Labour Act was amended in July 2016. The previous rule prohibited children to be employed, and to work in specific occupations listed in an annex that specified various professions where the prohibition did not apply.<sup>67</sup> The new amendment replaced the primary provision by stating that: ‘No child shall be employed or permitted to work in any occupation or process’.<sup>68</sup> The provision is however not applicable in those cases where the child helps the family. The exception includes close family members of the child, and further defines that the specific work shall only be engaged by these specific family members. The new amendment also emphasise that permitted work only can be carried out after school hours and during vacation.<sup>69</sup>

Instead of attending school, two respondents explained that they used to serve beverages at a restaurant.<sup>70</sup> Two of our respondents explained that child labour is one of the main reasons keeping marginalised children out of school in India.<sup>71</sup> Child labour is one additional reason preventing already enrolled children from completing their elementary education. Children from disadvantaged groups are often obligated to limit their attendance in school due to physical work they are forced to carry out in their homes or other harmful environments. In most cases, this behaviour becomes a habit and the child start working instead of regularly attending school.<sup>72</sup>

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<sup>65</sup> UNICEF Global initiative on Out-of-School children, 2014, p. 7.

<sup>66</sup> Child Labour act, 1986.

<sup>67</sup> Child Labour Act art. 3 (1).

<sup>68</sup> Ibid.

<sup>69</sup> Ibid., art. 3 (2) Explanation (a) and (b).

<sup>70</sup> IIC 3 and IIC5.

<sup>71</sup> GI 2.

<sup>72</sup> Ibid.

When analysing this rule, we draw our attention to the provision stating that permitted work only can be carried out after school hours.<sup>73</sup> We are concerned if this concept can be assured by stating in the same rule, that children are allowed to work with their closest family members. We believe that the structure of this rule creates a large gap between the law and the reality of children from disadvantaged groups in particular. The rule may theoretically protect children from working during school hours, however, in reality one of the main reasons keeping marginalised children out of school is due to child labour that in many cases are carried out in the household or is forced by close family members.<sup>74</sup>

### **3.1.4 Compulsory elementary education**

The term ‘compulsory education’ is expressed in the RTE Act by imposing an obligation on the appropriate government and local authority to ‘provide free elementary education to every child of the age of six to fourteen years’, and ‘ensure compulsory admission attendance and completion of elementary education of every child of the age of six to fourteen years’.<sup>75</sup> The responsibility to provide the right to education is clearly placed on the government. We believe that the focus in the provision regulating ‘compulsory education’ is misleading and does not reflect the core purpose of the RTE Act. Preferably, the definition of compulsory education should focus on how the government can enforce the right, and how children can utilise their right to free and compulsory education in reality. The current wording merely lists the obligation of the government and does not indicate how the responsibility will be monitored.

We believe that the consequence of the current definition results in a theoretic regulation. According to the structure, the government is responsible for those children who do not attend school. The provision does not express how the specified responsibilities will be monitored, or what the consequences will be for possible violations. We argue that the RTE Act also should impose a strict responsibility on parents to ensure compulsory admission and attendance in school. The lack of further explanations on how the government shall enforce the right to education to all children, including those from disadvantaged groups, is in our opinion a weak aspect of the RTE Act.<sup>76</sup>

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<sup>73</sup> Child labour Act art. 3 (2) (a).

<sup>74</sup> UNICEF Global initiative on Out-of-School children, 2014, p. 7.

<sup>75</sup> RTE Act art. 8 (a) and 9 (a).

<sup>76</sup> Grewal and Sing, 2011, p.873.

### *3.2 Children from disadvantaged groups under the RTE Act*

The number of children from disadvantaged groups who drop-out of school before completing elementary education remains very large.<sup>77</sup> The governments and local authorities shall ensure that children from disadvantaged groups are not discriminated or prevented from pursuing and completing elementary education.<sup>78</sup> The RTE Act of Uttar Pradesh further protect marginalised children by expressing that teachers have to ensure that there is no discrimination against these children from disadvantaged groups, in the classroom or any other part of school.<sup>79</sup>

It is the responsibility of the central and state governments to provide financial support to schools in order to ensure that education is accessible to all children in India.<sup>80</sup> The appropriate government and local authority shall also ensure that children have access to a neighbourhood school, that there are school buildings, infrastructure, school material and a sufficient number of teachers.<sup>81</sup> According to the RTE Act of West Bengal, a neighbourhood school has to be reachable within a distance of one kilometre in rural areas, and half a kilometre in urban areas for children in first to fourth grade. For children enrolled in fifth to eighth class, the legal acceptable distance to neighbourhood school is two kilometres in rural areas, and one kilometre in urban areas.<sup>82</sup>

