



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2015; 1(10): 740-743
www.allresearchjournal.com
Received: 15-07-2015
Accepted: 18-08-2015

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Implementation concerns and Devoirs of right to Education Act

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Abstract

In the present age of globalization and technological developments, the paramount prerequisite for endurance in society is education as it plays pivotal role in the process of overall growth of human beings. Thus to strengthen the position of education in a more organized manner, the government of India took an essential initiative through the enactment of the 86th Constitution Amendment Act. This attempt aimed to achieve and facilitate the realization of free and compulsory education to children between the age of 6 and 14 years as a fundamental right. Despite the amendment, the present system is facing wide ranging problems, which in turn is hampering the spirit of enactment. The article analyzes and evaluates the initiative of Right to Education in India, with the compliance of the 86th Constitutional Amendment Act. The article finds that although this attempt has shown benefits, there are serious barriers and roadblocks in way desired objectives of 86th Constitutional Amendment Act. These issues need to be addressed on an urgent basis to strengthen the scene of education at the grassroots level.

Keywords: Education, Quality, Insecurity, Evaluation

1. Introduction

Today, our nation is at a crossroad. On the one hand, we aspire to be in the top five countries in the world economically. On the other hand, there is a stark reality in terms of a large segment of our population subsisting below the poverty line. Additionally, India is often under the scanner of experts/institutions focusing on welfare economics and social justice for the adverse condition of the children. In fact, we, as a country are unable to uphold the most basic of the rights of our children - the Right to Life. Branching from this Right, two other important rights - Right to Food and Right to Education have been areas of concern in our country for Governments at the Central, State and Local levels. Even after 66 years of Independence, we are grappling with serious challenges related to both these issues. Our spotlight in this study, however, is on the Right of Children to Free and Compulsory Education Act in India. The Field Extension Programmed of the Centre for Child and the Law (CCL) at the National Law School of India University (NLSIU) is playing a crucial role in creating awareness of the RTE Act and monitoring its implementation at the grass-root level. It has been working in close collaboration with the State and civil society groups for making Right to Education a reality. This is done through advocacy work by strengthening the capabilities of people and institutions. The Centre also aids in reforming policies and using law as an instrument to realize the basic rights of children. The overarching principle is to bring the primary stakeholders together through a bottom-up process and thereby empowering communities to build a strong social movement for equitable quality education on the principle of social justice and equity.

2. A brief historical perspective of education in India since Independence

During pre-independence days, educational rights were unknown. In fact, education was considered a privilege rather than a right. The State's obligation to provide education was recognized with the inclusion of a directive principle to this effect under Article 45 in the Indian Constitution (directive principles, unlike fundamental Rights, are not legally enforceable). But, after the 86th Amendment to the Constitution in 2002, the Right to Education was converted into a Fundamental Right. The leaders of the independence

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Movement, intellectuals and people that comprised the masses stood in unanimity on providing free education to every child up to the age of 14. This concept was adapted from the British law of Free and Compulsory Education (FCE) and incorporated into Article 45 of the Constitution. Thus, FCE became a Constitutional commitment in India from 26th January 1950, when Article 45 mandated the State to universalize education within 10 years i.e. by 1960.

It would be pertinent to point out that between 1950 and 1960; Article 45 did not receive the importance that it deserved. The State and Union budgets treated education as a peripheral subject, allocating an insubstantial amount for this purpose. Much later, a movement towards equitable education began in 1964, when the Education Commission (Kothari Commission) was appointed to look into the problems of the education system in India. This Commission recommended achieving universalization of education within two time segments. The year 1976 was set as the deadline to provide free and compulsory education up to 5th standard, while 1986 was the deadline to do the same, up to 7th standard. Moreover, the Commission strongly recommended the adoption of a 'common school' system, which would help remove or minimize inequality of educational opportunities. It also stressed on the need to maintain the 'quality and standards' of schools. Despite all these efforts, the goal remained elusive.

The Kothari Commission had warned policy makers about the tendencies for segregation based on inequalities in the school education system. The gravity and objective of this recommendation was aptly summarized by Naik 1- "the recommendation of the commission regarding the common school system is the integral part of the programmed to promote the education of the poor, reduce its dual character in which 'haves' receive one type of education and 'have-nots' another, and to create a socially cohesive and egalitarian society".

In 1992, the Indian Supreme Court declared the right to education to be a fundamental right in the case of *Mohini Jain v. State of Karnataka*. It observed 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. 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 was under an obligation to make an Endeavour to provide educational facility at all levels to its citizens". This was again reiterated by the Supreme Court in 1993 in the case of *J.P. Unnikrishnan v. State of Andhra Pradesh*.

It is significant that the Parliament enacted the Eighty-Sixth Amendment, 2002, to make education a fundamental right for children in the age group 6 to 14 years. It was undoubtedly a compromise on the effectiveness of education since children from birth to 6 years and 15 to 18 years stood excluded. The Right remained on paper for eight years owing to the delay in drafting a central legislation that would lay down the practical framework for its implementation.

