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ARTICLE

Right to Education Act: Some Issues

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Right to Education was recognized by the United Nations as fundamental to man – indeed as the UN was being established, India had argued vehemently in favour of education as a fundamental right. The 1968 and 1986-1992 National Education policies in India recognized education as a precondition for development and set out three critical issues in those policies – equity, accessibility and quality. The right to education act 2009 was the result of a long process, discussions and recommendations made by various educational commissions and committees.

This act provides that the states will ensure that no non-teaching work is given to the teachers. The act recommends quality teachers and mandates that untrained teachers will have to upgrade themselves in 5 years.

Getting away from the rote learning method, fostering a culture of creativity and an ability to learn multiple jobs in one's career lifespan, is critical for the jobs of tomorrow. Let us first accept that the underlying idea behind the RTE is a good one – the concept of underprivileged children attending private schools – but the execution is at fault. Common sense and strong economics should help us improve the Act's intention.

This paper discuss with the constitutional provisions related with right to education act, A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act. The education of India's next generation is far too important a priority to leave to the mercy of a poorly thought out, and hastily drafted Act. Government needs to replace the RTE with a new Act, worthy of its' practical and pro-free market reputation.

Right to Education was recognized by the United Nations as fundamental to man – indeed as the UN was being established, India had argued vehemently in favour of education as a fundamental right. The 1968 and 1986-1992 National Education policies in India recognized education as a precondition for development and set out three critical issues in those policies – equity, accessibility and quality. The right to education act 2009 was the result of a long process, discussions and recommendations made by various educational commissions and committees.

The 93rd Amendment Bill was discussed and passed By Lok Sabha on 27 November 2001 and Rajya Sabha on 14th May 2002. The date of the bill was to amended from 2001 to 2002 so it again went to Lok Sabha. After ratification by the President, it became Constitution 86th Amendment Act. The 86th amendment provided for a follow-up legislation, which culminated in Right to Education Bill 2005, Right to Education Bill 2008 and finally Right to Education Act 2009.

Right to Education Act: Main Features

Education as Fundamental Right:

- Every Child of the age group of 6-14 years shall have right to free and compulsory Education.
- No child is liable to pay any kind of fee/ capitation fee/ charges. A collection of capitation fee invites a fine up to 10 times the amount collected.

Children from Disadvantaged Group:

- This right provides that “ child belonging to disadvantage group” means a child who
 1. Belongs to SC & ST
 2. Socially backward class.
 3. Geographical, Linguistic, Gender or such other matters.
 4. Is differentially abled.

The Right to Education Act 2009 did not initially talk about “Physically disabled” children. To enable such provisions, the Right of Children to Free & Compulsory Education (Amendment) Bill 2010 was introduced in the Rajya Sabha on April 16, 2010. This bill was later referred to a standing committee on Human Resource Development. The bill was passed in both the houses of the parliament by May 2012 thus expanding the definition of “Child belonging to disadvantaged group”. Now this group shall also include the children with disability. Disability means blind, leprosy cured, hearing impaired, locomotor disabled and mentally ill. It also includes autism, cerebral palsy, mental retardation & multiple disabilities. These children have the same right as of other children. A number of other

provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act.

The RTE Act provides for the:

- Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- 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. '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.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic 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,
- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the 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 centred learning.

Teachers:

This act provides that the states will ensure that no non-teaching work is given to the teachers. The act recommends quality teachers and mandates that untrained teachers will have to upgrade themselves in 5 years.

Schools:

The act has listed minimum infrastructure requirements as a part of the schools and mandates the states to ensure that schools have these requirements. The schools which don't conform to the quality standards as mentioned in the act, will upgrade themselves in 3 years or face derecognition.

Reservation:

The act mandates 25% reservation for disadvantage sections of the society as defined by the act.

Management Committees:

The act mandates that parents are to constitute the 75% members in the management committees. The School management committees are to have 50% women members.

Screening:

This act makes the screening of students / parents unlawful. It invites fine up to ` 25000 in the first instance and double in every successive violations.

Examinations:

No child can be put through any exam, not even class V & Class VIII board examinations.

