

RIGHT TO EDUCATION ACT, 2009 : UNIVERSALISING ELEMENTARY EDUCATION

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“The prosperity of a country depends, not on the abundance of its revenues, nor on the strength of its fortifications, nor on the beauty of its public buildings; but, it consists in the number of its cultivated citizens, in its men of education, enlightenment, and character; here, are to be found its true interest, its chief strength, its real power.”

-Martin Luther

Introduction

Education distinguishes a man from the beast. Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. It is also the key to gender equality. Also it is not only the individual who gets empowered, but the community as a whole and society at large. It is in recognition of these aspects that Parliament enacted the ‘Right of Children to Free and Compulsory Education Act, 2009’. In India, laws are framed but they are not implemented with the true spirit. This article tries to analyse the Right to Education (RTE) 2009 Act after three years since its passage.

Of the nearly 200 million children in the age group between 6 and 14 years, more than half do not complete eight years of elementary education; they either never enroll or they drop out of schools. Of those who do complete eight years of schooling, the achievement levels of a large percentage, in language and mathematics, is unacceptably low. It is no wonder that a majority of the excluded and non-achievers come from the most deprived sections of society such as Dalit, Other Backward

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Claases, tribals, women, Muslims and financially backward and precisely those who are supposed to be empowered through education.¹

UNESCO believes that education is an essential human right and achieving this for all children is one of the biggest moral challenges of our times. The Right to education is an integral part of the Organization's constitutional mandate which expresses 'the belief of its founders in full and equal opportunities for education for all' and 'to advance the ideal of equality of educational opportunity'. In addition, the right to education is enshrined in the preamble & Article 26.2 of the Universal Declaration of Human Rights, 1948, Article 13 & 14 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 18 of International Covenant for Civil and Political Rights 1966, Article 18, 19, 23, 24, 28,29 32 & 40 of the United Nations Convention on the Rights of the Child 1989, and Paragraph 33, section 1 & Paragraph 79 and 80, section 2 of the Vienna Declaration.

Importance of Education

Na Chouraharyama Na Cha Rajaharyama,
Na Bhartrubharyama Na Cha bharakari
Vyaya Krite Vardhata Eva Nityam
Vidya Dhanam, Sarva Dhanam Pradhanam

- As Per old Sanskrit saying

The importance of education was emphasized in the '*Neethishatakam*' by Bhartruhari (First Century B.C.) in the following words:

“Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour at the hands of the State, not money.

A man without education is equal to animal.”²

1. http://www.indg.in/primary-education/policiesandschemes/rte_ssa_final_report.pdf [Last accessed on October 23, 2013]

2. As cited in *Unni Krishana J. P. v. State of A.P.* (1993) 1 SCC 645.

“Learning is excellence of wealth that none destroy; To man nought else affords reality of Joy.”

-Valluvar

The right to education remains one of the most important, universally accepted, yet complex rights in international human rights law. The right to education is a “multiplier” or “empowerment” right as well as an essential means to promote other rights, the enjoyment of which “enhances all rights and freedoms” while its violation “jeopardizes them all.” Conversely, the denial of the right to education leads to “compounds of denials of other human rights and the perpetuation of poverty.”³

The right to education has close linkage with the right to development. Education is a fundamental human right. Education also empowers individuals for full development of human personality, and participation in society through acquisition of knowledge, human values and skills. Education helps children to develop creatively and emotionally and to acquire the skills, knowledge, values and attitudes necessary for responsible, active and productive citizenship.

The fundamental purpose of education is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit.

