

RIGHT TO EDUCATION ACT- NOBLE IDEAS BUT IMPRACTICAL APPROACH

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Abstract

Right to Education is a noble idea rooted in the Supreme Law of our country. It ensures that all the children should have access to education, irrespective of their class, caste or category. The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. This Act is the first legislation which makes the Government responsible for the enrolment, attendance and completion of basic education. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age.

Though drafted on a noble theme with wonderful strategies, this act has been criticized for its impractical approach. A few of the bizarre provisions are making the mockery of the present system of our country. These are highlighted in this paper and an attempt has been made to crack the challenges.

In this Act, the significance of better school facilities and highly qualified teachers are overestimated in the light of inefficient, corrupt and unaccountable educational institutions. At the end of the paper, conclusion has been drawn on the critical analysis of the thematic description of the subject.

RTE Act is only a tool, but collective efforts at all levels are necessary to bring the dream into reality.

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Background

“Right Education should help the student, not only to develop his capacities, but to understand his own highest interest.”

–J. Krishnamurti

Over past few decades, perception or approach to education underwent change because of Universal Declaration of Human Rights. It proclaims 'Everyone has Right to Education', wherein elementary and fundamental education shall be 'free' and 'compulsory'. World Conference on Education for all adopted 'Every person - child, youth and adult - shall be able to benefit from educational opportunity designed to meet their basic learning needs'.

To ensure global and international covenant on education, earnest effort is made and necessary amendment are brought in constitution of India to ensure educational right to all citizen in light of global principle.

86th Amendment Act, 2002, makes three specific provisions in constitution to facilitate realization of free and compulsory education to children between age six and 14 as a fundamental right. These are:

Adding Article 21A in Part III initiating provision that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norm and standard.

Modifying Article 45, and adding a new clause (k) under Article 51A (fundamental duties), making parent or guardian responsible for providing opportunity for education to their children between six and 14 year. Need to address inadequacy in retention, residual access, particularly of un-reached children and question of quality are most compelling reason for insertion. After much dithering for almost seven years subsequent to 86th Amendment to constitution, RTE Act 2009 received presidential assent on 26 August 2009, taking forward agenda of free and universal elementary education.

Objectives of the study

1. To analyze the aspects and provisions of Right to Education Act, 2009.
2. To suggest potential reforms and suggestions for the effective implementation of RTE, Act 2009.

Research Methodology

This study basically follows doctrinal research method in the compilation, organization, interpretation and systematization of the primary and secondary source material. The approach of the study is descriptive and analytical. The data collected, organized and systematized from the secondary data resources. We have collected the data from different websites and also websites of Indian government.

Purpose and Limitations of the study

This paper is an attempt to trace the impact of this noble legislation providing compulsory education to the future- force of our country. It also involves the critical analysis of aspects and provisions. However every study has its limitations. This topic being so extensive relating to almost every individual of the country, it would be too unmanageable to study each and every factor related to it. Similarly all the very basic concepts and reasons are not described and discussed in detail. For this purpose only prominent reasons of study have been analyzed to sort out the areas in which potential suggestions and amendments are required to convert the dream of educated India into reality.

Thematic Introduction

It is very difficult for a person to exercise their social, civil, political or economic rights unless he has received the basic or primary education. Probably this catered the idea in the mind of the founding fathers of our Constitution that they incorporated a well designed constitutional manifesto under Part-IV of the Constitution. Directive Principles of State Policy imposes certain obligations on the State to take affirmative action to establish a welfare State. One such directive is the duty of the State to provide free and compulsory education for all children until they complete the age of 14 years.

Free and compulsory elementary education was made a fundamental right under Article 21 of the Constitution in December 2002, by the 86th Amendment.

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), 2009 is the landmark enactment which makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. The Act came into force on 1 April 2010 and India became one of the 135 countries which have made

education a fundamental right of every child .It was the first time in the history of India that a new law was brought into force with the speech of the prime Minister of the country.

Analysis of Legislative Provisions

The salient features of this wonderful legislation are as follows:

Right of every child to free and compulsory education- Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education. This Act provides the scope to pursue and complete the elementary education without any kind of fee or charges or expenses. It requires all private schools to reserve 25% of seats to children (to be reimbursed by the state as part of the public-private partnership plan).

- **Special Provisions for children not admitted to, or who have not completed elementary education**

The child above six years of age has not 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 age. The Act provides a right to receive special training, if the child is directly admitted in a class appropriate to his or her age. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education.

- **Right of transfer to other school**

The Act provides a child shall have a right to seek transfer to any other school within state or outside state to pursue further completion of elementary education by obtaining transfer certificate.

- **Duty of appropriate government or local authority to establish school**

The Act Provides the appropriate Government and the local authority shall establish a school, where it is not so established, within a period of three years from the commencement of this Act.

