**IN THE HON’BLE HIGH COURT OF KARNATAKA**

**AT BANGALORE**

**WP No. 15768/2013 (EDN-Res)**

Between

The Registrar Judicial …..Petitioner

And

The Chief Secretary, Govt. of Karnataka ….Respondent

**FURTHER REPORT SUBMITTED BY PARTY-IN-PERSON,**

**SMT. KATHYAYINI CHAMARAJ**

The undersigned begs to submit as follows:

1. **Survey results presented at Inter-Departmental Coordination Committee (IDCC) meetings**: The survey results presented by the Education Department at the meetings of the Inter-Departmental Coordination Committee on out-of-school children on 4th & 25th February 2014 indicate that the number of 1.7 lakh out-of-school children they have identified now is more than five times the number originally claimed. It is being stated by the government that the percentage of drop-outs is in the range of 2% to a maximum of 6% only even in the most backward districts.
2. **Other surveys point to higher figures:** But pilot surveys done by an initiative called ‘E-mandala’ in 8-12 villages of the same backward Yadgir and Gulbarga districts seem to indicate that the drop-out rate is higher. The cover note of the research conducted by E-mandala is herewith attached (***Annexure –Z***). The government’s figures of out-of-school children in these villages need to be cross-verified with those of E-Mandala to arrive at the true figures.
3. **PRA exercise for obtaining data on OOSC:** What is of significance is the process adopted for conducting the survey by the initiative E-Mandala. It has adopted the method of Participatory Rural Appraisal involving the local children, youth, community and GP members in Grama Sabhas to obtain data on OOSC. The children, youth and community have collected the data themselves, and taken ownership of the process of collecting data and of monitoring the mainstreaming the identified OOSC. This seems to be an ideal manner of collecting data as it also empowers the community to take charge of the issue of RTE in their communities. The education department needs to include PRA exercises through Grama Sabhas in their Action Plan as the preferred method of generating and monitoring data on OOSC.
4. **Need for community volunteers /workers in education department:** The PRA exercise has shown the need to have community workers/volunteers to get community ownership of data on out-of-school children. It is significant that while the health departmenthas thousands of community workers such as ASHAs (Accredited Social Health Activists) who visit homes and deliver health and nutrition services, the Education Department which has an equally important task, has no field workers who are constantly in touch with the community and are monitoring the fulfilment of the Right to Education.
5. **Cross-verifying data on OOSC held by other departments: A**ttention was also drawn during the IDCC meeting on 4th Feb 2014 to the fact that data on street and run-away children available with the Women & Child Development department and the data on child labourers available with the Labour Department need to be cross-verified with the data of OOSC of the Education Department**.** The chairman directed on 4th Feb 2014 that these figures should be cross-verified within 10 days.
6. **Reason for dropping out of 47.7% children unexplained:** What is significant is that the reason why a total of 81,351 children out of 1.7 lakh children, or 47.7% of them, have dropped out is categorised under ‘*other reasons’* which are not explained and this category constitutes the highest number of children under any category. Next highest are the 38,478 children citing labour-related reasons, such as family labour, working in others’ households and wage employment, which could all be assumed to be due to poverty.
7. It needs to be ascertained whether the 81,351 children whose reason for dropping out is listed under “other reasons”, could be those who said generically that ‘poverty’ is the cause. Without categorising the specific reasons why this huge number of children dropped out - and these form almost the majority of children who are out-of-school - solutions to address those specific causes cannot be found.
8. **Quality of school not a prime reason for dropping out:** Improving the school is definitely necessary from the viewpoint of development of the state and society; for achieving outcomes from the huge money invested in education; and for making it worthwhile for the child to attend school. However, it is noted that school-related reasons - i.e., unattractive school environment and fear of the teacher - have been given as reasons for dropping out by only 374 out of 1.7 lakh children, which is an insignificant number. This proves that, contrary to common assumption, the school is not the problem from the perspective of parents and children in any case, as per the government’s own survey. Thus, improvement of the school, though necessary, will not be a measure that will attract the majority of these out-of-school children back to school, as their prime reasons for dropping out are different. The need is to address those reasons that have been cited by them as the causes for dropping out.
9. **Curative approach of Action Plan of education Department**: The Action Plan submitted by the Education Department during the meetings on 4th and 25th February to mainstream the 1.70 lakh out-of-school children are mainly about conducting ‘tent schools’, 3-month special training, school-based special training, etc., which are curative plans. They do not say much about a preventive plan providing remedies that address the particular reasons why children are remaining out of school.
10. **Curative approach similar to rehabilitation of bonded labourers:** It needs to be cautioned that this approach of merely mainstreaming the currently out-of-school children should not be like the one adopted at the time of announcement of the Bonded Labour System (Abolition) Act in 1975. A few lakhs of bonded labourers were identified through surveys and rehabilitated. Thereafter it was believed that bonded labour had been extinguished in the country whereas nothing had been done to address the causes of bonded labour. Thus bonded labour continues to exist even today.
11. One needs to ensure that the same approach is not adopted in the case of out-of-school children also. It should not be assumed that by rehabilitating a couple of lakhs of currently out-of-school children the problem of out-of-school children will be solved forever. As has been humbly submitted by the undersigned during the course of this PIL, one needs to shift the emphasis from a ‘curative’ to a ‘preventive’ approach to ensure that no more children drop out and remain out of school.
