

The Right to Education Act : A Right Based Approach to Education

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Education is the most powerful weapon, which you can use to change the world.

— Nelson Mandela.

ABSTRACT

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. (Article 26 of the 1948 Universal Declaration of Human Rights).

To quote Justice PN Bhagwati, Former Chief Justice of India: "The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and Vital energy and the utmost breadth, depth and height of its emotional, intellectual

And spiritual being; otherwise there cannot be a healthy growth of the nation." The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) was passed by the parliament on 4 August 2009. The act describes the modalities of the provision of free and compulsory education for children in the age groups of 6 to 14 in India under Article 21A of the Constitution of India. The act came into force on 1 April 2010. Thus, India becomes one of 135 countries which made education a fundamental right of every child. A child in India is entitled to get free and compulsory education. It is never easy for a first generation learner, anyways, to enter and stay in the fold of education. There must be preparatory education for those children who are first generation learners. Without such preparation and special attention, they might drop out even after getting mainstreamed into schools.

Like learning, effective teaching is necessary for children from disadvantaged backgrounds to benefit from staying in school. It can be achieved by proper training of the teachers with the right methodologies. Prior to that, the shortfall of teachers in both primary and upper primary levels across India must be met. Besides the required number of teachers and proper training, upgrading infrastructure in schools is another factor in making the RTE a success.

Keywords: Fundamental right, compulsory education, human right, education.

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Education has its functionalism in almost all sphere of life. Its signification can never be marginalized. An educated society prepares the present generation for a bright future and enables the individual to galvanize the capacity of collective.

It is a popular saying that “Education is both the means as well as the ends to a better life,” means, because it empowers an individual to earn his/her livelihood and the end because it increases one’s awareness on a range of issues. But, unfortunately, in today’s modern day scenario the subject of Education is actually used by our political leaders and legislators as the “means” for achieving the “end” common to them all i.e. political power. After all, it makes an integral part of their Election manifesto.

Ever since Independence, India has undertaken several initiatives to achieve universalization of elementary education, which has yielded mixed results. The Right to Education legislation in India has seen a cheered history in evolving from a directive principle to a fundamental right. In 1950, the constitution articulated its commitment to education through its Directive / Principles of State Policy. The 86th Constitutional Amendment was followed by multiple rounds of discussions (tabling of Right to Free and Compulsory Education Bills by the NDA and UPA governments), which made education a fundamental right for children in the age group of 6-14 years. The Act was introduced in Rajya Sabha in December 2008. It was passed in the Lok Sabha on 4 August 2009 and the President gave his assent to it on 26 August 2009.

The Right of Children to Free and Compulsory Education Act, 2009, popularly known as the Right to Education (RTE) Act is a remarkable step forward in the field of education in India. However, some of the provisions of the Act, although included with noble intentions, will have unintended consequences that might counter some of the advantages of the new system itself as well as have ill effects on the very subjects of the Act, i.e. the children, most of whom are even unaware of the polity behind the legislation ruling them.

Historical Perspective

At the time of Independence, India inherited an educational system which was not only quantitatively small but was also characterized by striking gender and regional disparities. Only one child out of three had been enrolled in primary school. Thus challenge was to provide elementary education to all its children within a stipulated period of time. Accordingly, universal education for all children in the 6-14 age group became a constitutional provision by Article 45 of the Constitution. Special care of the economic and educational interests of the under privileged sections of the population also became a constitutional obligation. But these constitutional provisions still remain unfulfilled. Government’s commitment to ensure elementary education for all children aged 6-14 years was later seen in its ambitious program named ‘Sarva Shiksha Abhiyan’.

Free and compulsory elementary education was made a fundamental right under Article 21A of the Constitution in December 2002 by the 86th Amendment. In bringing this into action, the ‘Right of Children to Free and Compulsory Education Bill’ was drafted in 2005. This was revised and became an Act in August 2009, but was enforced on 1st April 2010.

The Right to Education Act will benefit about one crore out-of- school children and a large number of drop-out children. As per an estimate, out of 22 crore children in the 6-14 years age group in the country, 4.6 percent children have no enrolment in any school.

