

A collection of historical artifacts is displayed on a light-colored surface. On the left, there is a blue leather-bound book with a checkered pattern of gold and dark spots. Several medals are pinned to the book and scattered around it. One prominent medal is a white Maltese cross with a central emblem. Another is a red cross with a central emblem. A red ribbon with a circular emblem is also visible. In the bottom left corner, there is a silver compass with a white face and black markings. A pair of gold-rimmed glasses with thin temples is placed in the center. The background is a plain, light-colored surface.

The Story of the Right to Education in India


Nalini Juneja
NUEPA

Nalini Juneja 2013



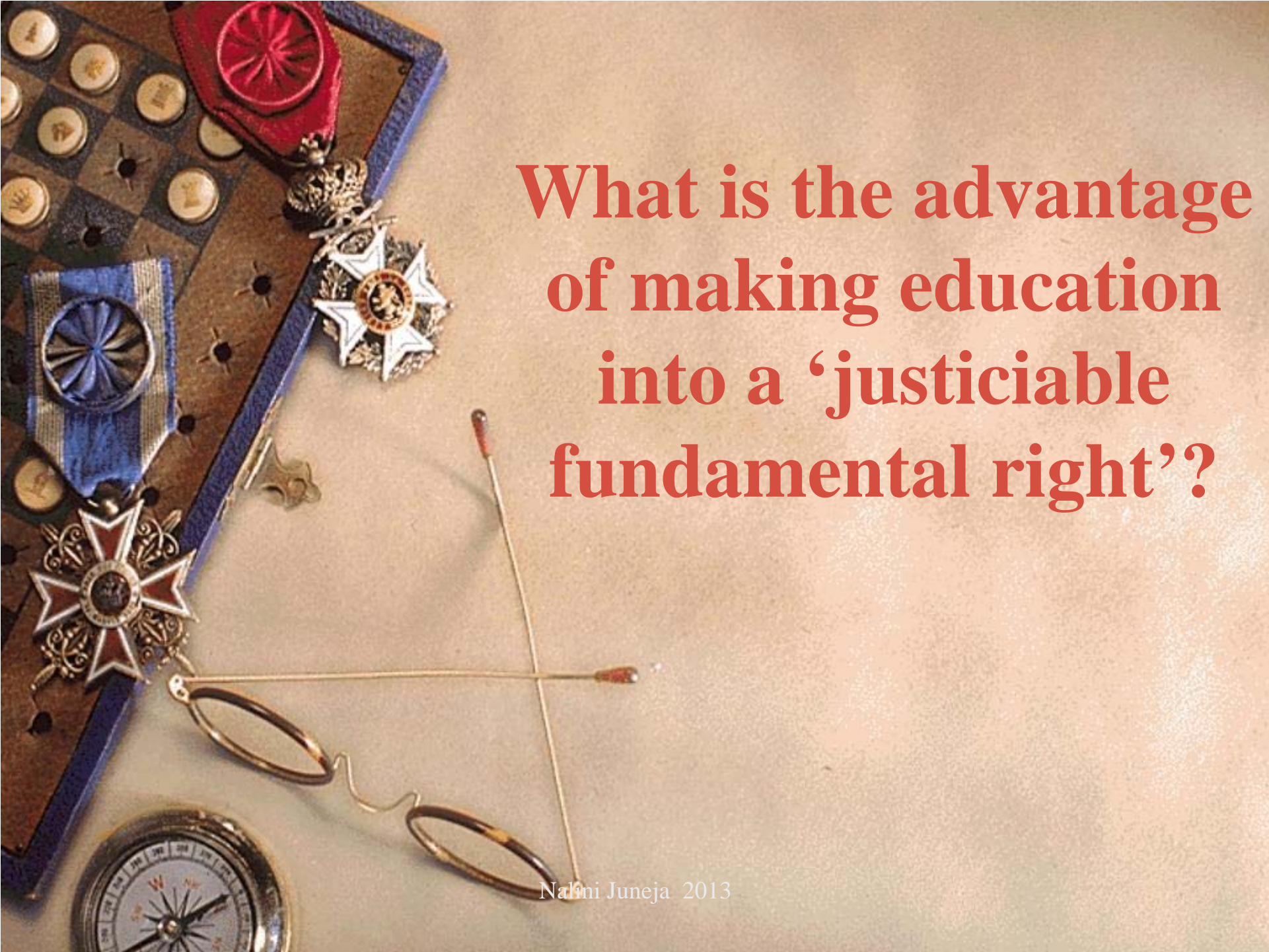
1950
**Article 45 of Directive Principles
of State Policy:**

“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”

A collection of items including a chessboard, medals, a compass, and glasses. The chessboard is in the top left, with several pieces visible. Below it are two medals with ribbons, one red and one blue. A compass is in the bottom left, and a pair of glasses is in the bottom center. The background is a light-colored surface.

Justiciable Fundamental Right to Education (2002)

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”.

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**What is the advantage
of making education
into a ‘justiciable
fundamental right’?**

Why 'Justiciable' right has Power

'once an unambiguous declaration of such a (justiciable) right is made, those responsible for it would *have to* find ways and means to give effect to it.

'If they had no such obligation placed upon them, they might be inclined to avail themselves of every excuse to justify their own inactivity in the matter, indifference or worse.'

- K.T. Shah: Note of dissent April 1947



The Story of Free and Compulsory in India

Nalini Juneja 2013



In this story:

- I. Pre independence struggle,**
- II. The three attempts to put education on list of fundamental rights in Indian Constitution**
- III. The Fate of Compulsory Education and sudden revival in the 90s**
- IV. The 86th Amendment, Follow up Legislation, and**
- V. Central RTE Act 2009 and State Rules**
- VI. RTE Amendments**



What is Compulsory education?