12. **Action Plan should be for systemic change:** The Action Plan should hence be for putting systems in place to prevent the recurrence of future drop-outs. The meeting chaired by the Addnl. Chief Secretary & Development Commissioner on 4th February 2014 was very encouraging. He accepted and stressed that the numbers of currently out-of-school children, whether 54,000 or 1.7 lakhs or 6 lakhs, is immaterial for finding systemic solutions to the problem. He pinpointed that four or five major reasons why children are dropping out should be identified from the survey data and solutions that address these root causes should be devised. Family labour, work in other households and wage employment taken together are cited by 38,478 children as the prime reasons for remaining out of school. An attempt is made in the following paras to address these causes.
13. **Addressing family labour:** 27,808 out-of-school children have cited family labour as the reason for dropping out.Studies have shown that much family labour of children, such as fetching fodder or fuel wood, washing dishes or clothes, etc., which are often done during school hours, can be avoided by persuading parents to reschedule the time when these activities are performed by the child so that he/she does not miss school. MV Foundation in Andhra Pradesh persuaded other family members, such as the elderly, who did not have much work to do, to take over the tasks that were being performed by the child, such as grazing sheep or cattle.
14. **Importance of scholarships in curbing family labour:** MV Foundation has succeeded in persuading many parents to sell their cows or sheep, which were being tended by their children, to enable the child to go to school. In all such cases, the importance of giving the scholarship or incentive money to the boy or girl in the school needs to be stressed as that amount will act as compensation for the loss of income suffered by the family due to the child disengaging from the economic work for the family.
15. **Addressing sibling care done by girls:** If several girls are being kept at home to care for younger siblings, one woman in the neighbourhood can be asked to look after about 10 young children in the neighbourhood and the older girls freed to go to school (first suggested by Prof. Myron Weiner, MIT). The scholarship amounts received by each of the girl children at school can be given to the woman as fees for looking after the younger children.
16. **Addressing wage employment:** 1,182 children have cited work in other households and 9,488 children have cited wage labour as the reason for dropping out. These figures seems too low when compared with the figures of child labour of the labour department. The problem of child labour cannot be solved until there is consonance between the RTE Act and the Child Labour Act. While the RTE Act makes education up to 14 years compulsory, the Child Labour Act does not abolish all kinds of wage employment of children below 14 years, such as in agriculture, horticulture, animal husbandry etc., which are considered non-hazardous. To free children from wage labour, it is necessary to harmonise the laws by banning all wage employment of children under 14 years and penalise employers employing them.
17. **Article 32 of UNCRC requires minimum age for employment:** Article 32 of UNCRC expressly mandates that states should ‘provide for a minimum age ..... for admission to employment’... ‘having regard to the relevant provisions of other international instruments’ implying the ILO Minimum Age Convention 138. This provision needs to be made part of the RTE Rules or a separate notification issued in this regard. A penalty of Rs. 20,000 can be imposed on the employer (penalty on any employer employing children during school hours was there in the earlier Karnataka Education Act). This money can be kept in a bank in the name of the child to be used for educating the child.
18. **Addressing migration:** Migration has been cited by 29,491 children as the reason for dropping out. It is humbly suggested that in order to provide a systemic solution to this problem, it needs to be written into the Rules that free residential school facilities or hostel facilities shall be mandatorily provided on priority basis for such children at the source of migration by school authorities. All parents should be informed of this provision at the time of enrolment of the child itself - that parents wishing to migrate for short periods of time, or those engaged in shifting occupations, should leave their children in these free government hostels or residential schools before migrating so as not to disrupt the schooling of their children and that it is not in the best interest of their child's future to be denied education.
19. **Addressing girl child-related problems:** For 9,461 girl children, marriage, attaining puberty or other related reasons are the causes for being out-of-school. Providing free and safe transport and separate girls’ toilets and free sanitary napkins in the school would help these girls to attend school. While officials constantly assert that the quality of schooling needs to be improved to retain children, they have been unwilling during the IDCC meeting to set a time-frame within which they will ensure that the infrastructure of government schools, such as drinking water and toilets, will be as per the norms set by the RTE Act. The time-frame set by the Centre for ensuring this ended in April 2013 itself.
20. **Preventing drop-outs due to child marriage:**  1,365 girls have said they have dropped out because they are married. The department needs to conduct awareness programmes for girls in all schools, through the Child Rights Clubs present in every school or by other means, about their right not to be married before the age of 18 years and that they should report any attempts by parents to marry them off, before that age, to their peers, teachers or head-masters, who should, in turn, report it to the concerned official of the Women & Child Department responsible for preventing child marriages.
21. **Addressing distance to school:** Since 5,441 children have cited distance to school as a reason for dropping out. Free transportation to any school beyond 1KM should be made part and parcel of the Right to Free & Compulsory Elementary Education either by providing transport or by providing free bus passes wherever bus facility is available.