3. Present status of RTE act

According to the 2001 census, 8.5 corer children are out of school in India. However, latest figures from the Human Resource Development Ministry put the number at 80 lakh. This disparity is because the government has been trying to divide the children into two sections.

According to the National Crime Records Bureau, every year around 65,000 children fall victim to trafficking. Only 10 per cent of such cases are registered with the police. Officially, therefore, only 6,500 children are trafficking victims. Besides this, around 1.20 crore children are involved in child labor (2001 census), keeping them out of school. One of the sections into which the government has tried to divide out-of-school children is those who have never enrolled in school. But here the question arises: if these children have never been enrolled in school how have they been counted? By which agency? And what was the methodology adopted? The second section includes children who have dropped out of school. Children who do not attend school for three months are considered to have dropped out. In some states the period is 15 days; in others it's one month. Taking these two sections together, the total number of out-of-school children is around 80 lakh. Nevertheless, the disparity between the figures of the two departments a drop from around 8 crore to 80 lakh is nothing short of magic! And even if the 80 lakh figure is correct, it's still a huge number and the children are not out of school because of choice. To believe that the RTE Act will magically put all such kids into classrooms would be naïve. Some states have claimed that there has been a jump of 120 per cent in school admissions. This has to be taken with a pinch of salt. The 2011 census will make the picture clearer.

A recent survey under the Sarva Shiksha Abhiyan program in Rajasthan found that 12 lakh children were out of school. Of these, 7.13 lakh children were girls and the rest were boys. Other states must carry out similar studies.

4. Implementation Concerns

4.1 Psychological Insecurity There has been a sense of insecurity that has crept into the minds of people from all the sections of society on the clause pertaining to reservation of 25 per cent of seats for children with underprivileged background. While parents have raised their voice against the behavioral traits their child is likely to learn on mixing with children from underprivileged background and the long term impact of such an environment later in life, teachers are worried on the issue of handling children with different academic credentials, home environment and cultural backgrounds and have expressed their inability to do so.

4.2 Eyewash Despite the enactment of The Right to Free and Compulsory Education Act, 2009 which guarantees free and compulsory education, several schools are charging capitation fees for education in pre-primary. They are also interviewing parents and/or children. There have been complaints from parents saying that several schools took their interview and asked questions about their family income, vehicles they owned, income certificates, pan card details and even the size of their flats, one of the schools even asked parents to get a character clearance certificate from the local police station. Several schools have even demanded donations at the time of admission for the pre-primary admission, and although parents have approached officials, the latter have failed to take any action in this regard.

4.3 Quality and Quantity of the Kingpin The teachers are the kingpin of entire education system and it is this factor on which lies the onerous responsibility of ensuring the effective implementation of RTE Act and given today's

complex environment, the diversity and complexity of backgrounds from which students enter in the schools today, this responsibility increases in magnitude. The existing teacher's training and education programs are ill suited to meet the contemporary understanding of students' needs. Given the immense importance of this link, it is ironical that there has been a continuous reluctance on the part of state to respond to this issue with the seriousness it deserves and given the target of RTE, which has to be achieved in five years, it is likely that the quality of teacher's education will be compromised.

4.4 Variations across the country Even after six decades of independence, education still remains differentiated in both qualitative and quantitative terms. There are huge differences in access to education across location, economic category, social group and gender which cannot be simplified into public versus private. The differences in the quality of schooling have significant implications not only on the quality of education but also on the chances of entry into higher education and other possibilities of socio economic advancement. All this critically depends on public funding because only then can we ensure quality infrastructure, adequate and adequately trained teachers, other amenities and teaching aids. Ensuring a reasonable quality of education requires not just expanding the system to all children but rather a significant expansion of resources to upgrade the quality of education.

4.5 Policy Deficits The no fail' policy of the RTE Act, according to which no child from Class 1 to 8 will fail irrespective of how poorly he or she fares in exams as under the Right To Education (RTE) Act it has become a mandatory to pass all students up to middle class. Though various state governments believe that this will increase the literacy rate and benefit unprivileged students, get students enthused about learning rather than simply excelling in exams, many educationists and parents feel it would further lower the standard of education in government schools. Mere declaration of non-detention policy is not enough to eliminate the root cause of stagnation. To make the declaration effective, issues like comprehensive and continuous evaluation, teacher-pupil ratio, training of the teacher, all weather classrooms are addressed and that the objective of education is to produce all-round development of children, besides equipping them with life skills. Parents are also unsure about how the policy would benefit students and feel that learning to deal with failure is incredibly important in life.

4.6 Evaluation System The present evaluation system in the higher education lays emphasis on the development of scholastic aspects at the cost of co-scholastic aspects. Unfortunately, the non-cognitive learning outcomes, which are equally important, are tested neither comprehensively nor continuously. Even the evaluation of higher level cognitive learning outcomes is often neglected. A continuous and participatory system of evaluation will provide timely feedback to the students for improving their performance and thus provide self-evaluation and self-improvement and in percolating its effect deep down to the primary level.

