

Critical Appraisal Of The Components Of The Right To Education Act-2009

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Abstract

The paper entitled “Critical appraisal of the components of the right to education act-2009” is based on grass roots practical experience of teaching and supervision at various levels of school education and teacher education system. The authors has interacted with hundred of pupil teachers, regular school teacher, teacher educators and is alive to their views on what ails the present education policies on Right to education Act 2009. The act, called as “The Right of Children to Free and Compulsory Education Act, 2009. The Right of Children to Free and Compulsory Education is landmark legislation in the history of education in India. The Act came into effect 1st April 2010. There is provision mentioned under RTE such as, “No child shall be held back, expelled, or required to pass aboard examination until completion of elementary education”, this is very bad in itself. As without obtaining proper ability and qualification, no child can understand in his next class. Second where a child above six year of age has not been admitted in any school and if such child is admitted in class appropriate to his age, it will create similar effect as the first one. The model rules provided any details on the implementation of 25percent reservation in private schools. There are so many incidents and various scams involving have been unearthed since it was started.

The paper discusses a brief, but meaningful description and critical analysis of RTE Act, 2009; containing with suggestion for improvement in implementation of The Right of Children to Free and Compulsory Education Act2009.

Keywords: Right to Education, Free and Compulsory, weaker section, Disadvantaged group.

Right to Education an Introduction

The Eighty-sixth Amendment of Indian Constitution, 2002 inserted Article 21A in the Constitution of India to provide Right of children to free and compulsory education of all children in the age group of Six to Fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

The Right to Education (RTE) Act came into effect on 1st April 2010. The title of the RTE Act “Right of children to free and compulsory education” incorporates the words ‘*free and compulsory*’ in which ‘*Free education*’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

‘*Compulsory education*’ means an obligation to the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups. It clarifies that ‘*compulsory education*’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group and ‘*Free*’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

Right to Education: Historical Background

Present Act has its history in the drafting of the Indian constitution at the time of Independence-but is more specifically to the Constitutional Amendment of 2002 that

included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill. It is the 86th amendment in the Indian Constitution A rough draft of the bill was prepared in year 2005. It caused considerable controversy due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society.

In Indian constitution, Article 45 was introduced under part IV “*Directive Principles of State Policy*”. The Article states: *provision for free and compulsory education for children*. As an International obligation: Article 26 of Universal Declaration of Human Rights (UDHR), recognizes the right to education. In 1993, over 170 countries including India reaffirmed their commitment to UDHR at the World Conference in Vienna that very one has the right to education and such education shall be free, at least in the elementary and fundamental stages. The Right to Education (RTE), Act 2009 is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. However, it is the parents' responsibility to send the children to schools in the United States of America and other countries.

The Hon'ble Supreme Court of India in “*Bandhua Mukti Morcha Vs. Union of India*” has held that the right to live with human dignity enshrines its life breath from Directive Principles of State Policy and therefore it must include educational facilities. In “*Mohini Jain Vs. State of Karnataka*”, the Hon'ble apex Court observed that “‘Right to life’ is the compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life. The right to life

under Article 21 and the dignity of individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facility at all levels to its citizens.”

The question whether right to primary education as mentioned in Article 45 of the Constitution of India is a fundamental right under Article 21 of the Constitution was discussed at length in the landmark case of “*J. P. Unnikrishnan Vs. State of Andhra Pradesh*” and the Hon'ble apex Court in this case has clearly held that the right to education flows directly from right to life.

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of Six to Fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

The Right to Education (RTE) Act came into effect on 1st April 2010. The title of the RTE Act incorporates the words ‘free and compulsory’ in which ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ means an obligation to the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups. It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group and ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

The components of the Right of Children to Free and Compulsory Education act, 2009 (No.35 of 2009)

The RTE Act provides for free and compulsory education to all children of India in the Six to Fourteen age groups and no child shall be held back, expelled, or required to pass a board examination until completion of elementary education. There is provision for appointment of trained teachers, i.e. teachers with the requisite academic and allied qualifications. It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition.

The RTE Act provides for development of curriculum in consonance with the values enshrined in the Constitution and which ensure all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child-centered learning.

The RTE Act also gives children from migrant families have the same right to free and compulsory education in a neighborhood schools as other children. A child who completes elementary education shall be awarded a certificate and talks about fixed student-teacher ratio and provides for 25 percent reservation for economically disadvantaged communities in admission to Class one in all private schools.