The importance of education has come to be recognized in various judicial decisions. In *Oliver Brown v. Board of Education of Topeka*,⁴ it was observed:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our

3. The Right to Education: Report Submitted by Katarina Tomasevski, Addendum, Mission to Colombia, U.N. DOC. E/CN.4/2004/45 7 (Feb. 17, 2004)

4. US Supreme Court Reports 98 Law. Ed. US 347; quoted by Swati Mehta, Consumer Protection and Educational Services, (2010) 4 MLJ 19; Jayashree V. Doddawadimath & Ramesh, Right to Education and Human Rights, 3 BLJ, 2010 (3) 311

most basic public responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

The Aims of Education

“Education leads to liberation”, Liberation from ignorance which shrouds the mind, Liberation from superstition which paralyses effort, Liberation from prejudices which blind the vision of the truth. (An old Sanskrit adage)

Human rights treaties outline the aims of education, which are most developed in Article 29 of the Convention on the Rights of the Child (1989). Article 29.1 reads as:

States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

The right to education in our Constitution

The right to education in the Constitution means the core principles of the preamble i.e. social justice and equality, Article 14 - equality before law, Article 15- prohibition of discrimination, Article 16 - equality of opportunities, Article 21 - right to dignified life, Article 21 A - right to education, Article 23 - prohibition of human trafficking, Article 24 - abolition of child labour, Article 39(e) & (f) - protection of children, Article 41 - right to education, Article 45 - early childhood care and education, and Article 46 - promotion of the educational interest of SC/STs and other weaker sections of society.

In corollary, the constitutional vision of the rights of children in general and the right to education in particular constitutes:

- Social justice, equality and equity in all actions related to children
- Right to dignified life through education
- Right against all forms of discrimination and exploitation
- Right to equitable care, protection and education

Historical perspective

India has a glorious tradition of education at all levels. There was no country where the love of learning had so early an origin; and importance exercised had lasting and powerful influence. In fact, education was no exotic to India⁵. It has always been regarded as one of the basic inputs in human resource development. India is a land of scholars and intellectual from ancient times- the Vedic and the Buddhist. Here, the history of education was very rich, interesting and organized. It is thought to be almost 5000 years old and began with the Vedic period. Our ancient social system stressed the need of education and 'Brahmcharya ashram' up to the age of 25 years was purely devoted to education. Education in India has a history stressing back to the ancient urban centers of learning at Taxila and Nalanda to western education established by Britishers.

The first step towards right to education was taken right after Independence in 1950 when the Constitution (Art.45) by way of a directive

5. Thomas, F.W. History and Prospects of British Education in India, George Bell & Sons, 1891. P. 1

principle promised free and compulsory education for all children until they complete the age of fourteen years. This was to be attained within 10 years (by 1960) from the commencement of the Constitution. But the States responsible for implementing the constitutional promise of primary education for all children did not do so for decades and Article 45 remained dormant.

Even though nearly all educationally developed countries attained their current educational status by legislating free and compulsory education. Britain did so in 1870 by Elementary Education Act, 1870. India has dithered and lagged behind up to 2002, in introducing such legislation, with grave consequences.

The Indian Education Commission (Kothari Commission) 1964-1968 reviewed the status of education in India and made several recommendations. Most important amongst these is its recommendation of a common school system with a view to eliminating inequality in education opportunities. Immediately thereafter, the National Policy on Education (NPE), 1968 was formed. This policy was the first official document evidencing the Indian Government's commitments towards the school education. Interestingly, it even required special schools to provide a proportion of free studentships to prevent social segregation in schools. Nevertheless, it retained the status as a 'directive principles'⁶.

In 1975, during the emergency, the Central government put the responsibility for education as a joint state/centre responsibility by putting education under "concurrent list" in an amendment (the 42nd) to the Constitution. However, the right to education was still not a fundamental right in the constitutional sense but only a strong directional policy of recommendation from the centre to the states.

Subsequently, the National Policy on Education, 1986 re-affirmed the goal of universalisation of school education and promised to take measures to achieve a common school system. 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 FCE

⁶. *Ibid.*

(Free and Compulsory education). The country witnessed an increase international focus on its initiatives regarding FCE after its participation in the World Conference on Education for All in 1990. India also ratified the UNCRC (UN Convention on the Rights of the Child) in 1992.

The Government could not fulfil the constitutional aspiration of Article 45. It was the Apex Court which through interpretative technique has made endeavour to realize the constitutional goal. Since *Maneka Gandhi v. Union of India*⁷, the ambit and scope of Article 21 of the Constitution has been expanded beyond imagination. In *Mohini Jain v. State of Karnataka*⁸, a Bench of two Judges impliedly read right to education as a fundamental right in Article 21. It not only traced it there but gave an extreme extension also. The court observed: “We hold that every citizen has a right to education under the constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.”