After the adoption of the RTE Act, appropriate governments and local authorities had the responsibility to ensure that neighbourhood schools would be available for everyone within three years after the adoption of the act.<sup>83</sup> We have realised that this specific criteria is still not fulfilled, eight years after the implementation of the RTE Act. A respondent informs us that there are no accessible schools in the rural areas where ASSI run their learning centres for marginalised children. Neither is there any possibility for parents to securely send their children to a formal school, nor is the government providing safe transportation options for these children to reach a school with sufficient school facilities and material.<sup>84</sup>

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<sup>77</sup> RTE Bill, 2008, p. 14.

<sup>78</sup> RTE Act art. 8 (c) and 9 (c).

<sup>79</sup> RTE Act Uttar Pradesh, Part III art. 5 (4).

<sup>80</sup> RTE Act art. 7 (1).

<sup>81</sup> *Ibid.*, in particular art. 8 (a) (b) and (d), 9 (c).

<sup>82</sup> RTE Act West Bengal art. 4 (a) and (b).

<sup>83</sup> RTE Act art. 6.

<sup>84</sup> GI 3.

### **3.2.1 Home environment**

The home environment of a child is a vital aspect to raise in relation to children's access and right to receive a basic elementary education. We observed that children from disadvantaged groups live under unstable conditions and in many cases they do not have a permanent home. One respondent informed us that he was not able to regularly attend school due to the fact that he frequently moved to different cities with his family with the aim to earn money.<sup>85</sup>

We have noted that the home environment has a major impact on the child's attendance in school. One respondent stated that he was not able to carry out his homeworks due to the inconvenient situation of his household, and lack of support from his family members.<sup>86</sup> Another respondent mentioned that he did not live in an environment where he was encouraged to regularly attend school, which resulted in roaming around and playing with his friends. Thus, the lack of motivation slowly disrupted his elementary education.<sup>87</sup> Another aspect of this particular social obstacle, is children who live without their parents. Those children are forced to live independently, and one respondent explained that he had to flee his home due to his unstable family conditions. This made it impossible for him to enrol in any school.<sup>88</sup> This is a clear indicator of the fact that marginalised children from urban communities need special attention and care that goes beyond the formal education. These children are vulnerable and face daily challenges to provide for their household, thus, a proactive approach is needed from teachers, schools, local authorities and NGO's to ensure that marginalised children have access to sufficient school facilities. By maintaining these children in a safe environment where they can benefit from their right to elementary education it can be ensured that they regularly attend and complete their elementary education.

### **3.2.2 The 25 per cent rule**

It is the obligation of every recognised school, including private and unaided schools, to admit at least 25 per cent children from disadvantaged groups in class one. This should reflect 25 per cent of the total amount of children in the class (the 25 per cent rule).<sup>89</sup> These children shall be provided with free and compulsory elementary education. The state government shall reimburse an amount equal to either the fees charged by the school, or the expense per child

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<sup>85</sup> IIC 2.

<sup>86</sup> IIC 7.

<sup>87</sup> IIC 4.

<sup>88</sup> IIC 10.

<sup>89</sup> RTE Act art. 12 (1) (c).

in state schools, whichever cost is lower.<sup>90</sup> This rule ensures that children from marginalised backgrounds can utilise their right to elementary education in both governmental and private schools. In this study, we noticed a lack of awareness about the 25 per cent rule among the private schools we visited. Additional efforts are required in order to ensure an effective implementation and application of the 25 per cent rule. In particular, we do not believe that private schools have readily accepted the rule in the two states we visited.

The 25 per cent rule is an attempt to include private schools in the implementation of the RTE Act.<sup>91</sup> A respondent confirmed that private schools apply this rule by admitting children from disadvantaged groups in first grade, however, mostly because they are legally obliged through national law.<sup>92</sup> There is clearly a legal pressure on private schools from the government to actively combat the issue of out of school children in India. We argue that the requirement to admit children from disadvantaged groups only in class one, is a major barrier preventing an effective implementation of the rule. In our opinion, the 25 per cent rule should also include continued admission in higher classes. Since marginalised children in many cases drop out of school before completing their elementary education, this group of children should have the possibility to be admitted also after class one.