The Salient Features of the Act:

The Right to Education Act is a detailed and comprehensive piece of legislation which includes provisions related to schools, teachers, curriculum, evaluation, access and specific division of duties and responsibilities of all concerned. Main features of the Act are as under:

1. Every child from 6 to 14 years of age shall have the right to free and compulsory education in a neighborhood school till completion of elementary education.
2. Private schools shall provide 25 percent reservation for weaker sections and economically disadvantaged groups in the admission.
3. All schools except government schools are required to meet all specified norms and standards within three years to avoid cancellation of their recognition.
4. The Act calls for a fixed pupil-teacher ratio, i.e., 30:1.
5. The Act mandates improvement in quality of education.
6. Financial burden will be shared between Central and State Governments.

The Act came into force on 1 April 2010 as a fundamental right in India. In short, the short history of RTE Act in India is given below:

Right to Education (RTE) ACT

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 of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means 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.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. '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' casts an obligation on 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 group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance.

Key Strengths of the RTE Act

The main strengths of the RTE Act are given below:

Assigning State Responsibility

The Act clearly makes the state responsible for ensuring that every child, in the age group

of 6 to 14, receives schooling for eight years, instead of merely shifting the onus for this to the parents, a majority of who are illiterate and mired in poverty.

Specific Duties

The Act reiterates the role of the state, along with private and aided schools, to satisfy certain basic norms in terms of infrastructure, learning facilities and the academic calendar. This is important since the quality of inputs has bearing on education outcomes.

Teacher Pupil Ratio

The Act mandates a minimum Pupil-Teacher Ratio and explicitly requires the same to be maintained in each school, rather than as an average over a block or a district.

Teacher Qualifications

The Act prescribes the minimum qualifications of teachers and their academic responsibilities, along with the minimum quality of the content and process. This can positively impact the actual quality of education provided within our schools.

Suggestions for Improving the Gaps of RTE

The Act also has several shortcomings and there are some, who will say that it is wholly inadequate. Like many other Acts and laws, the intentions of the RTE Act are very noble, but the key issues are around critical gaps in policy as well as implementation and enforcement issues. Attention may be drawn to the following issues, which may result in the RTE Act not delivering the promise of quality education for all.

Quality of Teachers and Teacher Education

While the Act lays down minimum criteria for teacher qualifications, it may be hard to expect quality improvement unless the foundations/principles, content and methodologies of pre- and in-service training of teachers are relooked at and changed. In addition to this, there needs to be a tight mechanism to prevent mushrooming of innumerable sub-standard private teacher training colleges and institutes in the country.

Institutional Structure for Active Support

The Act draws no attention to the existing shortcomings of the institutional structures for teachers' training and innovation. There should be more clear and strict provisions for capacitating the educational support structures, like the SCERT and DIET. Formation of a separate cadre of these organizations would greatly contribute towards professionalizing teaching. However, the RTE hardly talks of interventions required for the academic support structures themselves.

Ensuring the Learning Outcome and Competencies

While ensuring that every child, who traverses through the elementary education system, acquires a certificate of completion, the Act fails to guarantee that a child has acquired competencies deriving from said education process. No standards are set for monitoring and measuring learning outcomes—a case of guaranteeing graduation, but not education. The Act

should also define a framework to measure the quality of education imparted.

Recognition Process for State School

Unlike for private schools, the process of attaining recognition for state schools is not prescribed. The Act does not mention the course of action that the State schools will have to face, in case of failure to adhere to minimum norms for quality mentioned in the schedule. There does not seem to be any penalty on the government specified institutions for failing to meet its obligations.