This judgment triggered controversy and a Constitution Bench of the Supreme Court in *Unni Krishana J. P. v. State of A.P.*⁹ restricted the scope of *Mohini Jain* ruling. In *Unni Krishnan* case the court agreed with the view that the right to education is implicit in Article 21 of the Constitution. It held that “a child has a fundamental right to free education up to the age of fourteen years.” Beyond this age, the right to education was subject to the limits of the economic capacity of the State. This resulted in the Constitution (Eighty Sixth Amendment) Act, 2002. This amendment has inserted a new article - Article 21-A in the Constitution making right to free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine. This right is not self executory. It needs State legislation. After eight years this Article 21-A became operative, when the Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009) was made operative by a Gazette notification of the Central Government.

7. AIR 1978 SC 597: (1978) 1 SCC 248

8. AIR 1992 SC 1858: (1992) 3 SCC 666

9. (1993) 1 SCC 645

The Right of Children to Free and Compulsory Education, 2009

On Thursday, April 1st 2010, seventy three years since Mahatma Gandhi gave the call for universal education in 1937; sixty three years since independence; sixty years since the Constitution, instead of making education a fundamental right made it part of the Directive Principles; seventeen years since the Supreme Court in 1993 ruled on the right to education; eight years after the 86th constitutional amendment was passed by the Parliament in 2002 by inserting Article 21A making education a fundamental right for children in the restricted age group of 6 to 14 years; and six years after the draft bill was prepared by the CAGE¹⁰ committee, the Right of Children to Free and Compulsory Education Act, 2009, came into force. And India became one of 135 countries to make education a fundamental right of every child. The Children's Right to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009) came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010.

In *Vishwas Kumar and Another v. State of Uttarakhand and Others*¹¹, Hon'ble Sudhanshu Dhulia, J. observed the importance of the right to Education Act in the following words:

“This is so because now under Article 21A of the constitution and the right to Education Act, it is not just a fundamental right of children to get elementary education but this right has now become a meaningful right for various reasons and more particularly because children will be imparted elementary education by qualified and trained teachers.”

Salient features of the Act of 2009

Preamble of the 2009 Act is as follows:

“An Act to provide for free and compulsory education to all children of the age of six to fourteen years.”

10. Central Advisory Board of Education (CAGE) Committee

11. In The High Court of Uttarakhand at Nainital, Writ Petition No. 1246 (Ss) Of 2011, Decided On: 20.09.2011

The salient features of the Right of Children for Free and Compulsory Education act are -

- Free and compulsory education to all children of India in the six to 14 age group;
- No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
- A child above six years of age has not been 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 her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.
- Proof of age for admission: For the purposes of admission to elementary education. The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof.
- A child who completes elementary education shall be awarded a certificate;
- Calls for a fixed student-teacher ratio;
- Will apply to all of India except Jammu and Kashmir;
- Provides for 25 percent reservation for economically disadvantaged communities in admission to Class One in all private schools;
- Mandates improvement in quality of education;
- School teachers will need adequate professional degree within five years or else will lose job;
- School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
- Financial burden will be shared between state and central government.

Validity of 25 percent reservation for Economically Weaker Section (EWS)

Section 12 of RTE is one of the key provision, which mandates 25 percent reservation in unaided schools for children from economically weaker section and disadvantaged groups.

In this context it is important to refer to the Statement of Objects and Reasons (SOR) attached to the Right of Children to Free and Compulsory Education Bill, 2008, which states:

“The Right of Children to Free and Compulsory Education Bill, 2008, is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.”

The idea that schooling should act as a means of social cohesion and inclusion is not new; it has been oft repeated. Inequitable and disparate schooling reinforces existing social and economic hierarchies, and promotes in the educated sections of society an indifference towards the plight of the poor.