### **3.2.3 Special training**

A special framework and training has been composed in the RTE Act for never enrolled or drop-out children.<sup>93</sup> The main aim of special training is to incorporate children from disadvantaged groups in the school system. The time period for this training varies between three months to two years, and focus on filling the gap of knowledge comparing to children of the same age.<sup>94</sup> It is the duty of every local authority to provide this training and the required facilities.<sup>95</sup>

The School Management Committee (SMC) in Uttar Pradesh is the monitoring authority who is obligated to search for never enrolled and school drop-out children. The SMC is supposed to place drop-out children in an appropriate class and provide them with required special

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<sup>90</sup> Ibid., 2 (n) (ii), and art 12 (1) (c).

<sup>91</sup> RTE Bill, 2008, p. 14.

<sup>92</sup> IIP 1.

<sup>93</sup> RTE Act art. 4 (2).

<sup>94</sup> RTE Act Uttar Pradesh art. 3 (1) (d) and RTE Act West Bengal art. 2 (d).

<sup>95</sup> RTE Act art. 9 (g).

training.<sup>96</sup> The SMC has the duty to make sure that those children continue to receive special attention from teachers in order to successfully integrate with other children.<sup>97</sup> It is furthermore the responsibility of the SMC to ensure that teachers continue to have meetings with parents and children about the child's attendance and achievements in school.<sup>98</sup>

Respondents from a governmental school explained that they have received significant help from the SMC. The SMC in the local area counsel parents in their homes, have monthly meetings with both children and parents, and try to encourage out of school children to attend school on a regular basis.<sup>99</sup> A similar instrument is regulated in the RTE Act of West Bengal. The Circle Project Coordinator (CPC) is the responsible authority and shall every month make a review of the special training necessities for children within the district.<sup>100</sup> The regulation is not detailed in West Bengal and we were not able to gather sufficient information about the CPC during our stay in India.

A respondent confirmed that it is necessary to provide special support to children from disadvantaged groups in order to minimise the gap of knowledge in school.<sup>101</sup> During our visits in different slum areas, we understood that learning centres is a concept that is efficiently used. These centres provide reading, writing and speaking lessons in the local language, in addition to English. Children in different ages can attend these classes on a regular basis. Lessons are held either as a complement to children's elementary education, or as special training for marginalised children with the aim to reach the level that is required to start school in an appropriate class. Some children merely attend these classes due to their parents' dissatisfaction towards the quality of education in the neighbourhood schools.<sup>102</sup> A high amount of learning centres used to exist in slum areas, and were managed by various community organisations. These learning centres received funds from governmental programmes, however, after the implementation of the RTE Act many centres did not meet the norms and standards of inter alia school buildings, sanitary facilities, and playgrounds etc. Therefore, they were forced to shut down.<sup>103</sup>

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<sup>96</sup> RTE Act Uttar Pradesh art. 3 (1).

<sup>97</sup> Ibid., Part II art. 3 (2).

<sup>98</sup> Ibid., Part V art. 13 (8) (b).

<sup>99</sup> IIG 2.

<sup>100</sup> RTE Act West Bengal art. 3.

<sup>101</sup> IIG 1.

<sup>102</sup> GI 2.

<sup>103</sup> 213<sup>th</sup> report of the RTE Bill, 2009, p. 81.

Our study has shown that special training is poorly implemented and not satisfactorily applied in schools. During all of our interviews, respondents were not aware of the existence of the special training program. We are glad that both Uttar Pradesh and West Bengal have implemented special provisions about special training. We are however concerned about the difference between the use of the program in practice. The fact that we did not receive additional information about the program in West Bengal indicates that major efforts are needed in order to effectively implement the program nationwide. We did not meet one child that has been able to take advantage of special training, which they are eligible to receive.

### *3.3 The role of parents*

The RTE Act includes a provision stating the duty of parents. The provision states that it is the duty of every parent to admit his or her child to an elementary education in the neighbourhood school.<sup>104</sup> Our interpretation of this rule is that it imposes a moral obligation on parents to send their children to school, rather than stating a legal responsibility. This is further emphasised by the Committee on Human Resource Development, in their report on the RTE Bill. Currently there is no monitoring instrument to ensure compliance of the provision expressing the duty of the appropriate government, local authorities and parents. The Committee raise concerns about the lack of excising sanctions and the importance of a strict compliance of this vulnerable act. In fact, recommendations were made that serious measures shall be taken to ensure public awareness about the responsibilities of governments in the process to provide free and compulsory education to all children.<sup>105</sup>

The lack of awareness regarding education in unprivileged families is one of the main factors preventing marginalised children from attending school. Families do not possess sufficient knowledge about the importance of education. Thus, they are not able to encourage their children to complete their elementary education.<sup>106</sup> Their mid-set derive from cultural and social norms that exist in urban areas, and cannot be changed immediately. In most cases, the parents did not receive a basic elementary education themselves and are not fully aware of the fundamental factors education have for the child's personal development and future.<sup>107</sup> One of our respondent stated that counselling about the importance of education for a child's well-being and personal development is a successful tool that can help parents. By regularly

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<sup>104</sup> RTE Act, art. 10.