There is also provisions in RTE Act for Pupil-Teacher Ratio of 30:1; with minimum instructional hours of 4/day and minimum working days of 200/annum (4.5 and 220 for Upper primary sections) Buildings (all-weather, barrier-free access, boundary wall; one classroom for every teacher; separate room for Head teacher; separate toilets; safe drinking water, kitchen for mid-day meal; and playground). Teaching learning materials, Library, Play and sports equipment.

The number of vacancies in a school cannot exceed 10% of the sanctioned strength following the pupil teacher norms. If the

requisite number of qualified teachers cannot be found in a particular area the qualification norms may be modified to suit the purpose, but only for a period not exceeding 5 years.

The Central Government's role is to develop a National Curriculum Framework with the help of an appointed Academic Authority, developing and enforcing standards of teacher qualification and training and Providing technical and financial support and resources to the State governments for innovation, research, planning and capacity building.

The State Education department is entrusted with the responsibility of providing free and compulsory elementary education to all children, ensuring availability of a neighbourhood school with requisite infrastructure, teachers, and learning equipment as specified in the Act, ensuring admission, attendance and completion of elementary education for every child, prevent discrimination against any child on any grounds.

The local authorities also have various roles to play such as maintaining records of all children up to the age of 14 years residing in their jurisdiction, ensuring admission of all children, including migrant children, ensuring that no child is discriminated, deciding the academic calendar and monitoring the functioning of schools in their jurisdiction.

"A teacher affects eternity; no one can tell where his / her influence stops" – Henry Adams

A teacher's role in the life on an individual crucial and a good teacher occupies a very significant place in the minds of young students. After parents, it is the teacher who influences a child most, and contributes to the shaping of his or her personality. The teacher as a leader, a torchbearer, a mentor or a guide must also take on the role of a caretaker, a protector and a catalyst of social change. They should ensure that all children are protected from all forms of exploitation, abuse, neglect; inhuman and degrading treatment.

Teachers have several duties which include maintaining regularity and punctuality in school, completing the entire curriculum in

the specified time, assessing the learning ability of each child and providing supplementary additional instruction if required, holding regular meetings with parents and apprising them of regularity in attendance, learning abilities, progress and other issues relating the child.

There is also duty upon the teacher to inculcate respect for others, environmental awareness, sustainable development, minimizing pollution, cultural diversity & the values of unity and introduction to the human family, friendship, mutual help & appreciation of nature.

Many Teachers need to impart knowledge of their subject matter to students. This goes beyond simply stating the knowledge that they have gained through their own education. Teachers be a role model.

It is reasonable to expect teachers to meet their professional obligations and responsibilities. Every career has its own level of responsibility Viz. lawyers, doctors and other professionals have many similar responsibilities along with many others like client and patient privacy. The level of responsibility is commensurate with the amount of influence the professional teacher, lawyer, doctor etc. have. If a teacher expects to influence children and help them achieve their full potential, a teacher must be a responsible adult who models excellent behavior for them.

However, for fulfilling all the tasks from the teachers there must be need to focus on teacher training & education and proper Recruitment procedure, Pay package, etc. of teachers.

“Good Teachers Are Costly, But Bad Teachers Cost More”. Bob Talbert

There must be a reasonable sense of security of job among teachers and appropriate scales of pay and remuneration, including perks, at least equivalent to those with comparable qualifications, workload, responsibility, seniority, experiences etc. The teachers are overburdened and to bound to do non teaching activities.

Criticism of RTE Act:

The RTE Act also provides for child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribe.

- (i) There is no provision for any special training or any kind of such arrangement in school.
- (ii) If child age is 14 has not been admitted in any school, as per act child is directly admitted in a class appropriate to his or her age. According to this act child should get admission in class 8th is it possible to complete their elementary education within one year? Or child stays in class 8th for the longer years? Because the act provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

There is provision mentioned under RTE such as, “No child shall be held back, expelled, or required to pass a board examination until completion of elementary education”, this very provision is very bad in itself. As without obtaining proper ability and qualification, no child can understand in his next class. Second where a child above six years of age has not been admitted in any school and if such child is admitted in class appropriate to his age, it will create similar effect as the first one.

