



IMPLEMENTATION OF RIGHT TO EDUCATION ACT 2009: CHALLENGES BEFORE NATION

Rajashree J. Jawale

Assistant Professor,
Ismailsaheb Mulla Law College Satara, Maharashtra.

INTRODUCTION

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)¹ has a long and chequered history. The right to education was discussed extensively during the drafting of the Constitution. The Constituent Sub-Committee on Fundamental Rights included the right to primary education as a fundamental right. However the Advisory Committee of the Constituent Assembly rejected this proposal and placed it in the category of non-justifiable fundamental rights (later known as Directive Principles of State Policy). The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti Committee. Thereafter, several political as well as policy level changes influenced the course of free and compulsory education. The country witnessed an increased international focus on its initiatives regarding free and compulsory education after its participation in the World Conference on Education for All in 1990. India also ratified the United Nations Convention on Rights of the Child in 1992.

THE RIGHT TO EDUCATION IS A FUNDAMENTAL HUMAN RIGHT²:

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. This right is explicitly stated in the United Nations' Universal Declaration of Human Rights (UDHR), adopted in 1948:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. ..." (Article 26)

Ensuring *access to education* is a precondition for full realization of the right to education. Without access, it is not possible to guarantee the right to education.

¹ http://www.azimpremjifoundation.org/Right_to_Education

² http://www.hrea.org/index.php?base_id=144



Quality of education is the other side of coin. Providing access to schools secures only one part of the right to education. Once in school, children can be subjected to indoctrination (e.g., in communist countries). As stated, in the UDHR: "... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among ... racial or religious groups. ..." (Article 26)

The right to education does not limit education to the primary or the first stage of basic education, or among children of a particular age range. The right to education is also not an end to itself, but an important tool in improving the quality of life. Education is key to economic development and the enjoyment of many other human rights. Education provides a means through which all people can become aware of their rights and responsibilities, which is an essential tool for achieving the goals of equality and peace.

LEGISLATIVE AND JUDICIAL PERSPECTIVES OF RIGHT TO EDUCATION IN INDIA

The Supreme Court first recognised the right to education as a fundamental right in Mohini Jain v. Union of India (1992) 3 SCC 666. It was observed in this judgment that:

'Right to life' is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facility at all levels to its citizens.

In 1993 the Supreme Court narrowed the ambit of the fundamental right to education as propounded in the Mohini Jain case in the case of J P Unnikrishnan vs. State of Andhra Pradesh, 1993 SCC (1) 645. The Court observed that:

The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "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". Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation..... The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, meant: (a) every child/citizen of this country has a right to free



education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the state and its development. We may deal with both these limbs separately.

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 April 1, 2010.

STATUS OF CHILDREN IN INDIA³

Recent UNICEF (2005) report on the state of the world's children under the title "Childhood Under Threat", speaking about India, states that millions of Indian children are equally deprived of their rights to survival, health, nutrition, education and safe drinking water. It is reported that 63 per cent of them go to bed hungry and 53 per cent suffer from chronic malnutrition. The report says that 147 million children live in kucha houses, 77 million do not use drinking water from a tap, 85 million are not being immunized, 27 million are severely underweight and 33 million have never been to school. It estimates that 72 million children in India between five and 14 years do not have access to basic education. A girl child is the worst victim as she is often neglected and is discriminated against because of the preference for a boy child.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

In order to ensure child rights practices and in response to India's commitment to UN declaration to this effect, the government of India set up a National commission for Protection of Child Rights.

OVERVIEW OF THE ACT:

The RTE 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 different stakeholders. Key features of the Act include:

1. Every child from 6 to 14 years of age has a right to free and compulsory education in a neighborhood school till completion of elementary education.
2. Private schools must take in a quarter of their class strength from 'weaker sections and disadvantaged groups', sponsored by the government.
3. All schools except private unaided schools are to be managed by School Management Committees with 75 per cent parents and guardians as members.