<sup>105</sup> 213<sup>th</sup> report on the RTE Bill, 2009, p. 6-7.

<sup>106</sup> IIG 6.

<sup>107</sup> GI 3.

counselling parents and their children, involving them in social and informative events, parents can start to rely on the educational system and understand the value of elementary education for their children. This can motivate parents to encourage their children to attend school on a regular basis, instead of keeping them in the household with the aim to provide for the family.<sup>108</sup>

Education enables children to gain invaluable knowledge and skills that will prepare them to live and work in today's community.<sup>109</sup> We strongly believe that education is a long-term investment for the development of the child itself, and its family. We further believe that strong efforts have to be taken to raise awareness about children's right to education in rural areas of India. By informing these groups of the society about the existing national schemes and legal frameworks protecting the right to free and compulsory education to every child, we believe that marginalised children and their parents will realise and understand the value behind a basic elementary education and what it can bring for their future.<sup>110</sup>

## **4 Other programmes and policies**

### ***4.1 Mid-Day Meal***

The central government introduced the National Programme of Nutritional Support to Primary Education in 2008 with the aim to provide children in governmental schools one free Mid-Day Meal (MDM) during school hours. The MDM was launched to prevent hunger, increase the attendance in school, and ensure a higher nutrition standard for children.<sup>111</sup> Numerous of efforts have been initiated by the state governments in India to promote the MDM.<sup>112</sup>

Our observation indicates that this program is efficiently implemented, and governmental school provide the MDM on a regular basis. One respondent at a governmental school mentioned that they have served the MDM since the programme was launched in 2008. He also stated that this initiative has motivated a large number of students to attend school regularly. However, the respondent clarified that the preparation of the MDM is very time

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<sup>108</sup> Ibid.

<sup>109</sup> Human Rights watch, 2005, summary.

<sup>110</sup> See inter alia UNICEF Global initiative on Out-of-School children, 2014, p. 100.

<sup>111</sup> MHRD et al., Annual report 2014-15, p. 37.

<sup>112</sup> Ibid., p. 7.

consuming. Thus, strong efforts are required to prepare the MDM. This results in lower quality of teaching in the schools due to the lack of staff members during school hours.<sup>113</sup>

## 4.2 National Policy for Children

The National Policy for Children was recognised in 1974. The purpose of the program was to create equal opportunities for the development of children.<sup>114</sup> A second resolution was made in 2013 with the aim to continue the work with the current problems concerning child rights in India. The NPC shall guide and enlighten all legislation, programs and policies that affect children in the country.<sup>115</sup> The responsibility to emphasise the principles within the NPC is divided between the central and state governments, ministries, local authorities and the civil society.<sup>116</sup> The monitoring ministry is the Ministry of Women and Child Development (MWCD).<sup>117</sup>

In the preamble of the NPC, it is recognised that not all children have the same needs. Neither do all children come from the same circumstances, nor do they have the same desire.<sup>118</sup> The NPC reaffirms that appropriate measures are required to reduce and abolish the obstacles causing discrimination of any child. Once again, the importance to protect the rights of marginalised children is emphasised by the responsibility to provide them ‘equity, dignity, security and freedom’, and to ensure that all children have equal opportunities.<sup>119</sup> It is further stipulated in the NPC guideline principles, that ‘all children have equal rights and no child shall be discriminated against on grounds of religion, race, caste, sex, place of birth, class, language, and disability, social, economic or any other status’.<sup>120</sup>

A special section for education and development is to be found in chapter four of the NPC, where India recognises its duty to protect children’s right to equal education. This includes meeting the child’s special needs such as provision and promotion of infrastructure, services and support.<sup>121</sup> Measures shall be taken to ensure that all out of school children such as; ‘child labourers, migrant children, trafficked children, children of migrant labour, street children

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<sup>113</sup> IIG 2.

<sup>114</sup> NPC, section 1.3.

<sup>115</sup> Ibid., section 2.3.

<sup>116</sup> NPC, section 6.2.

<sup>117</sup> Ibid., section 6.3.

<sup>118</sup> NPC, section 2.1.

<sup>119</sup> Ibid., section 2.2.

<sup>120</sup> Ibid., section 3 (vi).

<sup>121</sup> Ibid., section 4.5.