Article 51A of the Constitution of India was supplemented with an additional clause (k) by the 83rd Constitutional Amendment Act, which makes it a fundamental duty of the parent/guardian to provide opportunities for education for all children between the age group of six and fourteen years. Is it possible for those parents/guardians are illiterate, are they aware for performing their fundamental duties. Who will train to such kind of

parents/guardians to ensure free and compulsory elementary education to every child?

The act has been criticized for being hastily drafted, not consulting many groups active in education, not considering the quality of education, infringing on the rights of private and religious minority schools to administer their system, and for excluding children under six years of age. Many of the ideas are seen as continuing the policies of Sarva Shiksha Abhiyan of the last decade, and the World Bank funded District Primary Education Programme DPEP of the '90s, both of which, while having set up a number of schools in rural areas, have been criticized for being ineffective and riddled with corruption.

The quality of education provided by the government school system is not good. While it remains the largest provider of elementary education in the country, forming 80% of all recognized schools, it suffers from shortage of teachers and infrastructural gaps. Several habitations lack schools altogether. There are also frequent allegations of government schools being riddled with absenteeism and mismanagement and of appointments made on political biases. But the conditions of government schools in India except Navodayas and Kendriya Vidyalayas are no better. There is also barrier for orphans as the RTE Act provides for admission of children without any certification. However, several states have continued pre-existing procedures insisting that children produce income and caste certificates, BPL cards and birth certificates. Orphan children are often unable to produce such documents, even though they are willing to do so. As a result, schools are not admitting them, as they require the documents as a condition to admission.

The law makes it clear that the compulsion is on the state and not on the parents to ensure completion of the elementary cycle of schooling. It says that it is the duty of every parent to admit their children in a neighborhood school, but the responsibility of the government to ensure quality education and the retention and completion of elementary education by child in school.

Thus, there are no penalties on parents for not sending their children to school.

However, the RTE Act makes it a duty of the appropriate Government and the local authorities to ensure that the child belonging to weaker section and child belonging to the disadvantaged group are not discriminated against and prevented from pursuing education on any grounds i.e. removal of class or caste consciousness, but that is not the case and there is rampant discrimination on caste and class line in admission and providing proper education.

The Model Rules provide any details on the implementation of the 25 per cent reservation in private schools. The actual position of Mid Meal Programme is also not very good. There are so many incidents and news about insufficient quality of foods/meal given to children. Various scams involving Mid-Day Meal Scheme have been unearthed since it was started. Even child labour and Dropout rate are also a main problem.

The RTE Act, 2009 does not make provisions for a second shift for children who have to work. Child labour is a major problem in our country but denying an education to child labourers only further closes all opportunities to escape from their conditions. If the Child labour admitted in school escape from their conditions who will responsible for their expenditure after school time like clothes food etc.?

However, realization of the objective of 'Education to All' is not going to be very easy- not when the school system in our country, especially those rural and remote areas continue to be plagued by problems of poor infrastructure, shortage of teachers, lack of teachers training, motivation besides poverty and livelihood issues that are responsible for the high dropout rates. It is estimated that there is a shortage of approximately five lakh teachers, while about three lakh of them are untrained at the elementary school stage. Over 50% of schools have a Pupil-Teacher ratio much poorer than the 1:30 prescribed under the RTE Act, 2009. About 46% schools do not have toilets for girls, which is another reason

why parents do not send girl children to schools.

To address these quality issues, the RTE Act also provides for compensating private schools for admission of children under the 25% quota which has been compared to school vouchers, whereby parents may "send" their children in any school, private or public. This measure, along with the increase in PPP has been viewed by some organization such as the All-India Forum for Right to Education (AIF-RTE), as the state abdicating its "constitutional obligation towards providing elementary education". As per the proper and detailed study done by Pratigya (NGO working at Ranchi) the abysmal condition of the implementation of EWS provision and lack of awareness in the marginalized community has led to just 1.6% admissions of BPL children against 25% available seats in last 3 years where as 2.4% admissions against 25% in the academic year 2013-14. Along with policy level advocacy to get the policy level gaps filled in Jharkhand, pertaining to this provision of the RTE Act, NGO volunteers are working in more than 40 slums and 20 villages of Ranchi, facilitating free admissions of children from poor community in various schools as per the provision of RTE Act.