◆ State:

1. to provide facilities for education
2. to ensure that child is able to avail of these facilities

◆ Child:

1. has right to these facilities; and
2. duty to obtain education up to required level

i.e. a vehicle for safe guarding Right to Education




What is compulsory *schooling* ?

Compulsory **Schooling**:

- ◆ Makes attendance at a school compulsory

Compulsory **Education**:

- ◆ Allows learning through means other than through attendance at a school



A Century of Struggle for Free and Compulsory Education

1882 – 1992

Nalini Juneja 2013



1870; 1880 Compulsory Education Acts passed in Britain - Demand for similar treatment

1882: Indian Education Commission: Indian leaders demand provision for mass education and Compulsory Education Acts.

1893 Maharaja of Baroda introduces Compulsory Education for boys in Amreli Taluk.



1906 Maharaja of Baroda extends Compulsory Education to rest of the state.

1906 Gopal Krishna Gokhale makes a plea to imperial legislative Council for introduction of F& C Edn.

1911 Gokhale proposes Private members Bill (Rejected)

1917 Sh. Vithalbhai Patel successful in getting Bill passed



1917 First Law on Compulsory Education passed (Popularly Known as Patel Act)

1918-1930 Every Province in British India gets Compulsory Education Act on its Statute Book

1930 Hartog Committee Recommendation for better quality (less focus on quantity) hinders spread and development of primary education



1944

Post War Plan for Educational Development in India (Sargent Plan) proposes scheme for India to achieve universal elementary education in by 1984 (40 years) in two phases:

1. Up to the age of 11
2. Up to the age of 14

1946

Constituent Assembly begins task

1947

Ways and Means (Kher) Committee set up to explore *ways and means* of achieving UEE within ten years at lesser cost.

A collection of items including a chessboard, medals, a compass, and glasses. The chessboard is in the top left, with several pieces visible. Below it are two medals with ribbons, one red and one blue. A compass is in the bottom left. A pair of glasses is in the center. The background is a light-colored surface.

First Attempt at making education into a justiciable fundamental right

1



1947

**Constituent Assembly Sub committee
on Fundamental rights places free
and compulsory education on list of
Fundamental Rights:**

“Clause 23- Every citizen is entitled as of right to **free primary education** and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory **primary education** for all children until they complete the age of fourteen years.”



1947 (April)

Advisory Committee meeting of the Constituent Assembly

Secretary: 23 (reads clause 23)

M. Ruthnaswamy: Is this a Justiciable right? Supposing the Government have no money?

Alladi Krishnaswami Ayyar: I want the deletion of this clause

Govind Ballabh Pant: I suggest this clause be transferred to Part 2. It cannot be justiciable.



1947 (April)

Advisory Committee of the Constituent Assembly rejects free and compulsory education as a fundamental right.

Sends clause to list of
“non justiciable fundamental rights”
later termed as
‘Directive Principles of State Policy’.



1949 (Nov.)
Debate in Constituent Assembly
Removes the First Line of
‘Article 36’

*“Every citizen is entitled as of right to free **primary education** and it shall be the duty of the State to..”*

and replaces it with

“The State shall endeavour to..”



1950
**Article 45 of Directive
Principles of State Policy:**

“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”

A collection of objects is arranged on a light-colored surface. On the left, there is a chessboard with several pieces. Next to it are two medals with ribbons, one red and one blue. A pair of glasses with thin frames and a long bridge is positioned diagonally across the center. In the bottom left corner, there is a circular compass. The text is overlaid on the right side of the image.

The Policy in Practice

.....Or

the importance of any
right being a *justiciable*
fundamental right



Expectations: J.P. Naik

*“The Constitution Framers opted for the quick solution in ten years. This also highlights the fact that **they attached the highest significance to this programme** as the foundation of democracy and wanted it to be implemented at any cost.”*



Expectations: Justice Jeevan Reddy

The Constitution contemplated a crash programme being undertaken by the state to achieve the goal set out in Article 45



K.T. Shah: (Note of dissent)

“The non justiciable rights would remain as no more than pious wishes”