[...]’ etc. are given their right to education. The views of the child, in particular from marginalised background, shall be strengthened within the educational system.<sup>122</sup> Marginalised children that hold a gift of learning and studying shall further be specially encouraged by teachers and schools.<sup>123</sup> In the establishment of legal provisions and policies in India concerning education, children from disadvantaged groups shall be prioritised.<sup>124</sup>

### *4.3 National Policy of Education*

The National Policy on Education (NPE) was established in 1986 with the aim to reduce the gap among the existing social classes in India, and to increase the opportunity for marginalised children to receive an elementary education. Through the NPE, various programs were established to support these children and to achieve universal elementary education.<sup>125</sup> The programme was modified in 1992<sup>126</sup>, and again in 2016. The ongoing development of the NPE shows that the Indian government is proactive in the progress of implementing the SDGs concerning education.<sup>127</sup> Before its adoption in 2016, a national committee assessed the previous system and presented their findings in a report. They found that children from disadvantaged groups are most affected by the large social disparities in the Indian educational system.<sup>128</sup> According to the report, the gap between enrolled ‘general’ children and marginalised children have decreased. However, stronger efforts are required to solve the major differences among marginalised children in India.<sup>129</sup> The report further express that several amendments of the RTE Act is necessary in order to achieve the initial object and purpose of the RTE Act. This rule has been the central regulation protecting children’s right to elementary education in India for more than six years, and is still not considered close of being fully implemented nationwide.<sup>130</sup>

Besides the above-mentioned report, the MWCD have contributed with inputs on the latest draft of the new NPE form 2016. They confirm that most states in India have succeeded with the enrolment of marginalised children in elementary education. Albeit, there are states where these children have not been able to benefit from this right, and where the amount of out of

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<sup>122</sup> Ibid., section 4.15.

<sup>123</sup> Ibid., section 4.6 (xx).

<sup>124</sup> Ibid., section 4.6 (vii).

<sup>125</sup> MHRD Report NPE, 2016, p. 182.

<sup>126</sup> Bajpai, 2012, p. 11.

<sup>127</sup> MHDR Input NPE, 2016, p. 10. See also SDGs, goal 4.

<sup>128</sup> MHRD Report NPE, 2016, p. 61.

<sup>129</sup> Ibid., p. 29.

<sup>130</sup> Ibid., p. 81.

school children remains large. The only approach that can guarantee universal elementary education is to prioritise marginalised children in the progress of implementing national legal frameworks in the educational sector.<sup>131</sup> India has to remain focus on, and continue the unfinished work towards the goal of universal elementary education.

## **5 India's responsibility to implement the UNCRC**

### *5.1 Obligations under the UNCRC*

The government of India must take a proactive role by providing necessary tools to ensure that all children have access to education and are able to utilise their right to education as provided in article 28 and 29 of the UNCRC. In reality State parties face challenges to establish sufficient national legislation to protect children's rights. In order to successfully implement the UNCRC, it is therefore necessary to raise awareness about the Convention among various stakeholders, including the duty bearers and the right holders.<sup>132</sup> The revision of the Indian Constitution through the (Eighty-sixth Amendment) Act, 2002, expressing the duty of India to create specific rules protecting children's right to free and compulsory education was an important milestone in the progress of implementing the UNCRC. The establishment of the RTE Act is further a measure taken by India to safeguard an effective implementation of the Convention, and reflects India's commitment to achieve universal free and compulsory elementary education.

Article 4 of the Convention obligates the States parties to ensure maximum use of resources for children's economic, social and cultural rights. The language of the Convention puts a strict obligation on each State by expressing terms such as 'shall take' and 'undertake to ensure', with the aim to guarantee that countries take an active role by taking all appropriate legislative and administrative measures to protect children.<sup>133</sup> The implementation of independent national human rights institutions is in this regard an important mechanism to foster and ensure the implementation of the Convention. According to the CRC, the creation of such legal body falls within article 4 stating the obligations of the State Parties. The CRC has emphasised that children are in need of a separate monitoring body and should be given special attention. Their development and different statuses in social, economic and political structures cannot be compared with adults and make them particular vulnerable to human

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<sup>131</sup> MHRD Input NPE, 2016, p. 10.

<sup>132</sup> Save the Children Sweden et al., 2000, p. 137 and art. 42 UNCRC.

