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INDIA'S RIGHT TO EDUCATION ACT –IMPLEMENTATION AND RESPONSE

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Abstract

India's, 'The Right of Children to Free and Compulsory Education Act 2009', is a land mark in history. India has the largest number of working children in the world and schooling is seen as the most effective way to combat this intergenerational cycle poverty and violation of child rights. For elementary education, in India, many challenges lie in its existing structures of education. In many states, the state governments, or the municipal authorities provide only a limited part of elementary education cycle. The remaining part is often provided by a different stratum of government, and often by govt. aided and private schools. At present, meeting even the minimum norms poses a challenge for many of the states, and efforts are underway at the highest levels to make available the resources that would enable these states to respect the rights of the child to education.

Key Words: *Fundamental right, students, teachers, infrastructure, fund, states of India.*

Introduction

The right to education is a fundamental human right. Every individual, irrespective of race, gender, nationality, ethnic or social origin, religion or political preference, age or disability, is entitled to a free elementary education (United Nations' [Universal Declaration of Human Rights](#), 1948).

In India the Right of children to Free and Compulsory Education Act, 2009 came into force from April 1, 2010 (Article 21A of the Indian Constitution). As per RTE every child of the age of 6-14 years shall have a right free and compulsory education in a neighbourhood school till completion elementary education i.e., class I-VIII. In the case of India, setting of the upper limit at age 14 was rooted in a 1937 decision of the Wardha Committee for free and compulsory 'basic education' between the ages of 7 to 14. This lower limit of this age range was modified to 6 years by the Woods-Abbot Committee the following year, and then in 1944, the Sargent Plan for Post War Educational Development of India proposed to make education in this age range universal by the year 1984.

The RTE focuses on quality and children learning achievement. The children have the right to receive special training to be on par with others with required subject specific competencies. Therefore the system is accountable towards children learning achievement appropriate to the class or grade. Any cost that prevents a child from accessing school will be borne by the state which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools. No child shall be subjected to physical punishment or mental harassment. Discrimination in the name of caste, gender etc. should be stopped and one should see that every child shall complete elementary education with proper standards.

The mandate of the RTE in providing quality elementary education will be possible provided teachers, other support staffs, students and guardians are duty bounded, committed for the achievement of goals of elementary education.

Historical Background

In India, under British rule, although compulsory education laws had been put into place, not much attention was given in this direction. The compulsory education laws of that period merely allowed the local governments to make education compulsory. They neither required the governments to make education compulsory, nor, in the face of neglect to do so, could the people demand education as a right. The quantity and quality of schools failed to meet the need for

education. A number of private schools modelled after British public schools had been set up to educate the children of the bureaucrats and rich in many states in India. The Christian Missionaries too had set up a number of schools. Private schools in turn, increased in number and variety.

The 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 that included the Article 21A in the Indian constitution making education a fundamental right. According to the Directive Principle of State Policy (DPSP), the state shall endeavor 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 (erstwhile Article 45). Yet, evidence shows neither the stipulated time frame respected nor the issue given due importance for a long span of time.

West Bengal Primary Education Act, 1973; The Assam Elementary Education Act, 1974; The Andhra Pradesh Education Act, 1982 are some examples of acts to improve the educational status in India. These require immediate amendments bringing them in line with the constitutional mandate of FCE. The Karnataka Education Act, 1983; The Tamil Nadu Compulsory Primary Education Act, 1994; The Himachal Pradesh Compulsory Primary Education Act, 1997; Sikkim Primary Education Act, 2000; The Jammu and Kashmir School Education Act, 2002 and the Madhya Pradesh Jan Shiksha Adhiniyam, 2002 tried to make primary education compulsory.

In 2009, the historic legislation of the Right of Children to Free & Compulsory Education (RTE) Act was enacted, thus moving it to Article 21 of Chapter III of the Constitution. With the RTE coming into force on 1st April, 2010; India became 135th among the countries all over the world which have legal guarantees to provide free and compulsory education to children.