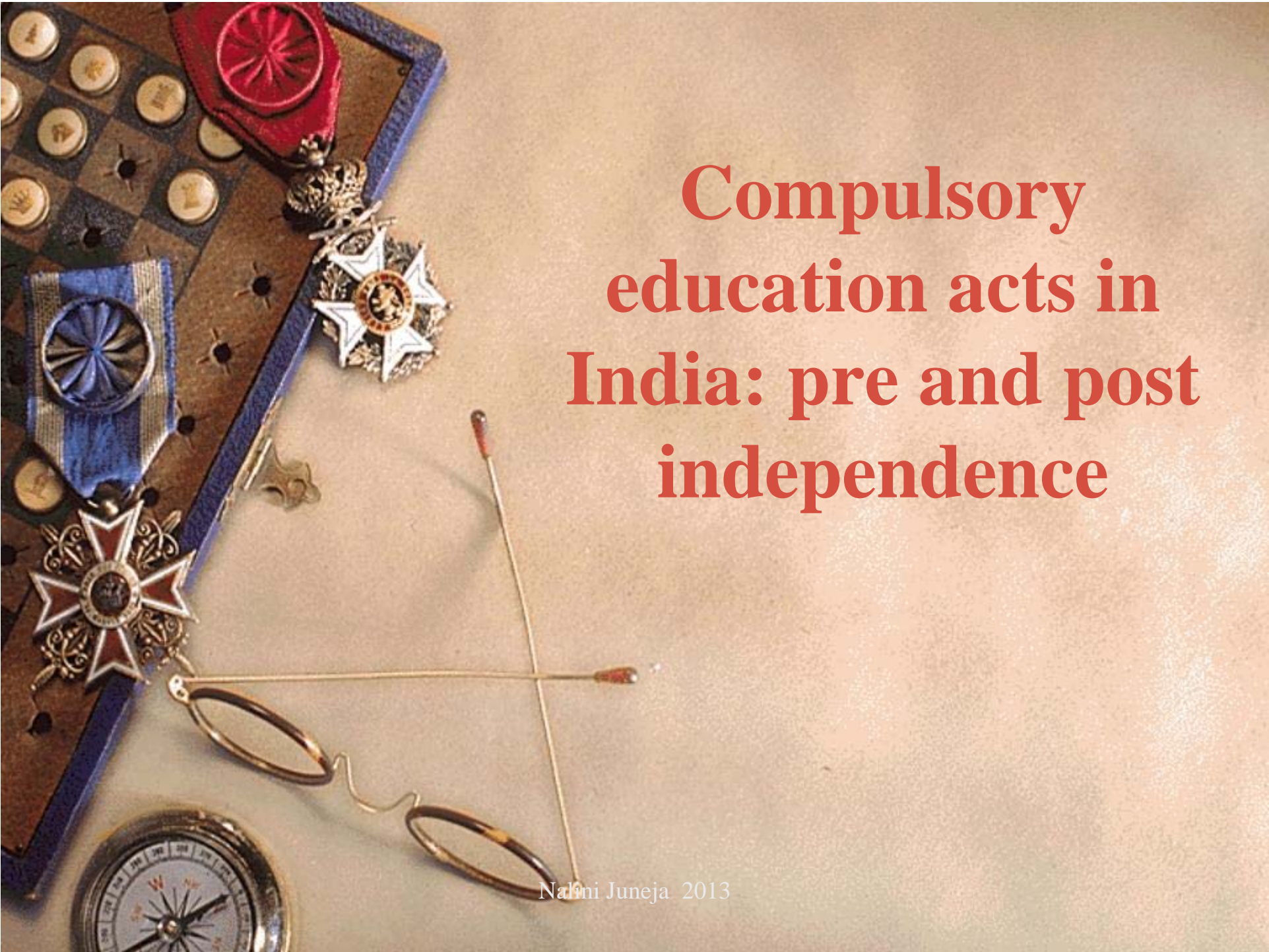
-April 1947 – Note of Dissent to the formation of two types of rights – justiciable rights and non justiciable rights



A tour of the budgets 1947-2001

“In this ten year period (1950- 1960) there is not to be found even a passing reference to education let alone to Article 45 in the Budget speeches”

- L.C. Jain, *‘Are our Budget makers faithful to the Constitution?’*

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Compulsory education acts in India: pre and post independence

Nalini Juneja 2013



Compulsory Education Acts in India *Pre-Independence*

- The **Bombay** Primary Education (District Municipalities) Act 1917
- The **Bengal** Primary Education Act 1919
- The **Bihar and Orissa** Primary Education act 1919
- The **Punjab** compulsory Education Act 1919
- The **United Provinces** Primary Education Act 1919
- The **Bombay City** Primary Education Act 1920



- **The Central Provinces Primary Education Act 1920**
- **The Madras Primary Education Act 1920**
- **The Patiala Primary Education Act, 1926**
- **The Bikaner State Compulsory Primary Education Act, 1929**
- **The Madras Primary Education Act 1937**
- ◆ **The Bombay Primary Education Act 1923**
- ◆ **The Assam Primary Education Act 1926**
- ◆ **The U.P. (District Boards) Primary Education Act, 1926**
- ◆ **The Bengal (Rural) Primary Education Act 1930**



- ◆ **The (Jammu & Kashmir) Compulsory Education Act, 1934**
- ◆ **The Bombay Primary Education (Amendment) Act 1938**
- **The Punjab Primary Education Act, 1940**
- **The Mysore Elementary Education Act, 1941**
- **The Travancore Primary Education Act, 1945**
- **The Bombay Primary Education Act 1947**



Compulsory Education Acts in India

Post-Independence

- ❑ The **Assam Primary** Education Act, 1947
- ❑ The **Bombay Primary** Education Act, 1947
- ❑ The **Cochin Free Compulsory Primary** Education Act, 1947,
- ❑ The **Madhya Pradesh Compulsory Primary** Education Act, 1950,
- ❑ The **Ajmer Primary** Education Act, 1952,



- ❑ The **Madras Elementary** Education Act 1952
- ❑ The **Hyderabad Compulsory Primary Education Act, 1952.**
- ❑ The **Vindhya Pradesh** Primary Education Act, 1952
- ❑ The **Himachal Pradesh** Compulsory Primary Education Act, 1953.
- ❑ The **Assam Basic** Education Act, 1954.
- ❑ The **PEPSU** Compulsory Primary Education Act, 1954.
- ❑ The **Bhopal State** Compulsory Primary Education Act, 1956
- ❑ The **Madhya Pradesh** Primary Education Act, 1956,



- ❑ The **Saurashtra** Primary Education Act, 1956
- ❑ The **Kerala** Education Act, 1958.
- ❑ The **Andhra Pradesh** Primary Education Act, 1961.
- ❑ The **Andaman and Nicobar** Islands (Primary Education) Regulation, 1959.
- ❑ The **Mysore** Compulsory Primary Education Act, 1961.
- ❑ The **Assam Elementary** Education Act, 1962.