However, it is noteworthy to mention that forcing unaided schools to admit 25% disadvantaged students, that the government has partly transferred its constitutional obligation to provide free and compulsory elementary education to children on "non-state actors," like private schools, while the government collecting a 2% cess on the total tax payable for primary education.

The other grey area is the quality of education provided to the children. The Act provides for the right to schooling and physical infrastructure but does not guarantee the quality of education. Even the teacher's duties are only related to punctuality, attendance, etc., and not to learning achievements of their students and performance driven mechanism.

As Alexander Pope has rightly said, "Legislation is only the first step; the real step is execution".

There must be effective participation and enrollment campaign and teachers must be made important party therein. The government should also motivate parents/guardians and other non state actors to involve in the child labour education programme. A teacher can motivate the drop-out children below 15 years of age and enrolling them in the regular schools and to create interest. A teacher should create child-friendly environment in school. A teacher should follow-up on girls who drop out or attend irregularly to ensure it does not continue. A school must have a trained counselor to help both the children and their parents/guardians.

There must be regular and periodic Parent Teachers Meetings as between teachers and parents on the child's overall development.

The school should provide basic facilities like toilets and drinking water for children of both the sex must be made available within the school premises and disabled-friendly infrastructure and teaching learning materials should be made available.

To organize meetings of children with school authorities and ensure children are protected within the school as well as in the community, even if it requires calling the police and taking/facilitating legal action.

Suggestions for Improvement:

There is also one important suggestion to better implementation of RTE Act regarding Government schools should be run by private entities/entrepreneurs. It is very doubtful if the government can manage hiring qualified teachers and provide quality education to children. Like in the USA, the government can opt for building the schools and make them available to private companies on a long-term lease, based on auction. The organization that comes up with the lowest bid and agrees to maintain the best quality education would be chosen to run each school in each locality. In villages the Panchayats members can play important role in promoting education. The village education

committee should not be an ad hoc project arrangement and should be permanent. There should be a teacher and parent interaction because a frequent parent and teacher interaction will enhance student enrolment and attendance rate. The incentives like books, uniforms etc. available to the students must be made at the beginning of session. The quality of Mid Day Meal needs to be improved, which will attract children of the weaker sections of the society. Village monitoring committees must be formulated so that they will monitor the enrolment and student absenteeism. More Acts like Mahatma Gandhi National Rural Employment Guarantee Act should be started because only those parents who employed think about not to employ their children in any labour work. The goal of 100% female literacy can be achieved by creating community awareness for girls education at all levels. All education above higher secondary school level should be primarily dealt with by private entities. Students should be offered lenient education loans at very low interest rates. Though the state has the primary obligation to provide education for all children but non-governmental organizations and other civil society partners can make a vital contribution to education by mobilizing public demand and expanding participation of NGO and Civil Societies.

There should be performance based pay scales for teachers and there should be serious thought to shall assist private unrecognized schools to improve their facilities including infrastructure so as to comply with the norms and standards prescribed by the RTE Act, thereby avoiding closure, within three years. There is a crying need to conduct awareness campaigns so as to raise the awareness about the RTE Act among the common masses

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especially poor, downtrodden, SCs, STs and people at remote and far flung areas. There is also serious need of restructuring the current licensing and regulatory policy in the government sector.

CONCLUSION

The most important point is that every school should be provided with adequate teacher infrastructure and teaching-material before implementing any new act or reform and it should be ensure that the teachers teach and students learn in child-centered environment. In the age of globalization, education assumes much significance. The greatness of a nation should not be measured by its ranking in global economic order, but by its ability to provide quality education. It is an important factor that fuels both social change and economic growth. India is actively pushing forward with its agenda for revamping and restructuring education in the country.

Education has innumerable benefits and it has immense power to transform a society. The statistical surveys suggest that high literacy rate is corollary to high sex ratio. The lowering of female feticides fertility rate and morality rate; increased life expectancy and better health outcomes are the indirect benefits of education and to better the Sex ratio.

Education is important because it equips us with all that is needed to make our dreams come true. The core of the right to education relates to its substance, which differs from education itself. Effective and transformative education should be the result of the exercise of the right to education, which is a universal human right. The right is about the entitlement to claim the substance of it; it relates to the possibility of demanding the right to education and making it justifiable.