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. The relevant universe in which the proportion needs to be considered is the class/section. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in class I only. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-a-vis the fee-paying children will be counter-productive.

The rationale for 25% lies in the fact that the composition of caste/class indicated in the Census is fairly representative of the composition of children who are seeking admission under this provision. As per Census 2001, SCs constitute 16.2%, and STs constitute 8.2% (total 24.4%) of the population. Further, the Tendulkar Committee, set up by the Planning Commission to measure poverty, has estimated the below poverty line (BPL) population to be 37.2%. It is a fact that much of the population that suffers economic deprivation also suffers from social disadvantage. Thus, taken together, the figure of 25% for admission of children from disadvantaged groups and weaker sections is considered reasonable. Any lower proportion would jeopardize the long-term goal of the policy which is to strengthen social cohesion and bring out the best human resource potential inherent in our society as a whole. A smaller proportion would serve only a token purpose, and it will run the serious risk of creating the feeling of alienation among the children belonging to disadvantaged groups and weaker sections. Their participation in classroom interaction will be neither strong nor sufficiently manifest to enrich the overall experiential learning taking place in any given subject area. Only a critical mass can play such a role.

*Society for Un-aided Private Schools of Rajasthan v. U.O.I. & Anr*¹² and as many as 31 others petitioned the Supreme Court of India claiming the section 12(1)(a) of the Right of Children to Free and Compulsory Education Act, 2009 violates the constitutional right of private managements to run their institutions without governmental interference. The parties claimed that providing 25 percent reservation for children from economically weak section in government and private unaided schools is unconstitutional.

On 12 April 2012, a three judge bench of the Supreme Court delivered its judgement by a majority of 2-1. Chief Justice SH Kapadia and Justice Swatanter Kumar held that providing such reservation is not unconstitutional, but stated that the Act will not be applicable on unaided private minority schools and boarding schools.

12. Writ Petition (Civil) No. 95 of 2010

The status of implementation of RTE Act: National Picture¹³

1. Enrollment in the 6-14 age group continues to be very high. But the proportion of out of school children has increased, especially among girls in the age group of 11 to 14.

- Overall, enrollment numbers remain very high. Over 96% of all children in the age group 6 to 14 years are enrolled in school. This is the fourth consecutive year that enrollment levels have been 96% or more.
- Nationally, the proportion of children (age 6 to 14) who are not enrolled in school has gone up slightly, from 3.3% in 2011 to 3.5% in 2012. A slight increase is seen for all age groups and for both boys and girls.
- Girls in the age group of 11 to 14 years are often the hardest to bring to school and keep in school.
- In 2006, in eight major states, more than 11% girls in this age group were not enrolled in school. By 2011, this figure had dropped to less than 6.5% in 3 of these states (Jharkhand, Gujarat and Odisha) and less than 5% in 3 others (Bihar, Chhattisgarh and West Bengal). The situation in these states remained more or less unchanged in 2012. However in Rajasthan and Uttar Pradesh, the proportion of out of school girls (age 11-14) has increased from 8.9% and 9.7% respectively in 2011 to more than 11% in 2012.

2. Private school enrollment continues to rise in almost all states.

- At the All India level private school enrollment has been rising steadily since 2006. The percentage of 6 to 14 year olds enrolled in private schools rose from 18.7% in 2006 to 25.6% in 2011. This year this number has further increased to 28.3%. The increase is almost equal in primary (Std. I-V) and upper primary (Std. VI-VIII) classes. In 2012, among all private school children (age 6-14), 57.9% were boys.

13. (Source- Annual Status of Education Report (ASER) 2012)
<http://righttoeducation.in/sites/default/files/fullaser2012report.pdf#overlay-context=>
[Last accessed on October 24, 2013]

- In 2012, more than 40% of children (age 6-14 years) in Jammu & Kashmir, Punjab, Haryana, Rajasthan, Uttar Pradesh and Meghalaya are enrolled in private schools. This percentage is 60% or more in Kerala and Manipur.
- Increase in private school enrollment is seen in almost all states, with the exception of Kerala, Nagaland, Manipur and Meghalaya (where private school enrollment was over 40% even last year) and Tripura.
- Since 2009, private school enrollment in rural areas has been rising at an annual rate of about 10%. If this trend continues, by 2018 India will have 50% children in rural areas enrolled in private schools.