Acts in Force

- ◆ **Andhra Pradesh**
Andhra Pradesh Education Act 1982 (Act No.1 of 1982)
- ◆ **Assam**
The Assam Elementary Education (Provincialisation) Act, 1974 (Assam Act No. 6 of 1975)
- ◆ **Bihar**
Bihar Primary Education (Amendment) Act 1959 (Bihar and Orissa Education Act (1 of 1919) as amended by Bihar Act IV of 1959)



- ◆ **Goa**
The Goa Compulsory Elementary Education Act, 1995 (Goa Act No. 4 of 1996)
- ◆ **Gujarat**
Gujarat Compulsory primary Education Act, 1961 (Gujarat Act No. XLI of 1961)
- ◆ **Haryana**
Punjab Primary Education Act 1960
- ◆ **Himachal Pradesh**
The Himachal Pradesh Compulsory Primary Education Act 1997. (Act No.2 of 1998)
- ◆ **Jammu & Kashmir**
The Jammu And Kashmir School Education Act 2002 (Act No.21 of 2002.) (21st April 2002)



Karnataka

The Karnataka Education Act 1983

(Karnataka Act No. 1 of 1995) (First published in the Karnataka Gazette Extraordinary on the 20th day of January, 1995)

Kerala

The Kerala Education Act 1958 (Act No.6 of 1959) (As amended by Acts 35 of 1960, 31 of 1969 and 9 of 1985).

Madhya Pradesh

The Madhya Pradesh Jan Shiksha Adhiniyam, 2002 (Act No. 15 Of 2002)

Punjab

Punjab Primary Education Act 1960 No. 39

Rajasthan

The Rajasthan Primary Education Act 1964 (Act No.31 of 1964)



Sikkim

The Sikkim Primary Education Act, 2000 (Act No. 14 of 2000)

Tamil Nadu

The Tamil Nadu Compulsory Elementary Education Act 1994 (Act No.33 of 1995)

Uttar Pradesh

- **United Provinces Primary Education Act 1919* (U.P. Act No. 7 of 1919)**
- **United Provinces (Dist. Boards) Primary Education Act 1926* (U.P. Act No. 1 of 1926)*Adapted and modified by the Adaptation of Laws Order 1950.**




- **West Bengal**

**West Bengal Primary Education Act 1973
(West Bengal No.43 of 1973)**

- **Delhi**

**The Delhi Primary Education Act 1960,
Act**

No.39 of 1960

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But these Acts were not
implemented -
were they?

Years	Urban	Rural	Total (Rs.)
1949-50	8455	37437	45, 892
1950-51	N.A.	N.A.	40, 575
1951-52	N.A.	N.A.	42, 110
1952-53	N.A.	N.A.	37, 651
1953-54	N.A.	N.A.	29, 259
1954-55	7921	17037	24, 958
1955-56	N.A.	N.A.	23, 629
1956-57	N.A.	N.A.	20, 785
1957-58	N.A.	N.A.	31, 881
1958-59	N.A.	N.A.	14, 483
1959-60	N.A.	N.A.	12, 932
1960-61	N.A.	N.A.	26, 534
1961-62	N.A.	N.A.	18, 068
1962-63	N.A.	N.A.	8, 880
1963-64	2861	8007	10, 868
1964-65	3629	8151	11,780
1965-66	1056	2962	4, 018
1966-67	9366	2037	11,403
1967-68	951	2159	3, 110
1968-69	1034	1593	2, 627
1969-70	912	1420	2, 332
1970-71	672	1647	2, 319

Table 3: All India :Enforcement of Compulsory Education in India after Independence Number of Prosecutions – Fines Realised (Rs)



Research* showed:

Most states
had
(enabling)
Compulsory
Education
Acts

Despite Article 45 (DPSP),
Neither the 1968, nor the 1986
Education Policy Speaks Of
Making Education Compulsory

But only 3% of Educational
Administrators in 1995 were aware
of the Compulsory Education Act in
their state

*Juneja, Nalini (1996). *Compulsory Education in India: The policy in practice:*

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1940s -1990s
The Movement of
Discourse on ‘Rights’;
‘Compulsion’

Nalini Juneja 2013



Movement of International Discourse on Rights

1940s-50s:

Concern with political freedoms & rights

1960s-70s:

Concern with economic & social rights

1980s-90s:

Concern with demographically defined rights, e.g. Rights of child; women, disabled etc



Movement of Discourse on 'Compulsion'

Internationally: constructed as a 'right', an entitlement

1948: UDHR: "Everyone has a right to Education....Elementary education shall be **compulsory**"

- ◆ *1989 CRC 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;



Movement of Discourse on 'Compulsion'


India: Constructed in terms of '*penalties*'

“ there will be more parents in the jail than children in the school”

Turning point 1997:

*“The compulsion more or less is being looked at as **compulsion on the state to provide...**”*

-63rd Report: Parliament Standing Comm. on HRD

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Revival of Discourse on free and compulsory Education In India

The 90's



1989

Convention on Rights of Child (India signed CRC in 1992)

- ◆ *“State parties recognize the right of the child to education and with a view to achieving this right progressively, they shall in particular (a) make primary education compulsory and available free to all....”*
- ◆ **Article 28 (CRC)**



(1990)
World Conference at Jomtien

**Declares basic education
to be a ‘need’**



1990 Ramamurti Committee

*“Now time has come to recognize ‘Right to Education’ as one of the fundamental rights of the Indian citizen for which necessary amendments to the constitution may have to be made and more importantly, **conditions be created in society such that this right would become available for all children of India.**”*