More recently, even within the government system, a variety and hierarchy of schools began to emerge. Money, privilege and merit are the key considerations in determining the kind of school attended, and the perception of what constitutes quality of schooling, and the amount of schooling received. Even in recent times, three in ten children enrolling in schools tend to drop out somewhere between grades one and five of primary school. By grade eight, more than half of the children who entered school are no longer in the system.

World Scenario

Chile tops the list of countries in providing free education for a period of 15 years to a child. It gives free and compulsory education to children in the age group of 6 to 21 years. The Latin American country, where elementary education was among the worst two decades ago, had implemented a special education programme in 1990 which recorded a significant improvement among primary and upper primary students.

There are seven countries such as Germany, Belgium, Italy and Norway that have provisions of free compulsory education to children covering their entire schooling period. Countries like Britain and New Zealand have made education compulsory and free for children for a period of 11 years. Spain, France, Norway and Canada are among the 19 nations where education is free of cost for 10 years, ranging from the age of five to 15 or six to 16 years. There are 34 countries, including Japan, Finland, Russia and Sweden where a child gets nine years of compulsory education.

There are 20 countries in the world e.g. Afghanistan, China, Switzerland etc. which have laws guaranteeing free and compulsory education for eight years of elementary education. India's neighbours such as Sri Lanka and Pakistan do not have any law providing free education, where as Bangladesh and Myanmar have such provisions for a four-year-period while Nepal has five years of compulsory schooling. Some countries have achieved extraordinary progress in their education system and the number of children dropping out from schools has declined by 33 million worldwide since 1999.

Positive Impact of RTE

The Right to Education (RTE) is yielding some positive results, especially in some parts of the country. An estimated eight million children aged between 6 and 14 do not currently attend school in India. The number of children reportedly enrolled in elementary education in India increased by 57 million to 192 million between 2003 and 2009. More than two-thirds of this increase took place in government schools. The number of children out of school declined from 25 million to 8.1 million during the same period.

In April 2011 one full year since the RTE came into force was completed. Various

credible institutions have come out with analytical reports on the performance of the Act in the year 2009-2010. ASER, the research division of the NGO Pratham, working primarily in the sector of promoting elementary education, has come out with the Annual Status of Education Report, 2010. This report evaluates the execution of the RTE Act on various parameters like pupil-to-teacher ratio, teacher-to-classroom ratio, school facilities, student-teacher attendance etc. Based on thirteen such parameters picked up from the Act when various states were ranked for their compliance with the RTE norms, the report revealed that Pondicherry, Kerala, Daman & Diu, Gujarat and Punjab ranked the highest as of now with the various RTE norms; whereas the seven north-eastern states ranked the lowest. But one of the main criticisms that came out through this report is that the Act does not account for the outcome achieved and end-result aimed to be achieved through this legislation, which is of a qualitative rise in the learning level of the targeted children.

Yet another important report of 2011, which provides a quality look into the execution of the RTE Act, is the District Information System for Education's (DISE) flash statistics on the progress of the implementation of elementary education in India for the year 2009-2010. It analyses the implementation of the Act across all the states of India, taking into account various components like access, infrastructure, teachers and outcomes. States were ranked in order of their compliance to these components by DISE. Pondicherry, Karnataka, Kerala, Andaman & Nicobar Islands and Tamil Nadu ranked the highest, whereas Bihar, Jharkhand, Meghalaya, Assam and Arunachal Pradesh ranked the lowest. Since 2005, many important indicators of implementation of elementary education have stagnated. The national apparent survival rate and the retention rate at primary levels has been stagnant at 70-78% since 2005; transition rate from primary to upper primary has also come to a stand-still at 83-84% since 2005. Moreover, the discrepancy in the performance between the better performing states and the under performing states on the above mentioned parameters is quite large.