3. Reading levels continue to be a cause for serious concern. More than half of all children in Std. V are at least three grade levels behind where they should be.

- In 2010 nationally, 46.3% of all children in Std. V could not read a Std. II level text. This proportion increased to 51.8% in 2011 and further to 53.2% in 2012. For Std. V children enrolled in government schools, the percentage of children unable to read Std. II level text has increased from 49.3% (2010) to 56.2% (2011) to 58.3% (2012).
- For all children in Std. V, the major decline in reading levels (of 5 percentage points or more) between 2011 and 2012 is seen in Haryana, Bihar, Madhya Pradesh, Maharashtra and Kerala. Even private schools in Maharashtra and Kerala, with a large proportion of aided schools, show a decline in reading ability for Std. V.
- The percentage of all children enrolled in Std. III who cannot read a Std. I level text has increased steadily from 53.4% (2009) to 54.4% (2010) to 59.7% (2011) to 61.3% in 2012. For children enrolled in government schools, this figure has increased from 57.6% in 2010 to 64.8% in 2011 to 67.7% in 2012.

4. 2012 was the year of mathematics. But it has been a bad year for basic arithmetic for children in India.

- In 2010, of all children enrolled in Std. V, 29.1% could not solve simple two-digit subtraction problems with borrowing. This proportion increased to 39% in 2011 and further to 46.5% in 2012. Barring Andhra Pradesh, Karnataka and Kerala, every major state shows signs of a substantial drop in arithmetic learning levels.
- Comparing the cohort of children who were in government schools in Std. V in 2011 with the cohort in Std. V in 2012, there is evidence of a more than 10 percentage point drop in the ability to do basic subtraction in almost all states. Exceptions are Bihar, Assam and Tamil Nadu where the drop is less; and Andhra Pradesh, Karnataka and Kerala where there has been either improvement or no change from 2011.
- The proportion of all children enrolled in Std. V who could not do division problems has increased from 63.8% in 2010 to 72.4% in 2011 to 75.2% in 2012. In rural India as a whole, two years ago about two thirds of all children in Std. V could not do simple division. In 2012 this number is close to three fourths.
- Himachal Pradesh, Punjab, Haryana, Chhattisgarh, Madhya Pradesh, Gujarat and Maharashtra are all states where the cohort in Std. V in 2012 seems to be substantially weaker than the cohort in Std. V in 2011. In the southern states, the situation is unchanged from 2011 except in Kerala where there is a significant improvement.

5. ASER 2012 assessed basic English.

- In ASER 2012, children were given a set of simple English reading and comprehension tasks. Across rural India, 48.9% children enrolled in Std. V could read English words or more, and 22.5% could read simple English sentences. Among all children enrolled in Std. VIII, 47% could read sentences. Of those who could read words or sentences, well above 60% could convey the meaning in their own language.

6. Private inputs into children's education, such as private schooling and private tutoring, are widespread. And their influence on children's learning outcomes is substantial.

- Whether enrolled in government schools or private schools, across rural India in the elementary grades (Std. I-VIII) about a quarter of all children also go to paid private tutors.
- Another way to think about private inputs into education is to categorize children into four groups:
 1. Children in government schools who do not go to private tutors;
 2. Children in government schools who go to private tutors;
 3. Children in private schools who do not go to private tutors; and
 4. Children in private schools who go to private tutors.

In 2012, the above four groups comprised 54.5%, 18.8%, 20.7% and 6% of all students in Std. V. Children in categories 2, 3 and 4 - amounting to about 45% of all children in Std. V in rural India - receive some form of private input into their education, either in the form of schooling or tuition.

- The influence of additional inputs in the form of tuition on children's ability to read or to do arithmetic is clear. Whether enrolled in government schools or in private schools, children receiving this additional support have better learning outcomes than those who do not.