(Para 6.1.3)



1991

Myron Wiener:

**“The Child and the State in India :
Child Labour and Education Policy in
Comparative Perspective”**

Nalini Juneja 2013



1992
**India signs
Convention on Rights of Child**

Nalini Juneja 2013

1993

**Unnikrishnan J.P. vs. *State of AP
and Ors.....***

“*every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to limits of economic capacity and development of the state.*”





Justice Jeevan Reddy: *(Unnikrishnan J.P. vs. State of Andhra Pradesh, 1993)*

“ Has it no significance? **Is it a mere pious wish**, even after 44 years of the Constitution? Can the State flout the same directions even after 44 years on the grounds that the article merely calls upon it to ‘endeavour to provide’ the same? ” ..



1996 Common Minimum Programme *of the United Democratic Alliance*

- ◆ **1. resolves to make the right to free and compulsory elementary education into a fundamental right and to enforce it through suitable statutory measures.**
- ◆ **2. Committee set up (**Saikia Committee**) to examine this proposal.**



1997 (Jan)

Saikia Committee recommends:

- ◆ ***“The Constitution of India **should be amended** to make the right to free elementary education up to the 14 years of age, a fundamental right. Simultaneously an explicit provision should be made in the constitution to make it **fundamental duty** of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age”.***

A collection of items including a chessboard, medals, a compass, and glasses. The chessboard is in the top left corner, featuring a red and blue checkered pattern with several white and black pieces. Below it is a blue ribbon with a circular emblem. To the right of the ribbon is a silver star-shaped medal with a central emblem. Below the ribbon is another silver star-shaped medal with a central emblem. In the bottom left corner is a silver compass. In the center is a pair of gold-rimmed glasses. A thin, long object, possibly a pen or a stylus, lies horizontally across the middle of the image.

Second Attempt at making education into a fundamental right


2



1997 (July) Constitution 83rd Amendment Bill

After article 21 of the Constitution, the following article shall be inserted, namely:

- ◆ ***“21A. (1) The state shall provide free and compulsory education to all citizens of the age of six to fourteen years.***



1997 (July)

83rd C. Amendment Bill (contd.)

- ◆ *(2)The right to free and compulsory education referred to in clause (1) shall be enforced in such manner as the State may, be law, determine.*
- ◆ *(3)The state shall not make any law, for free and compulsory education under clause (2), in relation to the educational institutions not maintained by the State or not receiving aid out of State funds”.*



1997 (July)

83rd Amendment Bill (contd.)

- ◆ ***4. Article 45 of the Constitution shall be omitted.***
- ◆ ***5. In article 51A of the Constitution, after clause (j), the following clause shall be added, namely:***
 - ◆ ***“(k) to provide opportunities for education to a child between the age of six and fourteen years of whom such citizen is a parent or guardian”.***



1997 Parliamentary Standing Committee Report:

- ◆ **i) Retention of Article 45 to cater to the 0-6 age group.**
- ◆ **ii) Clause (3) of the proposed Article 21-A relating to private institutions may be deleted.**



1997
**Parliamentary Standing Committee
Report: (contd.)**

“The Centre should prepare one simple legislation with some skeletal framework which may also indicate the **Central share in the financial burden**. The details can be formulated by the **respective states** according to their requirements. The Central Government may therefore consider working out the necessary legislation.”



2000

Sarva Shiksha Abhiyan (SSA) Formulated

- ◆ Umbrella Scheme for Central Funding of UEE
- ◆ Paved the way for acceptance by the State Governments

A collection of items including a chessboard, medals, a compass, and glasses. The chessboard is in the top left corner, featuring a red and blue checkered pattern with several white and black pieces. Below it is a blue ribbon with a circular emblem. To the right of the ribbon is a silver star-shaped medal with a central emblem. Below the ribbon is another silver star-shaped medal with a central emblem. In the bottom left corner is a silver compass. In the center is a pair of gold-rimmed glasses. A thin, long object, possibly a pen or a pencil, lies horizontally across the middle of the image.

**Third Attempt at
making education into
a fundamental right**

3

Success at last!



2001 Constitution (93rd Amendment) Bill

- ◆ **“21-A. The state shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may by law determine.”**



Article 45.

“The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.

Article 51 A

Every citizen:

“(k) 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”.

A collection of items including a chessboard, medals, a compass, and glasses. The chessboard is in the top left, with several pieces visible. Below it are two medals with ribbons, one red and one blue. A compass is in the bottom left. A pair of glasses is in the center. The background is a light-colored surface.

The Constitutional 86th Amendment Act 2002: Fundamental Right to Education

Passed December
2002

A collection of historical artifacts is displayed on a light-colored surface. On the left, a portion of a chessboard with a checkered pattern and several chess pieces is visible. Below the chessboard, there are two ornate medals with star-shaped centers and intricate designs. A pair of round, gold-rimmed spectacles lies in the lower center. To the right of the spectacles is a quill pen with a wooden handle. In the bottom left corner, a circular compass with a needle and degree markings is partially visible.