The Public Interest Foundation filed applications under the RTE Act to all 28 states seeking information on the level of execution of the RTE Act within the states. Some states that wrote back were Delhi, Uttarakhand, Kerala, Gujarat, Himachal Pradesh and Jharkhand. An analysis of the data provided shows that the State Advisory Council has not been constituted in any of the above states. Data mapping exercises for the neighbourhood schools have only just

started in Gujarat and Himachal Pradesh. Even on the preparation of financial estimates within the states required towards the implementation of this Act has not been prepared by Jharkhand. This goes on to suggest that little has been achieved in terms of concrete steps towards the adoption and implementation of the RTE Act at the level of state governments.

According to reports, admission to various schools in Indore has shown significant improvement during the ongoing academic year. Some 12,500 students have been admitted to various schools in Indore district using the RTE provisions. At the end of third round of admission process, some 12,500 students will now be able to study in various schools of the district. Even the private schools in the district have shown considerable interest after the launch of online process for reimbursement. Now, private schools can apply online for the reimbursement of dues and will not have to wait for days for claiming it. During the current admission drive some 5,989 students were given admission at the end of the second round. In fact, the government had to increase the number of seats to 22,000 after a strong response was seen among the admission seekers. Under the RTE in Indore district 1,875 schools, both in rural and urban areas were considered for admission. At the end of third round, over 6,200 applications were received for school admission. According to officials working for Sarva Shiksha Abhijan (SSA), continuous review meetings and roping in principals, teachers and private schools have yielded good results.

Another alarming pattern that calls for urgent attention within the RTE Act is that besides having parameters to measure the inputs made available to ensure the spread of elementary education, there is an unequivocal requirement for ensuring the quality of the outcomes achieved. Quality of outcomes refers specifically to the learning levels of the kids, the difference which has come about in retention and survival rates of kids and whether or not the coming about of this act has had any positive impact on the transition rate of kids from primary to upper primary levels. A direct correlation needs to be established and strictly monitored periodically as to how input in terms of infrastructural guarantees, accessibility to neighbourhood schools, availability of qualified teachers assures the certificate issued on the finishing of eight years of free and compulsory education actually reflects the enhanced reading and writing skills of the children between the age of 6 to 14 years.

Thus the assessment of three years (up to April, 2013) clearly shows the huge gap that still needs to be covered to translate the historic vision of this Act into reality. First and foremost, there is an urgent need to expedite the execution of the provisions of this Act, which is primarily the responsibility of the central and state governments working alongside local authorities. Secondly, there needs to be an in-built mechanism to ensure that the adoption of the provisions of the Act is done with reference to a concrete goal. The concrete end-goal needs to be ascertained in terms of the minimum learning level for the targeted children at the end of the eight years of elementary education, the rise in survival and retention rates of the children at the primary and the upper primary levels, the increase in the national transition rate of children from primary to upper primary levels, which can realistically be achieved through inputs being fed into the system by the means of the RTE Act.

Negative Impact

Despite the legal guarantee of free education, many schools fees continue to be charged in India. In reality, free primary schooling still remains the exception rather than the rule.

i. Out-of-School Children: The number of out-of-school children has declined from 25 million in 2003 to 8.1 million in mid 2009. The most significant improvements have been in Bihar, Jharkhand, Manipur and Chhattisgarh. The percentage of out-of-school children in highly populated states like Uttar Pradesh, West Bengal, Orissa and Bihar remains a cause of concern.

ii. Social Inclusion: Although there have been significant improvements in the proportion of children from socially disadvantaged groups in school, persistence gaps remain. Girls are still less likely to enroll in school than boys; in 2005, for upper primary school (Grades VI-VIII) girls' enrolment was still 8.8 points lower than boys, for Scheduled Tribes (ST) the gender gap was 12.6 points and 16 points for Scheduled Castes (SC). In addition, ST and SC children are less likely to access their right to 8 years of schooling; the drop-out rate for ST children being 62.9% and 55.2% for SC children compared to a national average of 48.8% leaving school before completing Grade VIII.