- **Sharing of financial and other responsibilities**

The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act. The Central Government shall develop a framework of national curriculum with the help of academic

authority, develop and enforce standards for training of teachers, provide technical support and resources to the State Government for promoting innovations, researchers, planning and capacity building.

- **Duties of appropriate Government and local authority**

There are certain duties of appropriate Government and local authority to be achieved viz., provide free and compulsory elementary education to every child, ensure that the child belonging to weaker section and the child belong to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds, ensure timely prescribing curriculum and courses of study for elementary education.

- **Duty of parents and guardian**

It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighborhood school.

- **Appropriate Government to provide for pre-school education**

With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children. The Act mentions the responsibilities of teachers and schools.

- **No capitation fee and screening procedure for admission**

The Act provides that no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

- **Monitoring of child's Right to Education**

The National Commission or the State Commission for Protection of Child Rights, the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely-

- a) Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

- b) Inquire into complaints relating to child's right to free and compulsory education and
- c) Take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

A Critique

Though drafted on a noble theme with wonderful strategies, this Act has been criticized for its impractical approach. A few of the bizarre provisions are making the mockery of the present system of our country.

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. The report 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. A shadow report by the RTE Forum representing the leading education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule.

• Economic Constraint

Since education falls under the concurrent list of the Constitution, financial negotiations were also undertaken between Central and State authorities to agree on sharing of expenses. The Centre estimated an annual budget of Rs 231,000 crore for implementation of the RTE Act. The Expenditure Finance Committee gave it the go-ahead, with a Centre-state contribution ratio of 68:32. This was later approved by the cabinet. Of the total amount, Rs 24,000 crore would come from the finance ministry and the remaining Rs 207,000 crore from the Centre and the states. This, the government claimed, would prevent the states from being overly burdened, though state governments continue to argue that their share should be lower.

• Unrealistic provisions

This Act has been criticized for being hastily drafted and far from practical approach. The Act says that schools should be within a radius of 1-3 km from where the child lives. All government-aided schools have to reserve 25% of their seats for students from economically weak sections (EWS). Private schools that are not government-aided also have to reserve 25% of their seats in Class 1 for EWS students; the government will compensate them.

However, the noble idea that a poor child is entitled to the same opportunities as a rich one is imbibed in this Act; the framers have not visualized the bitter reality that what would be the future of these children once they will complete their elementary education in elite schools. They have to slip back to the schools of average standards as their parent's annual income will not be sufficient to meet the sky touching tuition fees. This will be a psychological trauma for these poor children.

• **Problem of Un-recognized Schools**

Also the Act has enacted a grand scheme whereby within three years, only recognized institutions with certain minimum infrastructure will impart school education in the country. Only schools that have the minimum teaching personnel, at least one classroom per teacher and a playground will henceforth be allowed to function. It's a strange irony that while on the one hand the government wants to provide quality education to all children, across all barriers, on the other hand it recognises four kinds of schools under the Right to Education Act.

- 1) Government schools
- 2) Government-aided schools
- 3) Special schools recognised by the government such as kendriya vidyalayas, navodaya vidyalaya and sainik schools. There are others at the state level too.
- 4) Private schools

According to an estimate, out of 12 lakh schools in the country today, almost a fifth is unrecognized. This unrealistic provision has imposed a threat on the whole framework of Private Education system of our country. It may result in the massive closure of non- recognized and aided schools. The Act has overlooked the benefit of these schools which are actually accomplishing the deficiency of government schools which are almost at the dismissal stage by most of the people.

The RTE act has also neglected the point that India has more than 8 crores of children who are not going to any school. If the number of schools comes down, as it certainly will, due to closure of schools that do not comply with the stringent infrastructure standards, the nation's goal of ensuring universal literacy would suffer a massive setback. This has left us with a question that how would a bunch of Recognized schools accommodate the children of forcibly closed down schools in addition to the new entrants.

- **Lack of Quality in education**

The situation is even worse with the quality of education being imparted in government schools. While it remains the largest provider of elementary education in the country forming 80% of all recognized schools, it suffers from shortages of teachers, infrastructural gaps and several habitations continue to lack schools altogether. There are also frequent allegations of government schools being riddled with absenteeism and mismanagement and appointments are based on political convenience.

There are general statements to the effect that the Central government “shall develop and enforce standards for training a teacher.” It has also ratified “relaxation in the minimum qualification required for appointment as a teacher” for up to five years. Clearly, the RTE Act accords little importance to teaching standards, which is the major shortcoming in our educational system.