<sup>133</sup> Ibid., 79. See also art. 4 UNCRC.

rights violations. Children are in need of an institution protecting their individual rights since they face major challenges using the judicial system to protect their rights.<sup>134</sup>

## *5.2 National Commission for Protection of Child Rights*

The National Commission for Protection of Child Rights (NCPCR) is the monitoring body of the RTE Act and was established under the Commission for Protection of Child Rights Act, 2005.<sup>135</sup> The Commission has a legal responsibility to actively protect and ensure that all children in India are provided with free and compulsory education. The Commission shall further safeguard an effective implementation of the RTE Act<sup>136</sup> and ensure overall protection of children rights in India. Moreover, they shall examine matters related to children in need of special protection, including marginalised and disadvantaged children.<sup>137</sup>

They shall recommend appropriate and effective measures that are related to the implementation of existing national and international instruments to ensure the best interest of children.<sup>138</sup> The Commission shall guarantee immediate trial of offences against children and is eligible to enquire into complaints and take notice of matters related to deprivation and violations of children's rights.<sup>139</sup> In this regard, we would like to highlight that 764 complaints was received in 2009 to 2010, and 32 per cent of these was matters related to the education sector.<sup>140</sup>

## *5.3 Observations by the CRC*

Despite the legal measures India has taken to ensure that all children's right to a free and compulsory elementary education is protected through national law, the low attendance and high drop-out rates in elementary school among marginalised children maintains a high concern for the CRC. The Committee has encouraged India to focus on this specific concern by improving the quality of education and to address the issue affecting marginalised children in particular.<sup>141</sup> This includes actions to strengthen the ability to fully implement related national legislations and policies. The CRC states that it is vital to provide adequate training

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<sup>134</sup> CRC Report, General Comment, 2002, p. 2.

<sup>135</sup> The Commission for protection of child rights act, 2005, art. 3.

<sup>136</sup> RTE Act art. 31 (1) (a).

<sup>137</sup> The Commission for protection of child rights act, 2005, art. 13 (1) e.

<sup>138</sup> *Ibid.*, art. 13 (1) e.

<sup>139</sup> *Ibid.*, art. 13 1 (j).

<sup>140</sup> NCPCR Annual Report, 2009-2010, p. 30.

<sup>141</sup> CRC Report India, 2000, p. 10.

for teachers, in particular at state level and in rural areas. This is further urged by stressing the need for the government of India to adopt specific schemes in order to decrease the high drop-out rates, and to ensure that marginalised children are assisted in exercising their right to education.<sup>142</sup> The poor situation of elementary education in India is connected with the lack of appropriate infrastructure<sup>143</sup>, in particular related to sufficient school facilities that cannot be accessed by marginalised children who live in isolated communities.<sup>144</sup> To ensure regular attendance and completion of elementary education, obstacles such as lack of infrastructure and access to sufficient school facilities are therefore vital factors that need to be maintained by state governments in India. By ensuring that these children have access to education, we believe that the amount of out of school children from disadvantaged groups of the Indian society can decrease.

## 6 Discussion

Many connecting factors have been taken in consideration when analysing the issue of out of school children in India. We realised during this study that we were facing a broad problem that has to be assessed carefully from various aspects. The right to free and compulsory education to all children is a fundamental right expressed in numerous provisions and policies. However, what remains a challenge for the country is rather how this right can be utilised by marginalised children who face daily challenges to regularly attend and/or complete elementary education. We congratulate India for proactively establishing national schemes and rules, such as the RTE Act, the NPE and NPC with the purpose to tackle the problem in view of the UNCRC and the SDGs. Nonetheless, the high amount of out of school children from less privileged groups in both Uttar Pradesh and West Bengal is not an issue that easily can be solved. We believe that appropriate measures have to be taken by the society, including state governments, local authorities and NGO's in order to minimise the scope of this problem. One conclusion from this study is that the mere adoption of rules on national level protecting a certain right is not necessarily the final step. We believe that it requires stronger efforts from the global community and India as the main actor, to remove or minimise the barriers excluding marginalised children from receiving a basic elementary education. Stronger efforts are also required to fulfil the objects in article 28 and 29 of the UNCRC, and to reach universal elementary education as provided in the new SDGs.

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<sup>142</sup> CRC Report India, 2014, p. 16-17.

<sup>143</sup> CRC Report India, 2000, p. 10.

<sup>144</sup> UNICEF Global initiative on Out-of-School children, 2014, p. 7.

## **6.1 Poor implementation of the RTE Act**

One of the main finding in this study is that there is a large gap between the existing regulations in the RTE Act, and the implementation of these in schools.<sup>145</sup> In particular, we note a high lack of awareness among our respondents in both governmental and private schools about the 25 per cent rule and the special training requirement in the RTE Act. In fact, the requirements concerning disadvantaged children stated in the law was in most cases not followed. If the legal provisions in the RTE Act would be respected and practiced by every Indian school, and if the state governments would systematically monitor these rules, a higher number of children would be able to gain full value from their elementary education. We believe that this can be accomplished with a stringent system that force schools and teachers to follow the requirements stated in the law. This way, both the RTE Act and the national policies concerning children will have a greater chance to be adequately implemented and applied.