iii. Teachers: Children have the right to have at least 1 qualified and trained teacher for every 30 pupils. Currently, the national average is about 1 teacher to every 34 students, but in states such

as Jharkhand, Madhya Pradesh and West Bengal 1 teacher works with more than 60 students. Approximately 1.2 million additional teachers need to be recruited to fill this gap. Currently, about 1 in 5 primary school teachers do not have the requisite minimum academic qualification to ensure children's right to quality learning.

iv. Sanitation: In India 84 out of 100 schools have drinking water facilities. But nearly half the schools in Arunachal Pradesh, Assam and Meghalaya do not have such facility. Sixty-five out of 100 schools have common toilets in India; however only one out of four schools in Arunachal Pradesh, Assam, Chandigarh, Delhi, Jammu & Kashmir, Jharkhand, Orissa and Rajasthan have this facility. Fifty-four out of 100 schools have separate toilets for girls. On average, only one in nine schools in Assam, Meghalaya, Manipur have separate toilets and one in four schools in Bihar, Chhattisgarh, Jammu & Kashmir, Jharkhand and Orissa.

Key Issues

RTE provides a ripe platform to reach the unreached, with specific provisions for disadvantaged groups, such as child labourers, migrant children, children with special needs, or those who have a “disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor.” RTE focuses on the quality of teaching and learning, which requires accelerated efforts and substantial reforms.

Creative and sustained initiatives are crucial to train more than one million new and untrained teachers within the next five years and to reinforce the skills of existing teachers to ensure child-friendly education.

Bringing eight million out-of-school children into classes at the age appropriate level with the support to stay in school and succeed poses a major challenge. Substantial efforts are essential to eliminate disparities and ensure quality with equity. For example, investing in preschool is a key strategy.

Another point of caution in relation to this Act is that the parameters of retention, survival and transition of school children need greater monitoring and improvements with regard to government-managed schools rather than private schools. Private schools already have an

established way of operating, which is performance and efficiency oriented, along with a defined group of end-users who are more or less satisfied by its demand-supply mode of operation. The RTE Act, as a tool for quality intervention, should focus more on the defined area of government schools because this is where more enrolments are happening in the under performing states in terms of literacy rates, like Bihar, Jharkhand and Uttar Pradesh. A focussed target-based approach towards working efficiently to address these problems of survival, transition and retention of children in government schools will not only help in improving the national literacy rate, but will also go a long way in bridging this huge gap between the achievement of well-performing states and the under performing states in terms of the parameters used to check the implementation status of the RTE Act.

Families and communities also have a large role to play to ensure child-friendly education for each and every one of the estimated 190 million girls and boys in India who should be in elementary school today.

School Management Committees, made up of parents, local authorities, teachers and children themselves, will need support to form School Development Plans and monitoring. The inclusion of 50 per cent women and parents of children from disadvantaged groups in these committees should help overcome past disparities.

There has been a feeling that RTE may have led to relaxation of classroom teaching since all exams and assessments are scrapped and no child is kept back. Continuous Comprehensive Evaluation (CCE) is now a part of the law and several states are attempting to implement some form of CCE as they understand it.

ASER 2012 shows that school enrolment stands at over 96 per cent for the fourth consecutive year but the proportion of out-of-school children is slightly up from 3.3 per cent to 3.5 per cent, and it is more for girls (11-14 years) at 6 per cent from 5.2 per cent in 2011. Private schools are clearly becoming more preferred with an enrolment of 28.3 per cent in 2012 from 18.7 per cent in 2006. ASER predicts that India is likely to have 50 per cent children studying in private schools if this trend continues.

