



Right To Education Act implemented: Challenges still remain

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Abstract

Education is a human right and essential for realization of all other human rights. It is a basic right which helps the individual to live with human dignity. It promotes individual liberty, empowerment and all round development. Yet millions of children all over the world remain deprived of educational opportunities, many as a result of poverty, social customs, political instability, terrorist activities, internal disturbance, wars, defected policies and corruption. Normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education. These instruments promote and develop the right of every person to enjoy access to education of good quality, without any discrimination. This paper is an attempt to highlight the issue of whether the Right To Education Act has been implemented successfully? are there any challenges to be further dealt with due consideration?

Keywords: Education, right, educational opportunities, Right To Education Act, implemented

Introduction

The **right to education** is a universal entitlement to education, a right that is recognized as a human right. According to the International Covenant on Economic, Social and Cultural Rights, the right to education 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.

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), which was passed by the Indian parliament on 4 August 2009 but came into force from April 1, 2010, describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21a of the Indian Constitution. This was a historic day for the people of India, as from this day the right to education was accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010.

Any cost that prevents a child from accessing school will be borne by the State which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools.

All private schools shall be required to enroll children from weaker sections and disadvantaged communities in their incoming class to the extent of 25% of their enrolment, by simple random selection. No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State at the rate of average per learner costs in the government schools (unless the per learner costs in the private school are lower).

The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of this historic Right. NCPCR also invites all civil society groups, students, teachers, administrators, artists, writers, government personnel, legislators, members of the judiciary and all other stakeholders to join hands and work together to build a movement to ensure that every child of this country is in school and enabled to get at least 8 years of quality education.

What is Right to Education Act?

Education in India is treated as a service for public good and not as a commercial enterprise. In view of this object, the State Education Acts require only a non-profit entity to run a school with certain restrictions and regulations concerning its operations. Even if the schools are private un-aided schools, they are, to a certain extent, governed by the State Education Acts of the respective States where the schools are set up.

In terms of the RTE Act and Rules, every school, other than a school established, owned or controlled by the Central Government, appropriate government or the local authority, shall be established after obtaining a certificate of recognition from the Director of Education (“DEO”), by making an application/self-declaration confirming compliance with the prescribed norms and standards and fulfillment of the following conditions:

- (i) the school shall be run by a society, or a public charitable trust;
- (ii) the school shall not be run for profit to any individual, group or association of any individuals or any other persons;
- (iii) the school shall conform to the values enshrined in the Constitution of India;
- (iv) the school buildings or other structures or the grounds shall be used only for the purposes of education and skill development;
- (v) the school shall be open to inspection by any officer authorized by the appropriate Government or the local authority; and
- (vi) the school shall furnish such reports and such information as may be required from time to time and shall comply with such instructions of the appropriate Government or the local authority, as may be issued to secure the continued fulfillment of the condition of recognition or the removal of deficiencies in working of the school.

Subject to compliance with the above norms and verification by on-site inspection of the school premises, a certificate of recognition is issued by the DEO which is valid for three years from the date of issue. Any school that does not conform to the norms, standards and conditions stated above within a period of three years of commencement of the RTE Act and Rules will cease to function. Any person that establishes or runs a school without obtaining certification of recognition or continues to run a school after withdrawal of recognition would be liable to fine which may extend to Rs. 1,00,000/- (Rupees One Lac) and in case of continuing contravention, to

a fine of Rs. 10,000/- (Rupees Ten Thousand) for each day during which such contravention continues. Norms and standards of teacher qualification and training are also being laid down by an Academic Authority. Teachers in all schools will have to subscribe to these norms within 5 years.

The RTE Act makes certain fundamental changes to the Indian education system and makes the recognition subject to fulfillment of the following conditions:

(i) Education for All: Reservation. It is mandatory for every unaided school to admit in Class I or such pre-school class, as the case may be, to the extent of at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion. No seats in this quota can be left vacant. The unaided school providing free and compulsory elementary education, as aforesaid, will be reimbursed expenditures incurred by the school, to the extent of per-child expenditure incurred by the State, or the actual amount charged from the child, whichever is less.

(ii) Capitation Fee: While admitting a child, the trust/school is not permitted to collect any capitation fee and subject the child or his/her parents or guardian to any screening procedure. Any school or person receiving any capitation fee will be punishable with fine which may extend to ten times the capitation fee charged. Further, if any school or person subjects a child to screening procedure, it shall be punishable with fine which may extend to Rs. 25,000/- (Rupees Twenty Five Thousand) for the first contravention and Rs. 50,000/- (Rupees Fifty Thousand) each for subsequent contraventions.

(iii) Detention of Students: The school is obligated not to deny admission to any child for lack of proof of age and no child admitted will be held back in any class or expelled from school till the completion of elementary education. The child would not be required to pass any board examination till the completion of elementary education in a school and be subjected to physical punishment or mental harassment.