Number of Teachers:

The act mandates number of teachers as follows: (please note that in newspapers, different news have written different ratios. The following list is reproduced from the official document)

Class I to Class V

- Up to 60 children : 2 teachers (Pupil Teacher Ratio: 30:1)
- 61 to 90 children : 3 teachers (Pupil Teacher Ratio: 30:1)

- 90 to 120 : 4 teachers (Pupil Teacher Ratio: 30:1)
- 121-200 : 5 teachers (minimum Pupil Teacher Ratio: 40:1)

Class VI to Class VIII

- One teacher per class each for 1. Science and math 2. Social Studies 3. Languages.
- One teacher for 35 children
- If there are more than 100 children then 1. A full time teacher 2. Part time instructors for Art, Health and Physical Education, Work Education.

Corporal punishment:

The Right to Education Act 2009 makes corporal punishment unlawful.

Private Teaching/ Tuitions:

Clause 28, Chapter 28 of the act mandates that no teacher shall engage himself / herself in private teaching.

Monitoring:

The act states that National & State Commissions for protection of Child rights would monitor the effective implementation of measures in this act and inquire into complaints.

National Advisory Council:

The act provides that the central Government shall constitute a National Advisory Council of maximum 15 members which shall advise the central government on implementation of the various provisions of the act.

At present, there are five articles in the constitution of India which have Children as their special focus. These articles are Article 21A, 24, 39 & 45 and 51A (k). Thus special provisions for children find place in our constitution in Fundamental Rights, Directive Principles as well as Fundamental Duties.

The changes in constitution by 86th amendment Act

The 86th Amendment Act 2002 had made the following changes in our constitution:

Change in Fundamental Rights:

A new article 21A was inserted below the Article 21 which made Right to Education a Fundamental Right for children in the range of 6-14 years. This article reads:

“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”

Article 24: No child below the age of 14 years shall be employed to work in any factory or mine or engaged in hazardous employment.

Article 45 which originally stated: 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 was substituted as the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

Change in Fundamental Duties- Article 51A was also amended and after clause (J), the clause (k) was added which says:"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 report on the status of implementation of the Act was released by the Ministry of Human Resource Development on the one year anniversary of the Act which admits that 8.1 million children in the age group 6-14 remain out of school and there's a shortage of 508,000 teachers country-wide. The lack of teachers is not just unfair but also a violation of the Right to Education Act of 2009 which states that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

After the RTE Act 2009, the government had given time till 2015 to all untrained teachers in the workforce to complete teacher training bill. However, many teachers still remained untrained. As a consequence, an amendment bill was passed. According to the Right of Children to Free and Compulsory Education (Amendment) Bill, 2017, untrained teachers teaching students of class 1 to 8 under 'SarvaShikshaAbhiyan' will now get time till 2019 to complete their teachers training.

As per the amendment, such teachers will need to complete Diploma in Elementary Education (D.El.Ed.) course by 2019. Diploma in Elementary Education (D.El.Ed) programme is a specifically designed package for in-service untrained teachers working in primary/ upper primary schools of different states of the country. While the amendment has been passed so as to not drive teachers already teaching out of their jobs, it also points out to the stark reality that about 11 lakh teachers currently teaching in schools, as informed by PrakashJavadekar, are not properly trained. So it is not just recruitment which needs to be on the priority list but also a proper set up for teacher training in the coming years so as to avoid any future crisis of untrained teachers.

A RTE Forum report representing the leading education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule. The Supreme Court of India has also intervened to demand implementation of the Act in the Northeast. It has also provided the legal basis for ensuring pay parity between teachers in government and government aided schools.

This means that private schools have not been ruled out by the act. Still the RTE was challenged in the Supreme Court as an unconstitutional infringement on the rights of private and minority schools. An association of schools had challenged the constitutional validity of RTE Act in the Supreme Court saying the government was trying to enforce reservation and regulate affairs of private unaided and minority educational institutions.

The Model Rules don't provide many details on the implementation of 25 per cent reservation in private schools. It does not specify the definition and verification of the weaker and disadvantaged sections. How to select the children and in which class they shall be admitted. How they will gap the admission demand and seats available? What can be the vigilance mechanism? How the schools (private) would be reimbursed? etc. There is no clear instruction for private schools for formation of the school management committee.

Madarasas& Vedic Pathshalas have been clearly kept out of the purview of the Right of Children to Free and Compulsory Education Act. In 2011, it was reported that there is keenness on extending the provisions of the Right of all Children to Free and Compulsory Education Act to Class X (age 16) instead of VIII. Nothing substantial has been decided in this context so far.