The core problem remains poor learning levels. In 2010, 46 per cent of class V students could not read a class II text. This has risen to 53.2 per cent in 2012. Understanding of arithmetic remains dismal - 46.5 per cent of class V students could not solve a simple subtraction sum of two digits without borrowing in 2012, up from 29.1 per cent in 2010. In fact, barring Andhra Pradesh, Karnataka and Kerala, every state registered a drop in arithmetic learning levels (ASER 2012).

Aimed at reducing stress levels of students, the CCE replaces marks with grades and evaluates a student's performance on co-curricular activities besides academics. The no-detention policy up to class VIII under RTE and CCE was attacked last year by several state governments and a Central Advisory Board of Education (CABE) committee is looking into the issue. The Act, which has made education a fundamental right of every child, will require an investment of Rs 1.71 lakh crore for the next five years for implementation. Uttar Pradesh and Bihar have demanded that the Centre meet cent per cent financial requirements under the Right to Free and Compulsory Education Act. The HRD ministry is pushing for a fund sharing pattern of 55-45 between the Centre and the states for implementing the Act. The finance commission has already provided Rs 25,000 crore as assistance to the states for the next five years for meeting requirements of the Act. Incidentally both Uttar Pradesh and Bihar are the most educationally backward states in the country. Against the national literacy rate of 65%, the literacy rate of Uttar Pradesh and Bihar are 56 and 47% respectively. At present, over three lakh children in the 6-14 years age are not studying in any school in Uttar Pradesh. The scenario in Bihar is even worse as there is huge demand supply gap of teachers.

Progress Report

The Right to Education is now justifiable in India with the coming into effect of the Right to Education Action on April 1, 2010. All states should follow the following criteria as per the Act, within the stipulated timeframe.

- i. Opening new primary and upper primary schools as per the neighbourhood norms notified by State Governments in the RTE Rules

- ii. Support for residential schools for children in areas which are sparsely populated, or hilly or densely forested with difficult terrain and for urban deprived homeless and street children in difficult circumstances
- iii. Special training for admission of out-of-school children in age appropriate classes
- iv. Additional teachers as per norms specified in the RTE Act
- v. Two sets of uniforms for all girls, and children belonging to SC/ST/BPL families,
- vi. Strengthening of academic support through block and cluster resource centres, schools, etc.

Since RTE Act came into force, 50,672 new schools, 4.98 lakh additional classrooms, 6.31 lakh teachers, etc have been sanctioned to States and Union Territories under SSA. The fund sharing pattern between the Central and State Governments has also been revised to a sharing ratio which is more favourable to States Governments. In India, 27 States have notified the State Rules under the RTE Act, including five Union Territories which have adopted the Central RTE Rules. These are as follows: Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Jharkhand, Kerala, Orissa, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Sikkim, Tripura, Tamil Nadu, Uttar Pradesh; Daman and Diu, Chandigarh, Dadra and Nagar Haveli, Andaman and Nicobar Island and Lakshadweep.

The States of Karnataka, Gujarat, West Bengal, Goa, Delhi, Pondicherry, Uttarakhand have not yet notified the RTE Rules, and these States have been reminded to expedite the notification of the State RTE Rules.

The RTE Act mandates the following timeframe for implementation of its provisions:

1. Establishment of neighborhood schools
2. Provision of school infrastructure
 - a. All weather school buildings
 - b. One-classroom-one-teacher
 - c. Head Teacher-cum-Office room

- d. Library
 - e. Toilets, drinking water
 - f. Barrier free access
 - g. Playground, fencing, boundary walls
3. Provision of teachers as per prescribed Pupil Teacher Ratio
 4. Training of untrained teachers
 5. Quality interventions and other provisions

There are many states which are not able to set up the necessary schools and hire the necessary [qualified teachers](#) to provide an education to every single child in its territory. In particular, in densely populated urban areas where there is very little land available for constructing new schools, it is very difficult for the state to construct new schools with playgrounds and buildings of the size specified in the RTE Act.