Then began the process
of drafting the Follow up
Legislation

**To determine the manner in
which the state would provide
free and compulsory education
to all children of the age of 6-14
years**



Follow up legislations to the 86th Amendment

- ◆ **2003:** The Free and Compulsory Education For Children Bill 2003
- ◆ **2004:** The Free and Compulsory Education Bill 2004
- ◆ **2005:** The Right to Education Bill 2005 (CABE Bill)
- ◆ **2006:** Model Bill 2006
- ◆ **2007:** Bill prepared by Law Ministry
- ◆ **2008:** Revival of CABE 2005 Bill (introduced in Rajya Sabha, Dec 15, 2008)
- ◆ **2009:** The Right of Children to Free and Compulsory Education Act 2009

The Right of Children to Free and Compulsory Education Act 2009

Passage through Parliament

20th July: Rajya Sabha

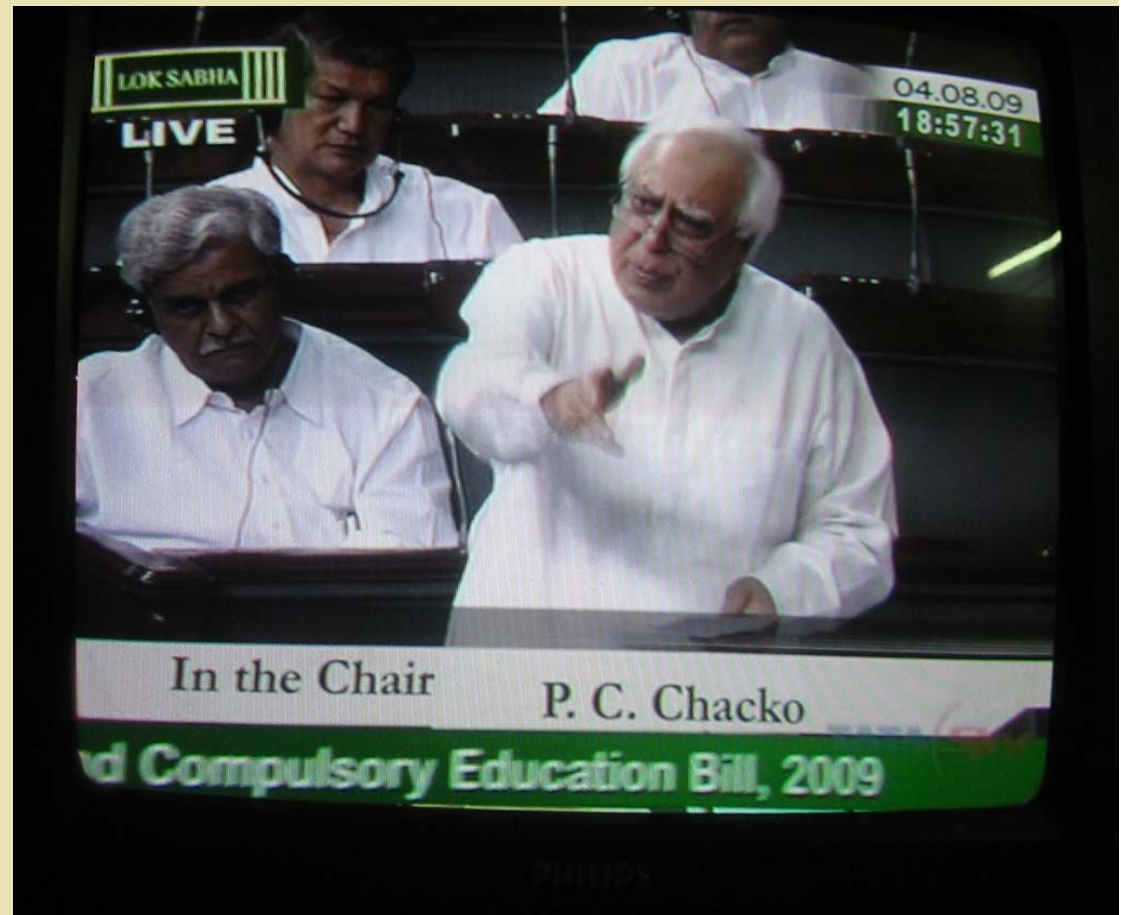
4th August: Lok Sabha

President's Assent

26th August 2009

Gazette Notification

27th August 2009



Notification of Constitution 86th Amendment Act 2002

- ◆ **16
February
2010**
- ◆ 8 years later!