³ http://www.smilefoundationindia.org/child_rights.htm

4. All schools except government schools are required to be recognized by meeting specified norms and standards within 3 years to avoid closure.

On the basis of this Act, the government has framed subordinate legislation called model rules as guidelines to states for the implementation of the Act.

The Right to Education Act: A critique ⁴The RTE Act has been criticised by a diverse array of voices, including some of the best economists. MHRD was perhaps keen to achieve this legislation in the first 100 days of the second term of the UPA, and chose to ignore many important difficulties of the Act. The most important difficulties are:

INPUTS AND OUTCOMES

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.

SCHOOL RECOGNITION

The Act unfairly penalises private unrecognised schools for their payment of market wages for teachers rather than elevated civil service wages. It also penalises private schools for lacking the infrastructural facilities defined under a Schedule under the Act. These schools, which are extremely cost efficient, operate mostly in rural areas or urban slums, and provide essential educational services to the poor. Independent studies by Geeta Kingdon, James Tooley and ASER 2009 suggest that these schools provide similar if not better teaching services when compared to government schools, while spending a much smaller amount. However, the Act requires government action to shut down these schools over the coming three years. A better alternative would have been to find mechanisms through which public resources could have been infused into these schools. The exemption from these same recognition requirements for government schools is the case of double standards -- with the public sector being exempted from the same 'requirements'.

SCHOOL MANAGEMENT COMMITTEES (SMCS)

By the Act, SMCs are to comprise of mostly parents, and are to be responsible for planning and managing the operations of government and aided schools. SMCs will help increase the accountability of government schools, but SMCs for government schools need to be given greater powers over evaluation of teacher competencies and students learning assessment. Members of SMCs are required to volunteer their time and effort. This is an onerous burden for the poor. Payment of some compensation to

⁴ The Right to Education Act: A critique ,by Parth Shah.Thursday, April 01, 2010



members of SMCs could help increase the time and focus upon these. Turning to private but 'aided' schools, the new role of SMCs for private 'aided' schools will lead to a breakdown of the existing management structures.

TEACHERS

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. These wages are clearly out of line, when compared with the market wage of a teacher, for most schools in most locations in the country. A better mechanism would have involved schools being allowed to design their own teacher salary packages and having autonomy to manage teachers. A major problem in India is the lack of incentive faced by teachers either in terms of carrot or stick. 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. School Management Committees need to be given this power to allow speedy disciplinary action at the local level. Performance based pay scales need to be considered as a way to improve teaching.

25% RESERVATION IN PRIVATE SCHOOLS

The Act and the Rules require all private schools (whether aided or not) to reserve at least 25% of their seats for economically weaker and socially disadvantaged sections in the entry level class. These students will not pay tuition fees. Private schools will receive reimbursements from the government calculated on the basis of per-child expenditure in government schools. Greater clarity for successful implementation is needed on:

- How will 'weaker and disadvantaged sections' be defined and verified?
- How will the government select these students for entry level class?
- Would the admission lottery be conducted by neighbourhood or by entire village/town/city? How would the supply-demand gaps in each neighbourhood be addressed?
- What will be the mechanism for reimbursement to private schools?
- How will the government monitor the whole process? What type of external vigilance/social audit would be allowed/encouraged on the process?
- What would happen if some of these students need to change school in higher classes?

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.

WHAT IS TO BE DONE?

The RTE Act has been passed; the Model Rules have been released; financial closure appears in hand. Does this mean the policy process is now impervious to change? Even today, much can be achieved through a sustained engagement with this problem.

DRAFTING OF STATE RULES

Even though state rules are likely to be on the same lines as the model rules, these rules are still to be drafted by state level authorities keeping in mind contextual requirements. Advocacy on the flaws of the Central arrangements, and partnerships with state education departments, could yield improvements in atleast some States. Examples of critical changes which state governments should consider are: giving SMCs greater disciplinary power over teachers and responsibility of studentsâ€™ learning assessment, greater autonomy for schools to decide teacher salaries and increased clarity in the implementation strategy for 25% reservations. If even a few States are able to break away from the flaws of the Central arrangements, this would yield demonstration effects of the benefits from better policies.