Teacher Shortage and Financing

The financing of the RTE Act could prove to be a major obstacle in its effective implementation. After protracted negotiations between the Centre and the States, it was decided that the financial burden would be shared in a 65:35 ratio. However, even one year after the Act came into force, the government of UP (the most populous state) stated that it did not have funds to implement the Act. The budgetary allocation for Sarva Shiksha Abhiyan (the vehicle for the implementation of the RTE Act) in the budget for 2011-12 is ₹ 21,000 crore, a mere 2,000 crore increase from the previous financial year. At present, the shortage of teachers is one of the greatest obstacles facing the implementation of the RTE Act. According to the Ministry of HRD, in order to meet the requirements of the RTE Act, 5.08 lakh additional Teachers are required to be recruited. Given that hiring of new teachers and construction of new schools is mandated under the Act, it is yet to be seen if these can be accomplished with the given budgetary allocation

Inadequate Grievance Redressal Mechanism

In order to make the RTE Act effective, it is necessary to establish the modalities through which rights under the RTE Act are protected and violations of the Act are to be dealt with, i.e., a system of registering, investigating and responding within a well-appointed time frame. Today, more than a year after the RTE Act came into force; this does not exist in most states. There is no designated authority for grievance redressal at the habitation level. Only eleven states have set up State Commissions for the Protection of Child Rights and Right to Education Protection Authorities.

Timeline of the RTE Act in India

- 1910: Resolution moved by Gopal Krishna Gokhale in the Imperial Legislative Council seeking Free and Compulsory Primary Education.
- 1937: Mahatma Gandhi makes a plea for universalization of education.
- 1944: Sargent Plan to achieve universal elementary education by 1984.
- 1947: Constituent assembly explores avenues to achieve universal elementary education.
- 1950: Directive Principles of State Policy (Article 45) directs state to endeavour to provide free and compulsory education to all children until fourteen years of age within a period of ten years Constitution of India introduced as Article 45, one of the Directive Principles of State Policy:

“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.”

1968: The first National Commission for education under Dr. Kothari submits its reports. Due to insignificant achievements, National Policy on Education urges serious efforts toward provision of free and compulsory education. It introduced several far-reaching changes such as uniform curriculum for boys and girls and Mathematics and Science as compulsory subjects. It also proposed a Common School System [access to education should not be decided by wealth or class]

1976: Constitution amendment making education a concurrent subject (responsibility of both State and Centre) was passed.

1986: National Policy on Education resolves to provide all children free and compulsory education up to 14 years by 1995. National policy on Education (NPE) endorsing Common School System (CSS) was formulated.

- 1992: India becomes signatory to the UN Convention on Rights of the Child, which requires states to recognize the right of the child to education.
- 1993: The Supreme Court in the case of Unnikrishnan vs. State of Andhra Pradesh ruled that the right to education is a fundamental right that flows from the Right to Life in Article 21 of the Constitution. The Supreme Court asked the state to honour the command of Article 45 of Constitution. This judgement allowed that RTE comes out of Right to Life, and so included education as a right for children of ages 0 to 18.
- 1997: Constitution Amendment making Education a fundamental right was introduced.

12 December 2002: Public pressure generated after Unnikrishnan case spurs successive governments to make education a fundamental right. 86th Amendment 2002 makes elementary education a fundamental right. The Right to Education (RTE) Act is born. In 2002, the 86th Amendment to the Constitution introduced Article 21-A making the right to education a fundamental right. For the first time in independent India’s history, a fundamental right had been added to the Constitution. Unlike other fundamental rights, the right to education required an enabling legislation to become effective. The RTE Act is this enabling legislation. The RTE Act came into force on 1 April 2010. The Constitution was amended (86th Amendment Act, 2002) to make free and compulsory education to all children in the 6-14 age group, as a Fundamental Right. The State shall provide free and compulsory education to all children of the age six to fourteen years in such a way as the State may, by law, determine. “The 86th Amendment also modified Article 45, which reads as “The state shall endeavor to provide early childhood care and education for all children until they complete the age of six years. “This was deemed as diluting RTE since we went backwards from 0-18 to 6-14. Many proponents of the original right wanted the constitution to be amended again.

- October 2003: The Free and Compulsory Education for Children Bill, 2003 (NDA government). A first draft of the legislation envisaged in the above Article, viz., Free and Compulsory Education for Children Bill, 2003, was prepared and posted on <http://>

education.nic.in in October, 2003, inviting comments and suggestions from the public at large.