### **6.1.1 Lack of knowledge and awareness in schools**

The poor implementation of the RTE Act and its connecting programmes is an important issue that has to be faced by the Indian government. We find that the implementation of the legal framework in schools has to be monitored and evaluated more strictly in order to accomplish the requirements in the long term. By guiding teachers and managements at government and private schools, appropriate assistance can be provided to children who are eligible to receive inter alia: special training and admission under the 25 per cent rule. The lack of knowledge among the group of adults, who daily work with marginalised children, makes it difficult to implement the legal provisions. Additionally, it makes it impossible for children from disadvantaged groups who are legally entitled to special care and attention, to sufficiently utilise their right as provided in the RTE Act.

### **6.1.2 Special attention and care**

We further like to emphasise the need for special support and care to children from disadvantaged groups, which also is stressed in the latest NPE from 2016.<sup>146</sup> We note that both the NPE and the NPC continue to develop with the aim to achieve universal elementary education, and emphasise the need of children from disadvantaged groups. However, we do

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<sup>145</sup> 213<sup>th</sup> report on the RTE Bill, 2009, p. 2.

<sup>146</sup> MHRD Report NPE, 2016, p. 60.

not believe that the existing national policies are entirely implemented. There are still a large number of marginalised children who are enrolled in school without receiving special assistance and care from teachers and local authorities. Teachers should act in the best interest of a child in view of the fact that all children have different needs. Children from marginalised backgrounds live under poor circumstances and face daily challenges to survive. Thus, it is vital for those children to not only gain literacy skills but also to improve their ability to resolve conflicts in a non-violence matter, make well-balanced decisions and develop a healthy lifestyle and other abilities that can contribute to a safer life in the present, and in the future.<sup>147</sup> Without special attention and care, we argue that there is a risk for the children to become socially excluded in school. Children, who never attended school, may have difficulties to adjust to the principles and rules that exist in the school environment. The interaction with other children may also create obstacles for these children. Our opinion is that teachers have a crucial role, and should regularly provide them with special attention and care from both academic and social aspects to prevent these risks.

## ***6.2 Legal suggestions***

We have noted the lack of existing disciplinary actions against governments, schools and parents who violate children's right to elementary education. As mentioned, India need to take serious measures to adopt sanctions against those who breach their legal responsibility as stated in the RTE Act in order to achieve universal education. We strongly emphasise the need to implement sanctions that can protect children's right to elementary education in India, including those from marginalised backgrounds.

### **6.2.1 Compulsory for all?**

A reason excluding marginalised children from Indian schools is decision of parents. Poor economic income, unawareness of the importance of education and lack of trust for the school system are examples of parent's arguments for keeping their children in the household and out school. Today, a counselling method is used in order to cope with parents who prevent their child from attending school. From our point of view, this method is not successful. At least not successful enough to achieve universal elementary education. We have met children whose parents changed their attitude towards education after counselling, but we also experienced the reverse. There are still a number of parents who after several years of counselling, still do not choose to send their children to school. Children are continuously

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<sup>147</sup> CRC Report, General Comment, 2002, p. 3.

exploited in many ways, and are being forced to work as rag pickers or street beggars. As long as parents continue to intentionally restrict their children from attending school without receiving any punishment, we argue that the goal of universal elementary education never can be reached.

We would like to propose a suggestion for an amendment of the existing rules in the RTE Act. The main concept of our suggestion is to strengthen the use of the term 'compulsory'. Instead of merely listing the responsibility of the appropriate government, schools and parents in relation to children's admission and attendance in school, there should be a compulsory requirement for children from the age of six to fourteen years to attend school. We believe that the attendance in school among marginalised children would increase if the law identified how the right to education can be applied, rather than stating what duties parents, schools and appropriate governments have. This way the term 'compulsory' would also involve the legal duty of parents to send their children to school. We strongly believe that this legal obligation for children and parents is necessary. By implementing appropriate sanctions in the RTE Act, possible breaches concerning the child's attendance in school would lead to a serious crime. Bearing in mind that most of these children belong to disadvantaged groups, a financial punishment against the parents would not be an ethical correct action. Instead, parents who do not send their children to school will receive warnings from the local authority urging them to fulfil their duty stated in the RTE Act. If parents would not apply with these warnings, the appropriate government or the social security would have the power to take custody of a child, as a last resort.