7. The proportion of small schools is rising in India.

- A total of 14,591 schools were visited during ASER 2012. Of these about 60% were government primary schools with classes up to Std. IV or V and the rest were upper primary schools which had primary sections.
- The proportion of government primary schools with enrollment of 60 or fewer students has increased over time. In the last 3

years, this figure has increased from 26.1% in 2009 to 32.1% in 2012.

- The proportion of children in primary grades who sit in multigrade classrooms is also rising. For Std. II, this number has gone up from 55.8% in 2009 to 62.6% in 2012. For Std. IV, it has risen from 51% in 2010 to 56.6% in 2012.

8. School facilities show improvement over time.

- Based on RTE norms, the pupil teacher ratio shows improvement. In 2010, the proportion of schools meeting these norms was 38.9%. This number has risen to 42.8% in 2012.
- 73% of all schools visited had drinking water available. However, just under 17% did not have drinking water facility at all. A water facility was available, though not usable in the remaining schools.
- The proportion of schools without toilets has reduced from 12.2% in 2011 to 8.4% in 2012 and the proportion of schools with useable toilets has increased from 47.2% in 2010 to 56.5% in 2012. Approximately 80% of schools visited had separate provision for girls' toilets. Of schools which had this separate provision, close to half had useable girls' toilets, as compared to a third in 2010.
- The mid-day meal was observed being served in 87.1% schools that were visited.

The status of implementation of RTE Act in state of Uttarakhand

The following table shows implementation of 25% quota in private schools, implementation of the norms & standards as per the schedule of the Act, constitution of School Management Committees in government and government aided schools, and vacancy and recruitment of teachers.

Right to Education Act, 2009 : Universalising Elementary Education

| RTE COMPLIANCE | | | | |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------|-----------------------------|---------------------|-------------------|
| RTE SCHEDULE ITEMS | STATE FIGURE | BEST IN CLASS | WORST IN CLASS | ALL-INDIA AVERAGE |
| Pupil-Teacher Ratio | 22 | 11 (Sikkim) | 59 (Bihar) | 30.0 |
| (Percentage Schools complying with the particular norm) | | | | |
| Drinking Water Facility (2011-12) | 95.5 | 100 (Delhi & Tamil Nadu) | 60 (Meghalaya) | 94.5 |
| Toilets (2011-12) | 95.4 | 100 (Delhi) | 52 (J&K) | 41.0 |
| Toilets for Boys | 93.1 | 100 (Delhi) | 50 (J&K) | 84.7 |
| Toilets for Boys which are functional | 63.0 | 99 (Delhi) | 22 (Andhra Pradesh) | 51.5 |
| Toilets for Girls | 77.6 | 100 (Gujarat) | 33 (J&K) | 55.4 |
| Toilets for Girls which are functional | 82.2 | 99 (Delhi) | 47 (Andhra Pradesh) | 58.2 |
| Boundary Walls (2011-12) | 81.0 | 98 (Delhi) | 14 (Tripura) | 82.9 |
| Playground (2011-12) | 56.9 | 80 (Delhi) | 30 (Odisha) | 42.8 |
| Kitchen Shed (2011-12) (Govt. & Aided Schools) | 53.7 | 92 (Tamil Nadu) | 2 (J&K) | 41.0 |
| Library (2012) | 82.1 | 97 (Himachal Pradesh) | 12 (Manipur) | 76.1 |
| Source: | (1)DISE Survey 2011-12; (2) ASER State Report | | | |
| TEACHERS | | | | |
| Number of Teachers | 74,498 | ALL-INDIA AVERAGE (2011-12) | | |
| Percentage of teachers in Govt. Schools | 59.4 | 64.1 | | |
| Percentage of teachers in Aided Schools | 3.8 | 8.0 | | |
| Percentage of teachers in Unaided Schools | 34.2 | 24.6 | | |
| Percentage of teachers in Unrecognised Schools | 2.01 | 2.7 | | |
| Source: | DISE 2011-12 | | | |
| Note: Total may not add up because of missing values or rounding of figures | | | | |
| 25% QUOTA IN PRIVATE SCHOOLS | | | | |
| Total seats available | NA | | | |
| Total seats filled | NA | | | |
| Numbers of schools reimbursed | NA | | | |
| Per-child cost (per child per month)(in Rs.) | 1,383 | | | |
| Source: | NA | | | |
| SCHOOL MANAGEMENT COMMITTEE | | | | |
| No. of Schools | 17,760 | | | |
| No. of SMCs constituted | 17,760 | | | |
| Source | 1) Unstarred Question No. 2065 Answered On 5.12.2012, Lok Sabha | | | |