(iv) Pupil-Teacher Ratio: Every school would need to maintain the pupil-teacher ratio stipulated under the RTE Act and Rules. Additionally, the RTE Act and Rules also prescribe certain norms and standards pertaining to number of teachers; school building requirements; minimum number of working days/instructional hours in an academic year; minimum number of working hours per

week for the teachers; teaching learning equipment library requirements; and play material, games and sports equipment, to be complied by the school for continued recognition of the school.

Failure to comply with the prescribed norms and standards can result in withdrawal of recognition granted to such school.

The primary focus of the Government of India for enacting RTE Act and Rules is to make good elementary education available to each and every child irrespective of his/hersocio-economic background and private un-aided schools are being made to play an active role under the public-private participation in achieving this objective.

Implementation of Right to Education Act

International law does not protect the right to pre-primary education and international documents generally omit references to education at this level. The Universal Declaration of Human Rights states that everyone has the right to education, hence the right applies to all individuals, although children are understood as the main beneficiaries.

The rights to education are separated into three levels:

- Primary (Elemental or Fundamental) Education- This shall be compulsory and free for any child regardless of their nationality, gender, place of birth, or any other discrimination. Upon ratifying the International Covenant on Economic, Social and Cultural Rights States must provide free primary education within two years.
- Secondary (or Elementary, Technical and Professional) Education must be generally available and accessible.
- Higher Education (at the University Level) should be provided according to capacity. That is, anyone who meets the necessary education standards should be able to go to university.

Both secondary and higher education shall be made accessible "by every appropriate means, and in particular by the progressive introduction of free education".

Education in the Indian constitution is a concurrent issue and both centre and states can legislate on the issue. The Act lays down specific responsibilities for the centre, state and local bodies for its implementation. The states have been clamoring that they lack financial capacity to deliver education of appropriate standard in all the schools needed for universal education. Thus

it was clear that the central government (which collects most of the revenue) will be required to subsidize the states.

Assessment of fulfillment of Right to Education Act

The fulfillment of the right to education can be assessed using the **4 As framework**, which asserts that for education to be a meaningful right it must be **available, accessible, acceptable and adaptable**. The 4 As framework was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, but is not necessarily the standard used in every international human rights instrument and hence not a generic guide to how the right to education is treated under national law.

The 4 As framework proposes that governments, as the prime duty-bearer, has to respect, protect and fulfill the right to education by making education available, accessible, acceptable and adaptable. The framework also places duties on other stakeholders in the education process: the child, which as the privileged subject of the right to education has the duty to comply with compulsory education requirements, the parents as the 'first educators', and professional educators, namely teachers.

Right To Education Act implemented: Challenges still remain

With the Right To Education Act coming into force today, government faces a number of challenges in its implementation, especially availability of teachers and setting up of neighborhood schools.

- a. There is a shortage of nearly five lakh teachers while there are about three lakh untrained teachers at elementary stage.
- b. The Right of Children to Free and Compulsory Education Act, says there should be one teacher for every 30 students at elementary level. At present, there are about seven lakh teachers in all the 1.29 million recognized elementary schools in the country. Of them, nearly three lakh teachers are either untrained or under-trained.
- c. The model rules for the Act say that state governments and local authorities will establish schools within walking distance of one km of the neighbourhood. In case of children for Class VI to VIII, the school should be within a walking distance of three km of the neighbourhood. Shortage of teachers and neighbourhood schools are the major challenges for

implementation of the Act, a ministry source said, in case of schools not having trained teachers, they will have to comply with the provision within five years.

- d. As per the new law, the schools need to have certain minimum facilities like adequate teachers, playground and infrastructure.
- e. As per the model rules, the local bodies and the state governments will undertake household surveys and neighbourhood school mapping to ensure that all children are sent to school.
- f. Besides, there are thousands of students who are working as child labourers. Providing education to such kids, including the children of sex workers, will be a challenge.
- g. At present, nearly 92 lakh children have either dropped out from schools or have never been to any educational institution. It will be binding on part of the local and state governments to ensure that all these children are brought back to schools.
- h. The implementation of the Act would require Rs 1.71 lakh crore for the next five years. The sharing of funds between the Centre and the state governments could be in the ratio of 55-45, the source said.
- i. According to sources, the state governments are seeking 90% funding from the Centre for implementing the Act.
- j. The government is in the process of revising the norms of Sarva Siksh aAbhiyan (SSA) to make it compatible with RTE norms. The SSA will be the vehicle for implementation of RTE.
- k. The Act mandates that even private educational institutions have to reserve 25 per cent seats for children from weaker sections. However, it will be implemented from next year from class one.
- l. Certain schools have already challenged the law in the Supreme Court as being "unconstitutional" and violating fundamental rights of unaided private educational institutions.

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