Teachers are the cornerstone of good quality education and need to be paid market-driven compensation. But the government has gone too far by requiring high teacher salaries averaging close to Rs. 20,000 per month. In the RTE Act, proper disciplinary channels for teachers have not been defined. Such disciplinary action is a must given that an average of 25 percent teachers are absent from schools at any given point and almost half of those who are present are not engaged in teaching activity.

- **Reservation in Private Schools**

To address these quality issues, the Act has provisions 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 (Public Private Partnership) has been viewed by some organizations such as the All-India Forum for Right to Education (AIF-RTE), as the state abdicating its “constitutional obligation towards providing elementary education”.

Moreover, the method for calculation of per-child reimbursement expenditure (which is to exclude capital cost estimates) will yield an inadequate resource flow to private schools. It will be tantamount to a tax on private schools. Private schools will end up charging more to the 75% of students - who are paying tuitions - to make space for the 25% of students they are forced to take.

This will drive up tuition fees for private schools (while government schools continue to be taxpayer funded and essentially free).

Reimbursement calculations should include capital as well recurring costs incurred by the government. By dictating the terms of payment, the government has reserved the right to fix its own price, which makes private unaided schools resent this imposition of a flat price. A graded system for reimbursement would work better, where schools are grouped -- based on infrastructure, academic outcomes and other quality indicators -- into different categories, which would then determine their reimbursement.

• **Poor coordination between Statutory Bodies**

Another example of poor implementation which draws the attention of critics is that the 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.

Another provision of the Act which is though enacted with good intent, yet far from the ground reality is that where a child is admitted to a class appropriate to his age, he shall, in order to be on a par with others, have a right to receive special training. This is absolutely unrealistic as it is almost next to impossible to cover the whole curriculum in few tutorial classes, which was missed by the child while he was not going to any school. And especially when there is already shortage of teachers and the academic infrastructure, no criteria has been devised to arrange for extra coaching for these children.

Another provision which takes the cake for sheer impracticability, directs that “with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre-school education for such children.” This country does not have the wherewithal to provide primary education to all and yet the Act envisages universal pre-school training facilities also being set up.

The Act is excessively input-focused rather than outcomes-oriented. Even though better school facilities, books, uniforms and better qualified teachers are important, their significance in the Act has been overestimated in the light of inefficient, corrupt and unaccountable institutions of education provision.

Conclusion and Suggestions

Despite its limitations, this enactment opened new possibilities for improving the quality of school education in the country. Much work has to be done at the ground level and an attempt should be made to provide platform for stakeholders and civil society organizations from various States to come together and hold the Government - both Centre and State- accountable for its implementation. Different states stand at different levels in terms of elementary education, and there are State-specific issues which need to be addressed.

Following steps can help the agencies to achieve the goal of imparting free and compulsory quality education to the future of the Nation-

- Centre should initiate process urgently through Centre-State consultative mechanisms for ownership by states as education is a concurrent list subject.
- To bring more transparency in the system, every state should prepare a set of model rules for implementation of the right to education, with the participation of the community and other stakeholders.
- Stronger regulatory frame for private schools is required. Ensure transparency and accountability measures are put into place.
- Shortage of the qualified teachers should be met up by the appropriate Government to cater quality education to the children in Government schools.
- Instead of closing the unrecognized schools, efforts should be made to support such schools to improve their facilities by resource support and providing linkages with financial institutions.
- Efforts should be made to bring the children under the age of 6 years and above the age of 14 years to bring in the ambit of this Act. This can be done by announcing scholarships to the meritorious students who are unable to afford private education.
- The government should ensure that all government schools are well-equipped to take in students, so that the

children belonging to the economically backward class are not left with the sole choice of going to private schools.

- Awareness should be built about the spirit of the Act with department officials that are tasked with its implementation. Community awareness on the Act likewise needs to be deepened further. The parents should be motivated and made responsible to send their ward to school.
- School management committees should be provided the necessary financial and other support by the state to convince them to perform their duties effectively.
- There should be a collective approach by the various statutory bodies as the Human Resource Development Ministry, Labour Ministry, Women and Child Development Ministry, Panchayati Raj Ministry and Rural Development Ministry to ensure the proper implementation of all the noble provisions of the Act and for the achievement of the common goal.
- There is a dire need for the review of the curriculum and textbooks in the schools so as to ensure they are of a level commensurate with the actual learning levels of the students.
- Put in place a rational regulatory framework for private schools to ensure their compliance with the RTE norms, standards and other provisions and on other issues like regulation of fees through a central legislation on the same.
- Media campaigns and community awareness programmes should be organized by State on a large scale to activate people and children in realizing educational rights.

Scope of further Analysis

The paper is based on the secondary data, so the sources of data were basically secondary resources. Hence, if there is further scope of research then different methods for collecting data like Interview method, Survey, Questionnaire methods etc can be employed and primary data can be collected.

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