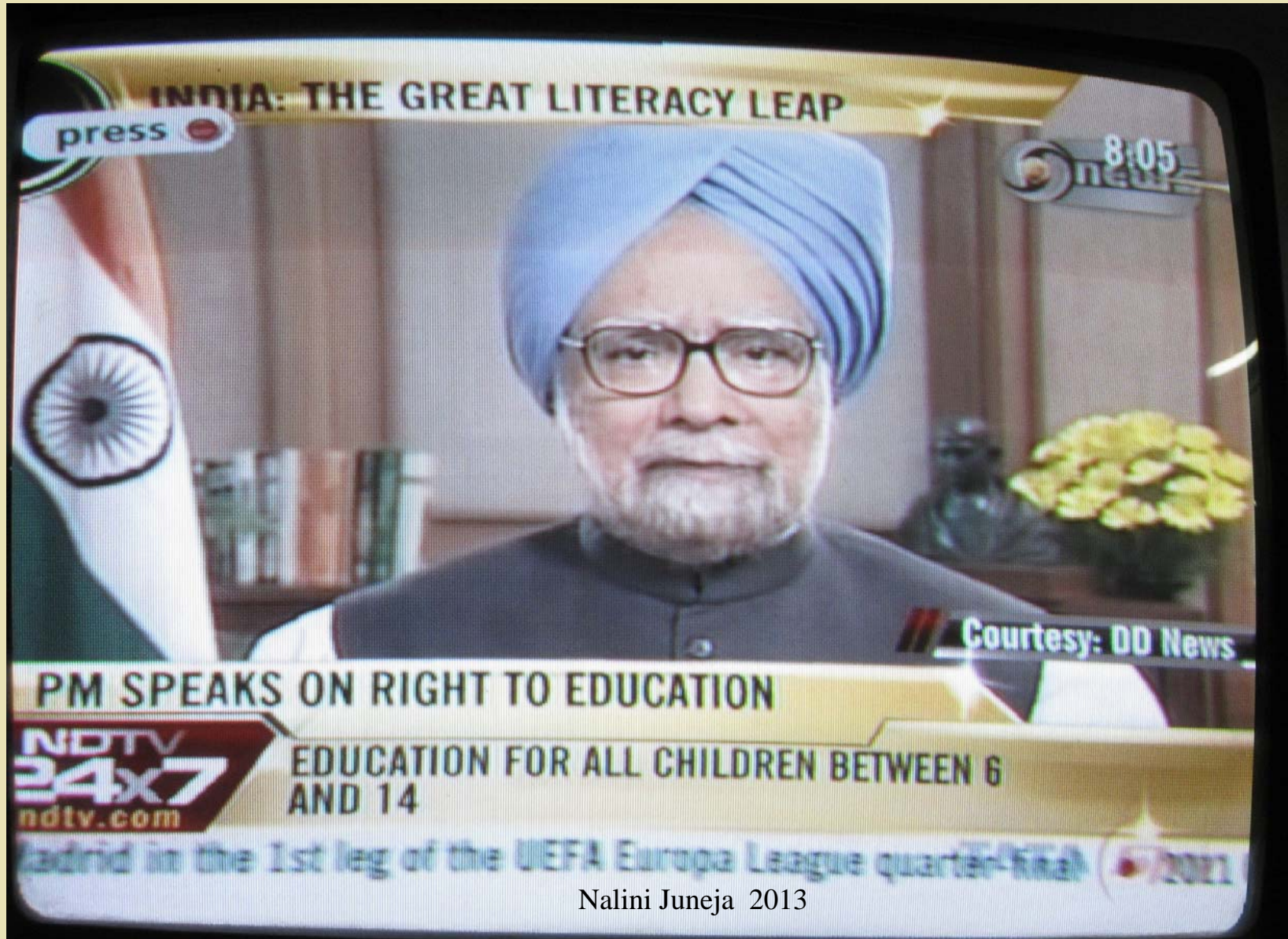
◆ Smt. Anshu Vaish



Preparation of Model Rules and and Budget estimate

- ◆ NUEPA, September 2009 – January 2010

1.4. 2010: Fundamental Right at Last!



The TEN Functions of the Right to Education Act 2009

1 Makes education Free

**2.Makes Education Compulsory
for state to provide**

**3. Curriculum as per
Constitutional Values**

**4. Ensures Quality
of Teachers**

**5. Defines Norms
for Schools**

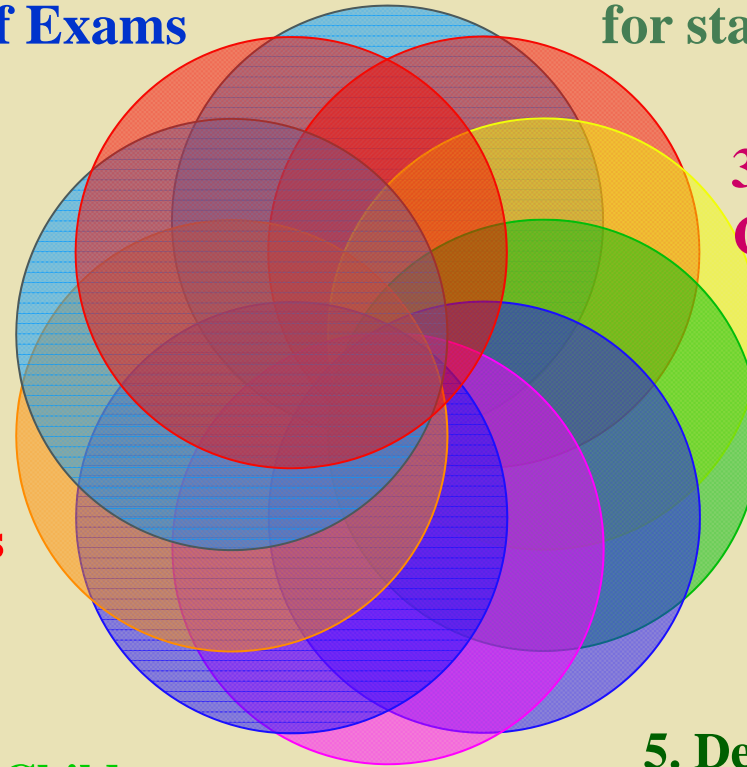
**6. Pushes for
Social Reform**

7 Protects Child

**8.Makes procedures
more simple**

**9. Puts power in
hands of people**

**10. Removes the
oppression of Exams**



The Constitution to the school: the RTE links

21 A

- The state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may by law determine (86th Constitution Amendment, 2002) Notified in April 2010

RTE 2009

- First and Historic Central Act on School Education n.2010
- All State acts have to be in conformity

Model Rules

- All states have to pass state rules to the central RTE Act
- Centre prepared 'model rules' as model for states

Guide lines

- As per section 35 (1) and 35 (2) Centre and states respectively may issue guidelines for implementation of the provisions of the Act



Milestones after Passing of RTE Act 2009

1. Circulation of model rules- 20th January 2010
2. Notification of Central Rules- 9th April 2010
3. Notification of Academic Authority as per section 23 of RTE Act - 5th April 2010