We argue that an establishment of such a regulation would help these children to utilise their right to free and compulsory education immediately, but also from a long term perspective. If there are concrete sanctions towards parents who do not send their children to school, a greater respect and trust will be recognised towards the various provisions in the RTE Act. The downside with the proposition is not to be rejected. A majority of families that would be affected by this legal change derive from disadvantaged groups of the society. These groups already sustain oppression and poverty in their every day life, and the lack of employment, homes and money distinguish their way of living. The social exclusion already exists in the Indian society, and such a radical approach from the government may result in distrust among affected families. Despite these considered aspects, we continuingly uphold our legal suggestions.

## **6.2.2 Provisions for special training**

The objects behind special training for never enrolled or drop-out children is virtuous. Nonetheless, the special training has not been well implemented in schools in Uttar Pradesh and West Bengal. Children do not receive the support from the schools as promised in the law. As a result of this study, we have found that many learning centres, often runned by NGOs, were forced to close down after the adoption of the RTE Act.<sup>148</sup> We argue that the RTE Act have limited the access of learning centres. Our opinion is that learning centres can motivate and have a positive influence on the academic and personal development of children from disadvantaged groups. If more NGOs or other actors would still be able to receive financial funding from the government in order to manage such centres, we believe that a higher amount of marginalised children would be enrolled in schools. We argue that a separate legal framework in the RTE Act for this type of learnig centre is necessary. The standards should be less strict than the ones regulated for governmental or private schools. The centres would fulfil the task of teaching and could be accessed in rural areas where children from disadvantaged groups mostly live with their families, and in places close to slum areas and railway stations. We believe that the establishment of additional learnig centres nationwide can adequately prepared marginilised children to enrol in school. The special attention and care from teachers will prepare them both from an academic and social aspect.

## **6.3 Conclusion**

The problem related to out of school children in India cannot be solved in an instant. Multiplied social and financial factors overlap in this major issue, and create the vast character of this matter. The majority of the Indian population are classified as poor, and the large socio-economic disparities, in addition to the major population growth makes it difficult for India to ensure sustainable solutions. In order to achieve the goal of universal elementary education, India need to actively approach the issue of out of school children in view of the existing social factors we have raised in this study. We believe that those social factors are the main barriers excluding marginalised children from utulising their right to education and are the main reasons keeping them from attending and/or completing their elementary education.

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<sup>148</sup> MHRD Report NPE, 2016, p. 18.

India has undertaken a number of legal developments in relation to the educational sector. The country has furthermore shown to be committed towards implementing article 28 and 29 of the UNCRC, and achieving the goals expressed in the SDGs. However, there is still a long way to go, and millions of children are not able to utilise their right to education due to the major socio-economic disparities that exist in the country. The high amount of out of school children in India requires immense efforts from the government of India and the global community. By adopting a more strict legal framework, we believe that marginalised children's attendance in school can increase. The current structure in the RTE Act does not safeguard universal elementary education. A stronger coherence between the national programmes and legislations is necessary, in addition to stronger awareness about children's right to education among various groups of the society. In this regard, we strongly emphasise our finding about the need to ensure an increased awareness among governments, local authorities and schools about the situation of children from disadvantaged groups in particular, and how their right to education can be protected and ensured. By informing the society and raising awareness about marginalised children's right to education, we hope that a deeper belief in the educational sector can arise.

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## **Appendix**

### **Questions raised in group interviews with ASSI employees**

- What are the main reasons why children from Uttar Pradesh/West Bengal are not enrolled in school?
- Are there any existing sanctions for parents who keep their children out of school?
- Did the children that live in your home receive elementary education before moving here?
- What type of schools are the children living in your home attending?
- Are they receiving MDM at school?
- Are you aware of the special training program?
- Has any child living in your home received special training?
- What necessary measures are required in order to increase the amount of children from disadvantaged groups attending school?
- What necessary measures are required to prevent those children from dropping out of school, in Uttar Pradesh and West Bengal?

### **Questions raised in individual interviews with school managements**

- Are you familiar with the RTE Act?
- Would you say that at least 25 per cent of the total amount of admitted children in class one, originate from disadvantaged groups?
- Are you serving MDM at your school?
- Do you provide children from disadvantaged groups with special training?

### **Questions raised in interviews with children**

- Did you attend school before moving to this home?
- If not, what did you do instead?
- Did your parents encourage/prevent you from attending school?
- If you attended school, how did teachers and classmates treat you?
- How was the study climate at your home when carrying out homeworks?
- Did your siblings/friends attend school?
- Did you want to attend school?
- Why do you think it is important with education?
- What do you think needs to be done in order to enrol more children in school?