- 2004: The Free and Compulsory Education for Children Bill, 2004 (NDA government). Subsequently, taking into account the suggestions received on this draft, a revised draft of the Bill entitled Free and Compulsory Education Bill, 2004.
- 2005: The Right to Education Bill, 2005 (June) (CABE Bill) (UPA I Government)
- 2005: The Right to Education Bill, 2005 (August) (UPA I Government)

2005: The Central Advisory Board of Education (CABE) committee report constituted to draft the Right to Education Bill submits its report.

- June 2005: The CABE committee drafted the 'Right to Education' Bill and submitted the same to the Ministry of HRD. MHRD sent it to the NAC where Mrs. Sonia Gandhi was the Chairperson. The NAC sent the Bill to PM for his observation.

July 2006: Central legislation discarded. States advised to make their own Bills based on The Model Right to Education Bill, 2006 (UPA I government)

Formulates a Model Bill.

Heavily diluted from the CABE committee Bill.

Dropped all private school clauses.

Dropped all neighborhood school clauses.

Dropped all financial obligations from the centre.

Dropped any committee to oversee implementation.

Suggests that individual states pass that as a legislation and implement.

Finally in August 2009 : Nearly six years after the amendment, the Bill is cleared by the Cabinet. On 4 August 2009, the Right to Education Act is officially passed by the Parliament. Key provisions state that 25 per cent of admissions in all private schools will be provided free of cost to children from under-privileged areas. Then, Union Human Resources Development Minister Kapil Sibal says that the move is about the State's obligation to provide compulsory education. "This is a historic opportunity as there was never such a law in the last 62 years since Independence," he says.

- Rajya Sabha passes the bill and forwarded it to the Lok Sabha.

The passed bill from the Rajya Sabha was different from the one introduced.

- Lok Sabha passes the bill.

- Notified in the Gazette and Act in effect starting April 2010.

- 1 April 2010: The Right of Children to Free and Compulsory Education Act as enacted by the Parliament comes into force. "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India," says Prime Minister Manmohan Singh.

- 12 April 2012: Supreme Court upholds the validity of the RTE Act and makes it clear

that the Act would be implemented across the country. The court, however, exempted private unaided minority schools (such as schools run by religious institutions) from the Act stating that it would “infringe upon the fundamental freedom” of such schools.

Conclusion

It is identifiable that the Indian legislation is quite aligned to the international norms on the right to education and enshrinement of the right to education into national legislation rests clear. National norms also assure the education rights, which are available, accessible, acceptable and adaptable. But, having a legislation, which enshrines rights does not mean that the reality of those subjected to it will demonstrate the full realization of the right. The system presents pockets of success in the realization of education but “[these healthy segments of Indian education do not contradict the fact that the system as a whole is under severe strain, financially and institutionally, and needs to change and adjust, for more quality, efficiency and relevance” (Schwartzman 2004:27).

Legislation can be a tool for enhancing the realization of the right, but it does not ensure instant realization. In specific cases, the Indian judiciary played an important role in assuring the realization of the right to education, but to follow such a route does not ensure a sustainable educational system in which education is available, accessible, acceptable and adaptable. Each case is individual and the costs of using this method for accomplishing rights are high (Gupta, 2009). RTE is really a stepping stone in the history of elementary education in India. Its success depends on the central government, state governments, policy makers, teacher educators, teachers, parents, social workers and NGOs. At present, we are facing many problems related to the implementation of RTE Act in India. Though the Right to Education Act is a great start, government officials are now beginning to understand the challenges they face in implementing it. They are searching for resources and partnerships to support the goals of the Act. Teacher development and trainings are being investigated and pursued. The future is bright in India in many areas and education can certainly be one of them. Some important suggestions to achieve the goal of RTE are Parents, Teachers, Professionals, Social workers and NGOs should assist the government and competent authorities for the successful implementation of this Act. Seminars and workshops should be organized to generate awareness among rural people about RTE Act, 2009. Appropriate facilities should be provided by the Government and competent authorities to the rural people of India.

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