22. **Addressing Children with Special Needs:** 3.445 children are not in school because they are severely disabled.In other countries, every "child with special needs"  who can be integrated with a normal class, has an individual teacher who teaches him, based on what the 'normal teacher' is explaining.  Others who cannot be integrated in a normal classroom and have special needs are taught in a special classroom by an exclusively trained teacher within the normal school so that they also attend the normal school and are not isolated from other normal children.  In this context, the initiative to have one paid employee in every cluster and 3 volunteers with honorarium to look after "Children with special needs" which has been discontinued in our state needs to be re-instated and expanded on the lines suggested above.
23. **Preventive Protocol to be gazetted within time-frame:** The protocol setting out preventive steps to be undertaken by the Attendance Authority has already been prepared, as an addition to Rule 6 of the RTE Rules, and has been sent to the Law Department for vetting two months ago. The Chairman of the IDCC meeting held on 4th Feb 2014 fixed a time-frame of two weeks within which the Law Department should be asked to give its opinion on the protocol and the Rules 6A to 6D gazetted.
24. **All eligible children to get scholarship at the time of enrolment:** Whatever the income limit or other criteria fixed for eligibility for scholarships, it is important that all those who qualify as per this income limit or other criteria should be given the scholarship at the time of enrolment itself, without waiting for the children to drop out to be given the scholarship.  If a child is given a scholarship only when it drops out, it will be an incentive for others also to drop out to claim the scholarship.  It will also result in discrimination as a child in an equally vulnerable situation, which comes regularly to school, will not get any benefit, while a child which drops out will be rewarded.
25. **Article 18 of UNCRC supports assistance to parents:** There is much scepticism among several government officials about the advisability of giving cash incentives or scholarships**.** This preventive measure for all vulnerable children is enunciated in Article 18 of the UN Convention on the Rights of the Child (UNCRC) which says: *"For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children".* Articles 41 and 46 of the Indian Constitution also emphasise this duty of the state to assist parents.
26. **Placing children in hostels is not undemocratic:** Several officials and certain sections of civil society are expressing the fear that taking charge of out-of-school children and placing them in free government hostels (even as a last resort) is against our ‘social and cultural context’, that it is ‘undemocratic’ or 'Hitler-like'. But Article 9 of the UNCRCpermits States to separate a child from his or her parents “*when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents”.* Denial of the fundamental right to education of a child can definitely be construed as neglect of the child by the parents.
27. **Persuasion alone insufficient for actualising a fundamental right:** If only persuasion and gradualism were intended to get all children to school, there would have been no need for passing the 86th Amendment to the Constitution and making Free & Compulsory Elementary Education a Fundamental Right, rather than just a Directive Principle of State Policy. It is humbly submitted that firm measures, more than mere persuasion, are necessary for the actualisation of a justiciable Fundamental Right.
28. **Duty of state to protect neglected child as per Article 19 of UNCRC:** The above duty of the state to protect a child neglected by parents, either because they are unwilling or unable to fulfil the rights of the child, are reiterated inArticle 19 of the UNCRC which says that*“States shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of .............neglect or negligent treatment ...... while in the care of parent(s), legal guardian(s).”*
29. **Duty of state to provide alternative care to child as per Article 20 of UNCRC:** Article 20 of the UNCRCsays that “*a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State and that States shall in accordance with their national laws ensure alternative care for such a child. Such care could include, inter alia, foster placement, .........or, if necessary, placement in suitable institutions for the care of children.*
30. **Need to incorporate UNCRC provisions into our laws:** Since India ratified the UN Convention on the Rights of the Child in 1992 itself (more than 20 years ago), it was duty-bound to incorporate the above provisions, especially of Articles 9, 18, 19, 20, 28 and 32, of the UNCRC into its own laws. It is time that it is done at least now by Karnataka, setting a model for the entire country to emulate. The UN Committee on the Rights of the Child has expressly recommended that India should ratify ILO Convention 138 on a minimum age for general employment.
31. **Need for Appeals Authority at GP/Ward level:**  There should be a 1st level of appeals authority at GP/municipality/corporation ward level to summon and hear parents of OOSC apart from the appeals authority at taluk and district and state level. Ward committees in all municipal corporations are mandatory as per Section 13A of Karnataka Municipal Corporations (Amendment) Act, inserted in January 2011.
32. **RTE implementation to be on standing agenda of GPs/Wards:** OOSC and RTE implementation should be standing items on the agendas of the monthly meetings of local bodies, rural and urban.   Reporting Formats for Returns should be provided to them to be filed every month.
33. **Pilot project and software improvement to test proof of concept:** After gazetting Rule 6A-6D, pilot projects in a few districts need to be initiated as part of the Action Plan to test the proof of concept of the new Protocol for Attendance Authorities and other software. Private sponsors are available to fund the pilot projects. The Vidya Vahini software needs improvement to record micro-plan for each OOSC. Shiksha Manthan, an initiative of Pragathi Trust demonstrated such software to former SPD, SSA, which could be field-tested during the pilot project.
34. **Mobile-based survey software:** Another software developer, DigiCollect has demonstrated to the Principal Secretary, Primary Education, a hand-held mobile-based survey software which would greatly help in collecting field-level data of all children 6-14 years, with geographical coordinates to validate location, video and audio facility to record photo of child and statements of parents. The survey format can be customised and data uploaded instantaneously to the central data base, without recourse to paper-based surveys and manual inputting of data.