ASSISTING PRIVATE UNRECOGNIZED SCHOOLS

Since unrecognized schools could face closure in view of prescribed recognition standards within three years, we could find ways to support such schools to improve their facilities by resource support and providing linkages with financial institutions. Moreover, by instituting proper rating mechanisms wherein schools can be rated on the basis of infrastructure, learning achievements and other quality indicators, constructive competition can ensue.

ENSURE PROPER IMPLEMENTATION

Despite the flaws in the RTE Act, it is equally important for us to simultaneously ensure its proper implementation. Besides bringing about design changes, we as responsible civil society members need to make the government accountable through social audits, filing right to information applications and demanding our children's



right to quality elementary education. Moreover, it is likely that once the Act is notified, a number of different groups affected by this Act will challenge it in court. It is, therefore, critically important for us to follow such cases and where feasible provide support which addresses their concerns without jeopardizing the implementation of the Act.

AWARENESS

Most well-meaning legislations fail to make significant changes without proper awareness and grassroots pressure. Schools need to be made aware of provisions of the 25% reservations, the role of SMCs and the requirements under the Schedule. This can be undertaken through mass awareness programs as well as ensuring proper understanding by stakeholders responsible for its implementation.

ECOSYSTEM CREATION FOR GREATER PRIVATE INVOLVEMENT

Finally, along with ensuring implementation of the RTE Act which stipulates focused reforms in government schools and regulation for private schools, we need to broaden our vision so as to create an ecosystem conducive to spontaneous private involvement. The current licensing and regulatory restrictions in the education sector discourage well-intentioned 'edupreneurs' from opening more schools. Starting a school in Delhi, for instance, is a mind-numbing, expensive and time-consuming task which requires clearances from four different departments totaling more than 30 licenses. The need for deregulation is obvious.

CHALLENGES AHEAD

1. State Governments' Apathy:

- i) Lack of commitment
- ii) Poor economic conditions of the States
- iii) To maintain pupil-teacher ratio as per the Act, appear a distant dream.

2. Availability of Infrastructure Facilities under the Act:

- i) Establishment of Primary Schools within one kilometer and upper Primary Schools within three kilometer distance.
- ii) Well equipped classrooms, library, laboratory, play ground, drinking water and toilet facilities etc.

3. Integrated education means that persons with disabilities have the right to be educated in the same schools and follow the same curriculum as non-disabled students. Integrated education can include special education if that education is given in special classes in regular schools or in the form of support teaching in regular classes and resource rooms. Integrated education is the key to equal educational opportunities for persons with disabilities. It

maximizes disabled persons opportunities for participation in society and facilitates the transition from school to work.

4. The quality of education should be equal to that of persons without disabilities and should meet the special needs persons with disabilities. Similarly, the quality of education should be the same irrespective of gender, age or degree of disability.

5. Special attention to different groups of persons with disabilities implies that equal opportunities should be made available to them at all levels of education: pre-school, primary and secondary schools, university and adult education programmes. This is one of the concerns expressed by the World Programme of Action concerning Disabled Persons. The World Programme of Action also calls for special attention to persons with disabilities in rural areas and draws attention to problems caused by traveling distances

Access to education is the most fundamental aspect of the right to education. It is therefore important to ensure that all legal and technical obstacles to it are removed and that positive measures are taken to facilitate access for all persons with disabilities.⁵

RIGHT TO EDUCATION - PERSONS WITH DISABILITIES⁶

Persons with disabilities are often excluded from mainstream education. As basic education is essential for employment in many spheres and a prerequisite to economic independence, the right to education is of particular importance for disabled persons. Education is also an important part of the rehabilitation process, as persons with disabilities develop their capacities to become more independent and integrated into mainstream society.