4. Notification of authority for preparation of National Curriculum framework – as per sections 7 and 29 of the RTE Act – 5th April 2010
5. Notification of Authority for preparation of Curriculum and Evaluation procedure for states and UTs without legislature – 5th April 2010



Rules drafted by States to the RTE Act 2009

- ◆ **S.35** empowers the central, state governments, and local authorities to **issue guidelines** for implementation of provisions of RTE Act
- ◆ **S.38** may **make rules** for implementation of provisions of RTE Act



RTE Amendments 2012,

Passed in May 2012 notified August 22nd 2012

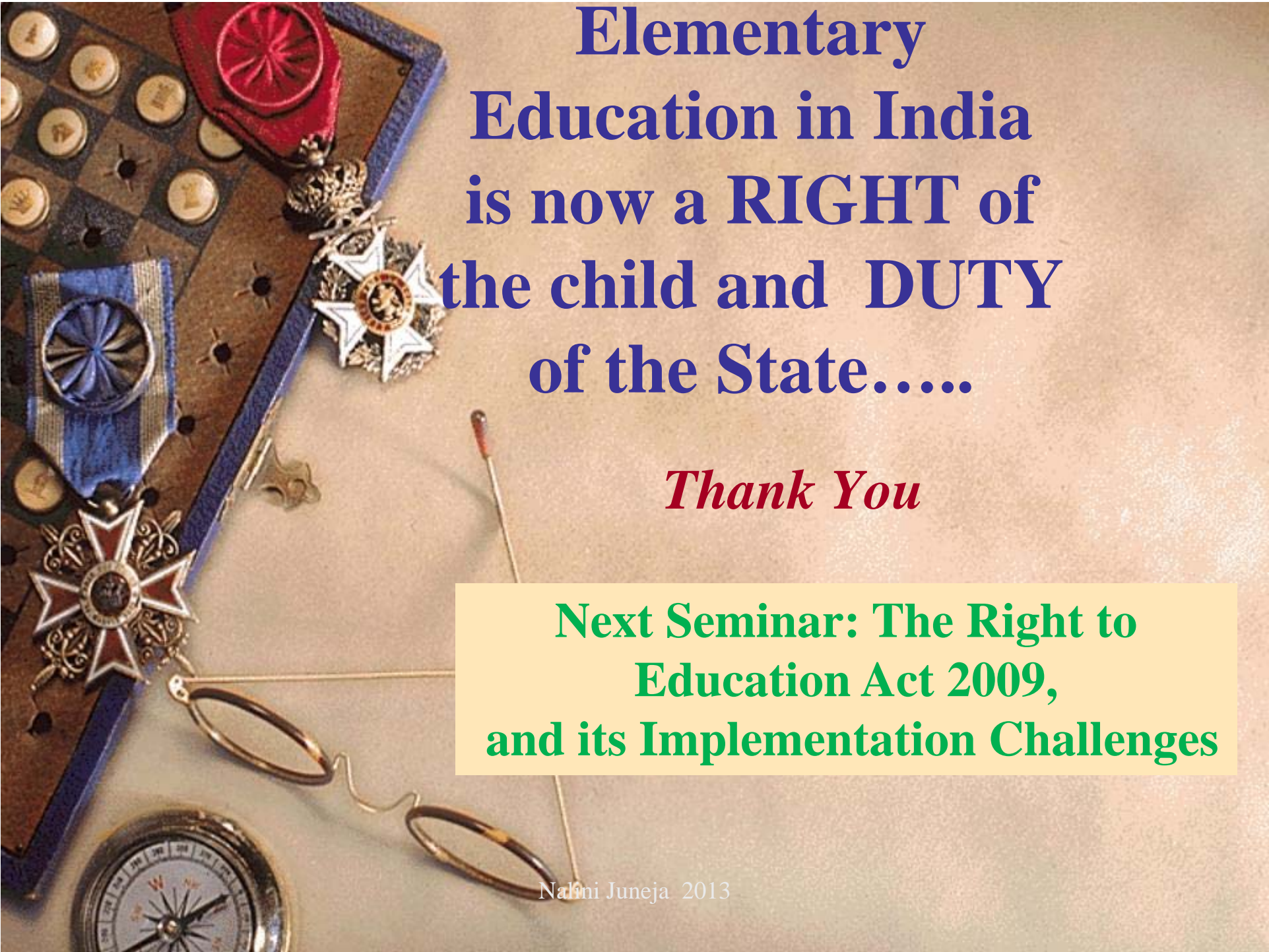
1. Nothing contained in this Act shall apply to Madrasas, Vedic Pathsalas and educational institutions primarily imparting religious instruction.
2. Child with disability further defined
3. Child with multiple disabilities may opt for home based education
4. SMC in minority and aided schools to be advisory only
5. PTR to be as per schedule of the Act within 3 years, not 6 months

Residential schools

Dated 13 July, 2012:As directed by the Supreme Court in Para 13 of Judgment of April 12th 2012. to clarify its applicability to Boarding Schools

- i.** To be limited to day scholars for only in the case of day scholars can the neighbourhood criterion apply
- ii.** shall not apply to residential schools which start admitting students in class higher than class 1.



A collection of medals and a compass on a wooden surface. The medals include a red ribbon medal, a blue ribbon medal, and two star-shaped medals. A compass is visible in the bottom left corner. The background is a light-colored wooden surface.

**Elementary
Education in India
is now a RIGHT of
the child and DUTY
of the State.....**

Thank You

**Next Seminar: The Right to
Education Act 2009,
and its Implementation Challenges**