**PRAYER**

Wherefore in the light of the above facts and circumstances, the undersigned prays that this Hon’ble High Court may be pleased to direct the Respondent No. 1, the State government to :

1. Provide the results of the cross-verification of the data of the Education Department on out-of-school children in a few villages of Yadgir and Gulbarga districts with the figures submitted by E-Mandala.

1. Provide the results of the cross-verification of the data on OOSC with those on street and run-away children of the Dept. of Women & Child Development and those of child labourers of the Labour Department.
2. Adopt Participatory Rural Appraisal methods involving the children, youth and community in gathering and taking ownership of the data on OOSC and monitoring their mainstreaming into the formal stream of education.
3. Further categorise and provide the reasons for dropping out of 81,351 children who have been currently shown under ‘Other reasons’.
4. Prepare a Preventive Action Plan for addressing the 15 or more root causes why children are out-of-school, as revealed in the government’s survey, rather than merely mainstreaming the currently out-of-school children through bridge courses.
5. Incorporate Rule 6A to 6D into the Rules of RTE at the earliest by getting the Law department to vet them immediately.
6. Incorporate the provisions of Articles 9, 18, 19, 20, 28 and 32 of the UNCRC into the laws and rules of the State as India is a signatory to the UNCRC.
7. Fix a time-frame within which infrastructure of government schools meets the norms fixed by the RTE Act.
8. Appoint Appeals Authority at GP/Ward level
9. RTE implementation to be on standing agenda of GPs/Wards
10. Undertake a pilot project with suggested software to test proof of concept of new GOs issued suggested above
11. Pass such other orders as the Hon’ble High Court may deem fit in the interest of justice and equity.

WHEREFORE the undersigned prays that this Hon’ble Court may be pleased to take this report on record and issue suitable directions in the interests of justice.

BANGALORE

DATED: 06/03/14 KATHYAYINI CHAMARAJ

 PARTY-IN-PERSON

 **IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**WP No. 15768/2013 (EDN-Res)**

Between:

The Registrar Judicial ...Petitioner

And

The Chief Secretary,

Govt. Of Karnataka ...Respondent

**VERIFYING AFFIDAVIT**

I, Kathyayini Chamaraj, Executive Trustee of CIVIC Bangalore, residing at Apt. 001, HM Wimberly, 6 Berlie Street Cross, Langford Town, Bangalore 560025, do hereby solemnly affirm and state on oath as follows:

1. I state that I am the Intervenor in this Writ Petition and i am well aware of the facts and circumstances of the case and hence I am swearing to this affidavit.
2. I state that the submissions made in Para 1 to 20 of the accompanying application are true and correct to the best of my knowledge, ability, information and belief.

The facts stated above are true and correct to the best of my knowledge, ability, information and faith.

Identified by me

 BANGALORE

 DATED: KATHYAYINI CHAMARAJ

 PARTY-IN-PERSON