There are four main points for RTE act. First and foremost, it does not factor in important recommendations of the parliamentary standing committee of which the current HRD minister, Prakash Javadekar, was also a member. Second, in emphasizing infrastructure and teacher-student ratio while omitting any consideration of learning outcomes its priorities are misplaced. Third, its implications for private schools, which are obligated with 25% reservations with reimbursements below the average cost, are serious. Fourth, there is lack of clarity on its financial implications, and sharing of cost between the Centre and states.

Credible action programmes to improve teacher training both quantitatively and qualitatively remain exclusive. It is sad that this challenging obligation had no place in the RTE Act. Besides, total teacher vacancies are 9 lakh at the elementary level and exceed 1 lakh at secondary level. This is a huge backlog and will keep rising every year.

The 11th Annual Status of Education Report released by Pratham this year suggests that "today about one in four children in standard 3 in an average rural school is at Grade 1 in

reading and mathematics.” Further, nationally, this picture does not seem to have changed very much over the last decade. There has however been a slight increase in these attainments between 2014 and 2016.

The debate between public and private schools has raged for long. This is a false hiatus. Societies with rising aspirations need both equity and excellence seeking inclusiveness while ensuring acceptable outcomes is invariably challenging. Public policies must be designed to harmonise a possible asymmetry. Recent initiatives by the Rajasthan government for government schools to operate on a public private partnership model have important lessons.

The government could (should) have provided free quality education without a law as a number of countries have done. In fact, successive governments were attempting to do that but were unable to do so. The inability was certainly not on account of absence of legislation. A number of non-legislative factors have created a mess in the last few decades in the education sector. Education does not provide for immediate results that a political party can show off. The impact of initiatives in education is visible only in the long run. Perhaps, legislation was one way to show that the government was concerned about education. However, if we go by the available evidence, enactment of RTE hardly led to any improvement in delivery of quality education. Learning outcomes, in fact, declined during the years that followed the legislation.

The norms and standards prescribed in the schedule for a school are far removed from ground reality. What is perhaps desirable has been made mandatory. This has resulted in a phenomenal increase in the number of teachers. During 2015-16, there were 39,608 government schools that had less than 10 children but each school was mandated to have a minimum of two teachers. The budget private schools, most of whom are doing a great job in imparting education, are under enormous pressure to meet the prescribed standards or face closure. On an average, around Rs 10,000 per child gets spent in government schools. The budget schools do that for far less and impart as good, if not better, education.

Another worrying feature is the growing disconnect between education and employment. A recent broad-based survey to assess the efficacy of India’s education system brings out the harsh reality that only 26% respondents in the survey believe that their schooling has contributed to overall development but more importantly, to their employment.

Getting away from the rote learning method, fostering a culture of creativity and an ability to learn multiple jobs in one’s career lifespan, is critical for the jobs of tomorrow.

Restructuring pedagogy and course materials designed to serve this inescapable necessity brooks no delay.

Some steps that should be taken by the Government and local authorities and also by the parents for increasing awareness regarding education are-

- In RTE “compulsory education” creates an important responsibility for the government as well as for the local authority to ensure admission of every child of the age 6-14 years.
- It is the responsibility of the parents to maintain proper attendance of their child.
- Fulfilling elementary education of each and every child falling under the age of 6-14 years.
- The government should try to maintain proper training facilities of the teachers.
- It should ensure a good elementary education that should be according to the norms.
- It is the responsibility of the local authorities that the child belonging to the weaker section of the society and anyone who is disabled should not be discriminated from the other students.
- The awareness of teachers towards right to education act needs significant teachers for proper implementation. The teachers of primary school should be free from additional duties. It is found that the teachers of primary schools are involved in many other duties other than teaching

Conclusion

Let us first accept that the underlying idea behind the RTE is a good one – the concept of underprivileged children attending private schools – but the execution is at fault. Common sense and strong economics should help us improve the Act’s intention.

Present government must start by fixing its failing public school system, attended by around 70 per cent of Indian students. Without this, the government is simply abdicating its responsibilities. Even with limited resources, this can be done by first improving the monitoring of teachers and teaching standards and second, by regulating the financial management of the state school system. The current government has run on a proven platform of better governance, therefore, this should be within their ability.

The 25 per cent reservation in private schools should be retained, but the government must compensate the schools for the actual revenue lost, which can be easily done through a

modification to the same voucher program mentioned above. This allows the best schools to maintain their standards while achieving the goal of social inclusion. The education of India's next generation is far too important a priority to leave to the mercy of a poorly thought out, and hastily drafted Act. Modi's government needs to replace the RTE with a new Act, worthy of its' practical and pro-free market reputation.

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