Lacunae of the RTE Act, 2009

Even a cursory examination of the Act shows some glaring shortcomings. Three years since the passage of the Right of Children for Free and Compulsory Education Act (RTE), an ever increasing number of children have access to education. Yet, a large and growing amount of data points to the fact that student learning levels are unacceptably low, and that improving schooling inputs have had a very limited impact on improving learning outcomes. Thus, the RTE's focus on inputs to education rather than on learning outcomes of students may ensure that children are in school, but is unlikely to result in them getting a meaningful education.

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 of six to fourteen remain out of school and there's a shortage of 508,000 teachers country-wide. The act has been criticized for being hastily-drafted, not consulting many groups active in education, not considering the quality of education, infringing on the rights of private and religious minority schools to administer their system, and for excluding children under six years of age.

With RTE's enforcement deadline expired on March 31, 2013, I would like to raise some core concerns around the Act's enforcement so far and share some possible solutions:

- 1. Children below six years are not covered :** It covers only children in the age group between and 14, clearly excluding and violating the rights of the 0-6 and 14 to 18 year olds. This problem can be traced to the 86th Amendment, 2002 to the Constitution India and its Article 21A, which defines the age. There is no security for providing education to the child up to the age of six years. Section 11 of the Right of Children to Free and Compulsory Education Act, 2009, merely says- "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." Thus provisions of Article 45 of the Constitution and Section 11 of the Act 35/2009 are directory and in the absence of free and compulsory education to the children between the age of three to six years, the object of Article 21-A and the Right to Education Act, 2009 cannot be achieved.

It is imperative that the 86th Amendment should have been re-amended to correct this anomaly.

- 2. Problem of child labour :** In order to cope with the burgeoning problem of child labour, it is important to ensure that children below the age of six are also brought within the targets of the Act. It is a

social reality that children are employed from a very early age, in various circumstances within and outside their homes. Therefore it is not sufficient that the right be guaranteed only from the age of six, and must widen its scope to ensure the mitigation of child abuse in formative years. In fact, the Act makes no reference to the Child Labour (Prohibition and Regulation) Act, 1986 and there is no categorical statement which prohibits the employment or engagement of children, which might hinder their prospects of education.¹⁴

Therefore, the provisions of RTE Act must be synchronized with the Child Labour (Prohibition and Regulation) Act, 1986.

3. **There is still no focus on learning outcomes in the RTE:** In recent speeches our Hon'ble Ministers of MHRD have acknowledged the need to shift the focus to quality of education. However, the effort to provide a free and compulsory education that is also of high quality requires learning outcomes to be at the centre of every policy for real results.

Therefore the Centre and State Governments to be called upon to view RTE's enforcement through a lens of learning outcomes, and make it a fundamental goal to ensure that all children in India reach well specified learning goals over the next five years.

4. **Large number of low-fee private schools irrespective of their performance on learning outcomes face closure:** Enrolment data across the country shows that government schools are losing students as parents opt to send their children to low-fee private schools. However, many of these private schools face closure from April 1, 2013 if they fail to comply with infrastructure and teacher salary norms, which is completely counter-productive because these 'input-based' markers of school quality are not correlated with quality of learning outcomes.

I therefore call for an approach to private school regulation based on transparency, and disclosure of audited performance metrics as

14. Renu Singh, The Wrongs in the Right to Education Bill, The Times of India, <<http://timesofindia.indiatimes.com/home/education/The-wrongs-in-the-Right-to-Education-Bill/articleshow/4742600.cms>>, 6 July 2009 [Last Accessed on October 28, 2013].

opposed to inputs. The approach outlined in Gujarat's Model Rules of recognizing private schools based on meeting performance standards is a path-breaking model to follow.