4.7 Pressures and Progress Under the pressure to meet the national and international commitment, the progress towards universalization of elementary education is being viewed

unduly in terms of meeting quantitative targets. There seems to be an inadequate focus on schooling processes and outcomes. Central as well as State governments are heavily preoccupied with reporting the progress in terms of expansion of the schooling facilities and coverage of children in the relevant age group and hence neglecting the qualitative aspects.

4.8 Questions Unanswered A closer look at the fine print of the Right to Education Act highlights the major weaknesses in the landmark law. It is worrying that the authors of the Act have not visualized the long-term consequences of the revolutionary provision of providing 25% reservation to children from the weaker sections. The first big unanswered question relates to the fate of children from the weaker sections after they complete their free elementary education in the elite schools. Predictably, these children will have to leave these schools and slip back to schools of questionable standards, which are bound to be psychologically traumatic. Secondly, the quality of education, the infrastructure, teacher pupil ratio and issues like drinking water and toilet facilities in government schools have also been questioned. Next, the most ambiguous aspect of the RTE Act relates to teaching quality. A shocking aspect of our vital, life-molding primary education is that in most of our six lakh villages, the teaching of children is in the hands of barely educated teachers. Clearly, the RTE Act accords little importance to teaching standards, which is the major shortcoming in our educational system.

4.9 Policy Implementation in Isolation The reason as to why the dropout rate has grown alarmingly after the implementation of the RTE Act and the dream associated with the ambitious RTE Act of bringing in the poor to share the common dream of quality education for children - two years after its implementation still remains elusive for the poor. Instead of imposing the vague concept of education on the children of the poor to show improved statistics, work should first be done to improve their living conditions, for children who lose the earning members of their family; concerns of survival precede the concerns of education¹⁴.

4.10 The Textbook culture The formal school system, denies space to children and teachers to engage with subjective experiences and life as it plays out for the student. The regime of standardization dominates the schooling system and leads to the fragmentation of learner's lives. There is a gap between the world of books and the world a child inhabits. School textbooks are out of sync with the reality a child lives in. The clash between these two worlds produces dissonance. The culture of rote learning and the examination oriented attitude to textbooks dismiss the student's own life world as insignificant. This dominance of textbooks undermines the role of both the teacher and the learner and denies them creative engagement with the learning endeavor. The teacher-child relationship remains confined in hierarchical terms. All children who come to a learning site should have the opportunity to contribute to the attractions of the space by their conversations and their questions. It is therefore advocated to create learning environments that invite children to share and to create curricula and content that the participating children find enough to connect with, where they feel comfortable enough to express themselves.

5. Devoirs of the day

For quality education to truly reach every child in the country, it is necessary that the following steps are taken:

- 5.1 Each state should prepare a set of model rules for implementation of the right to education, with the participation of the community and other stakeholders.
- 5.2 Although the RTE Act puts the applicable age-group at 6-14, it has been left to the states to decide whether they want to widen this group, say from 0-18 as Kerala has done. States should think about including more children under the Act's ambit.
- 5.3 With the Act coming into effect, it has been found that there is a shortage of 12-13 lakh teachers in schools. The states must take steps to employ more teachers and not rely on Para-teachers to provide children with quality education.
- 5.4 The government should ensure that all government schools are well-equipped to take in students, so that they are not left with the sole choice of going to private schools.
- 5.5 School management committees should take it upon themselves to spread awareness about the Act at the community level, in panchayats, so that people are encouraged to send their children to school.
- 5.6 School management committees should be provided the necessary financial and other support by the state to go about their duties.
- 5.7 For effective implementation of the RTE Act, states should give some sort of judicial power to the education department.
- 5.8 The public private partnership (PPP) model in primary education should be avoided at all costs so that there is no commercialization of education.
- 5.9 There is a conflict between the child labor law and the Right to Education Act, although both deal with related issues and promote the overall development of children. It is important to bring them in step, to avoid confusion.
- 5.10 To effectively implement the RTE Act, the Human Resource Development Ministry, Labor Ministry, Women and Child Development Ministry, Panchayati Raj Ministry and Rural Development Ministry have to work together. There should be an umbrella body that brings all these agencies together to work towards a common goal.
- 5.11 The government must make every effort to become self-sufficient by using the education cess and other taxes to effectively implement the RTE Act. It must not always beg from the private sector.

6. Conclusion

Most people in the Indian society have lived in the hope that one day their dream of securing holistic education for all children - irrespective of their class, color or creed will become a reality. This is in fact the very essence of Article 21A of the Indian Constitution. However, there is conclusive evidence from the study to prove that the hiatus between what is laid down by law and the ground realities is alarmingly colossal. In other words, what is written on paper is not being implemented at the grass-root level and this has resulted in the path-breaking Act becoming much less effective than what it was intended to be. Of course, it can be argued that the Act is not without its flaws, but there is no denying that better implementation of the existing provisions

could have been achieved. It is imperative to point out that the people it matters most to are unfortunately not even aware about the Act.

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