The government has also set up a number of Commissions to which complaints of violations of child rights can be directed. A National Commission at the national level has been set up for Protection of Child Rights. At the state level, there are State Commissions for protection of Child Rights. Both National and State Commissions have quasi judicial powers. In some states, A Right to Education Protection Authority may be set up as an interim measure.

If things don't work out as envisaged, there is need of area specific planning. Anticipation of potential problems is needed and thinking should be started right now about possible ways of addressing them rather than starting to think about it 3 years from now when many institutions may be mired in litigation, or stuck with lack of funding, structural issues in implementation and myriad other problems.

Recommendations

The existing schools are required to make basic infrastructures available within three years of enforcement of the Act. Three years have already been passed after enforcement of the Act but still most of the schools in India are lacking requisite infrastructures. School

authorities should immediately take action to ensure all the basic facilities in the school like safe drinking water, library etc.

The head masters/mistresses are not very clear about the procedures for admission laid down in the Act, such as, how to give admission to a child who is above six years and so far not enrolled in the school; how to give special training to such students etc. Orientation programmes should be organized for the head masters/mistresses and the teachers who are in charge of admission or usually are given charge in the absence of the head of the institution.

Teaching should be activity oriented and students should be given basic knowledge of computers. Most of the students in the schools of rural India come from lower economic group; at times it becomes difficult to make them understand the subject. So pre-nursery or classes before Class I should be arranged for these children by the government. This will help them to grasp the teaching easily.

School managing committees do not play their required roles in many schools. The teachers face difficulties in dealing with uneducated parents of many children who are not bothered about their children's education. So something should be done to orient parents also so that they become aware of their roles and responsibilities. All teachers should be involved in motivating the non-enrolled children to join in the schools.

Classes should be held regularly and teaching should be made interactive and interesting with the use of visual aids i.e. globes, maps, charts, slide shows etc. Co- curricular activities, excursions, games, dance, fine arts and quizzes should be made part of the teaching methodology. Such methodology will attract the students to the schools and help them in their personality development.

There is a serious need to assess the academic capacity of the existing training institutions. For any quality improvement the content and methodologies of the present pre and in service training of teachers should be reviewed, modified and changed wherever needed. Formation of a special organization as per the need would greatly contribute towards professionalizing teaching and there should be a mechanism to train teachers on regular intervals so as to enable them to keep pace with new advances in their subjects. Community members should be made aware about important provisions made in the Act as regards to students, classes

and functioning of the schools etc. They may be encouraged to approach authorities, if they find any deviation in the functioning of the school or admission etc.

Conclusion

Rights are rarely secured without struggle. The same can be expected in the case of the Right to Education Act, 2009. It follows therefore that the implementation of the Right of Children to Free and Compulsory Education Act 2009, cannot expect to be entirely smooth sailing. There is long road ahead before all bodies to become aware of their rights let alone become able to exercise, and finally able to enforce their rights. For the children, the power that the right to education potentially brings, could bring into effect a major change in life and society of future generation in India. It will be a good idea to focus just on basics at every standard and not treat it as a 'remedial' measure. At this stage, teaching-learning of basic foundational skills should be the main agenda for primary education in India.

However, whether this potential of the RTE will be realized or not will depend a great deal on the advocacy and mobilization campaigns that the governments initiate, and the ability of parents to understand and exercise their new role relationships as far as elementary education is concerned. Already, in small pockets, NGOs are making efforts towards preparing parents for their roles in school management committees. While efforts are being made to solve problems at the level at which they emerge, a few NGOs are also helping children realize their rights in education through the courts, and many others are considering the use of litigation to help in securing the rights of children. It is now truly a new era that promises to emerge conforming to a vision of education that from a rights perspective. The potential of the RTE depends a great deal on the advocacy and mobilization campaigns initiated by government and the ability of teachers, parents and children to understand and exercise their new role relationships as far as elementary education is concerned.

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