Suggested strategies to implement the given provisions in the Right to Education Act, 2009 in all the government schools of Manipur in particular:

1. Each and every government school must form a school management committee as prescribed to
 - i) effectively monitor the working of the school;
 - ii) prepare and recommend the school development plan;
 - iii) monitor the utilization of grants;
 - iv) check the performance and attendance of teachers (as they are accountable to school management committee);
 - v) perform other functions as may be prescribed.

2. All the School Management Committees of every Sub-Division/District of Manipur must

⁵ Several international instruments call for equal access to education for disabled persons. General statements can be found in the Convention against Discrimination in Education (article 1), in The Salamanca Statement (paragraph 2), in the Sundberg Declaration (article 1) and in The Copenhagen Declaration and Programme of Action in Commitment 6. The purpose of this commitment to universal access to education is to eradicate poverty, promote full and productive employment and foster social integration.

⁶ <http://www.un.org/esa/socdev/enable/comp402.htm>

form a common platform eg. like Joint Action Committee (JAC) to put up a concerted action to implement the cherished provisions of the Right to Education Act, 2009.

3. While the Central and State Governments have their full share of responsibilities in term of budget, it is also a community participation and involvement of local NGOs/communities which can make marked difference in meeting the challenges of implementing the Right to Education Act.

The education of disabled persons should as far as possible take place in the general school system.⁷

The significance of education was very well explained in **case of Brown V Board of Education** , in following words: "It is the very foundation of good citizenship. Today, it is principal instrument in awakening the child to cultural value, in preparing him for later professional training and in helping him to adjust normally to his environment. "It is said that child is the future of nation.

The quality of education of the child will determine the quality of life in nation. As it is well illustrated in following words:

"In ancient shadows and twilights Where childhood had strayed, The world's great sorrows were born And its heroes were made. In the lost boyhood of Christ was betrayed. " Both at national and International levels efforts are being made to educate more and more people as education contributes in the development of the society which is consistent with the dignity of the human being.

The recently legislated Right to Education (RTE) Act is a milestone in the journey towards achieving the goal of universal, equitable and quality education. The Act has travelled a long and arduous path to the point of legislative sanction and is the most substantive declaration of the government's responsibility towards education. Therefore it would be appropriate to examine the issues around educational policy in the overall framework already provided by the Right to Education (RTE) Act. The RTE Act deserves due recognition for articulating in unambiguous terms the State's commitment to education. However, it is also true that many gaps persist in the existing formulation of the Act – these include key areas not addressed by the legislation as well as policy and implementation level loopholes⁸.

CONCLUSION

International human rights instruments have established a solid normative framework providing for the right to education. Considerable efforts have also been made to implement this fundamental human right at country level. Nevertheless, millions of children of school-going age are still out of school and millions of adults are deprived of learning opportunities worldwide. Making the right to quality education a reality for all is an absolute priority and

⁷ The World Programme of Action concerning Disabled Persons (paragraph 120) calls for States to adopt policies "...which recognize the rights of disabled persons to equal educational opportunities with others."

⁸ Right to Education Act: Key Gaps in Policy and Implementation -Right to Education Act:Key Gaps in Policy and Implementation Note Prepared For National Advisory Council by August 20th, 2011 Azim Premji Foundation Special Issue 5, Mar., 2015



this cannot be achieved without strong national legal and policy frameworks. United Nations Educational, Scientific and Cultural Organization guidelines were developed to assist countries wishing to assess the compatibility of their national education laws and policies with international standard-setting instruments on the right to education⁹. The right to education is a universal entitlement to education, recognized in the International Covenant on Economic, Social and Cultural Rights as a human right that includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction of free higher education. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to these access to education provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve quality of education. RTE Act 2009 has to be implemented in its spirit.

⁹ United Nations Educational, Scientific and Cultural Organization LAW AND POLICY REVIEW GUIDELINES
Special Issue 5, Mar., 2015