5. **25 percent reservation needs more to be effective:** Section 12 of RTE mandates 25 percent reservation in unaided schools for children from economically weaker section and disadvantaged groups. This landmark mandate provides an opportunity to parents and children from these marginalized communities to access schools of their choice, and will also reduce socio-economic stratification across schools.

I therefore call for focused implementation of this clause with special emphasis on parents becoming aware of their right to this option, schools adopting best practices in integrating classrooms (with government-funded support from NGOs), and governments clarifying and simplifying the application and admission practices and ensuring timely and adequate reimbursement to private schools. The government should reimburse families of children under the 25% reservation for 'out of pocket expenses' such as books, uniform etc.

6. **SMCs need capacity building support:** The formation of School Management Committees (SMCs) is the RTE's central provision to increase the accountability of teachers and schools to communities. Well-implemented SMCs can develop effective school development plans and monitor various aspects of school functioning such as teacher and student attendance, student learning outcomes, and addressing relevant infrastructure needs. Unfortunately, the implementation of SMCs has been uneven across states.

I therefore highlight an urgent need to find models that work and replicate them so that SMCs can become a powerful tool for communities to ensure that their children receive a quality education.

7. **Need for increasing the number of qualified teachers:** The Pupil-Teacher Ratio proposed by the RTE, is likely to overwhelm the already strained teacher pipeline as an additional 12 lakh teachers will need to be recruited and trained. Several states will be stretched to meet the March 2015 deadline for teacher certification.

I call for innovation in teacher education, the use of technology for scale and for the creation of alternative pathways into the teaching profession so that we can meet the goals of certification without compromising quality.

- 8. Need to improve evaluation and assessment tools:** The continuous and comprehensive evaluation (CCE) system, if used appropriately, is an effective tool for teachers to document the progress of the children in their class. However, CCE does not provide data on a systemic level that allows for measurement of student progress.

I therefore call for regular, independent monitoring of children's learning outcomes through standardized assessments that do not add pressure to children and teachers but do produce meaningful and measurable data.

Conclusion and suggestions

RTE Act is an excellent initiative on the part of the law makers but remembering that it is easier to take a horse to water, the Act will have more teeth if the grey areas in the legislation are effectively addressed by the legislature. Despite the flaws in the RTE Act, if the Act properly implemented most of sacrosanct goal of RTE can be achieved. In order to meet the challenges and surmount the hurdles that stand in the way of implementing Right to Education Act, it is needful to concentrate all efforts with full dedication and commitment. Not only the central and state governments but the nation as a whole should take responsibility in this regard. Most well-meaning legislations fail to make significant changes without proper awareness and implementation. Schools need to be made aware of provisions of the 25 per cent reservations, the role of SMCs, and the requirements under the Schedule.

The RTE has created a powerful vision of education for all of India's children. Today, all states and union territories have notified their rules and addressed the provisions of the Act in accordance with their needs. The next ten years will see the largest ever number of citizens in the school system at any point in Indian history (or future), and it is critical

that this generation that represents the demographic dividend be equipped with the literacy, numeracy, and skills needed to participate fully in a rapidly modernizing world.

There exists a need for greater coordination amongst different agencies and functionaries involved in this task. To overcome population pressures and budgetary constraints, cost effectiveness and accountability must be ascertained at every level. Let the government and the private sector come together to finally give meaning to our fundamental right of good quality elementary education for all. Community participation and support can make marked difference in achieving this goal. Efforts should be focused on qualitative improvement of the whole programme. It is now time to take the next step in fulfilling the fundamental promise to Indian children that they will truly get an education and not just access to schools. We should make learning outcomes an explicit goal of our education policy and invest in regular, high-quality and independent measurement of learning to monitor our progress vis-a-vis this goal. And finally, we must also continue to participate in international benchmarking assessments to track our progress as we aspire to ensure that Indian children are not left behind those in the rest of the world.
