

Political, Social and Legal Dimensions of Right to Education In India

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Abstract

The Government. of India passed Right to Education Act, 2010. The passing of this legislation is a significant step in the development of India as a country. However, mere passing of a legislation is not an answer to the problem. It is necessary for us to take care of implementation of legislation as well. For this purpose, significance of right to education, its political, social and legal dimensions and historical perspective needs to be examined. This article aims at critical analysis of Right to Education Act, 2010 and also gives suggestions for effective implementation of the Act.

[A] INTRODUCTION

Education particularly the right to primary education is considered to be a very significant aspect of development of any country in the world. Education and Human Rights whether they be Civil, Political, Social, Economic or Cultural have a direct relation. The Universal Declaration of Human Rights, 1948 states, "Education shall be directed to full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religion groups and shall further the activities of the United Nations for the maintenance of peace". The right to education is therefore now part of international obligation of India, as India has accepted the

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aforesaid declaration. The declaration which is considered to be a common standard for all nations and all people to achieve emphasizes on a close link between human rights and education.

Every election in India goes to show that, the elections are held on the basis of caste, communal politics and self interest. Corruption and criminalisation of politics has come to stay in this country. One of the main reasons for this state of affairs is, lack of education of our voters.

Poverty Inequality and Illiteracy are very closely related to each other. In India, education and development has shown a close link. For example, the States of Rajasthan, Bihar and Utter Pradesh have shown a low literacy rate and, therefore, are considered to be socially and economically backward as compared to certain other States in the Country.

Literacy especially literacy amongst women have a close nexus to control of population.

The places where there is high illiteracy rate show a wide spread system of child labour.

Universalisation of Education strengthens democracy, reduces fundamentalism and gender discrimination.

Education leads to overall human development. It gives self confidence to stand up and speak for yourself, breaks sex discrimination leading to social revolution.

[B] POLITICAL, SOCIAL AND LEGAL HISTORY OF RIGHT TO EDUCATION IN INDIA

a) Pre Independence Period :

The Pre Independence Period in India can again be divided into three parts :-

- i) Pre British Period – In the Pre British Period casts system was prevalent in this country. Education was therefore restricted only to upper caste.

ii) British Rule – British created an education system in India only for the purpose of creating a beurocracy for administering British India. They therefore never intended to universalize education to masses in India. Infact, education to masses would have affected British rule and would have challenged the same much earlier and faster.

It is significant to note here that some of the princely states like Kolhapur, during the time of King Shahu [1874-1922] had legislations for free and compulsory education.

iii) Freedom Struggle – In Freedom Struggle a number of leaders including Mahatma Gandhi, advocated universalisation of education in India. In Maharashtra Mahatma Gandhi, Karmveer Bhaurao Patil played pivotal role in Right to Education and education for women.

b) Post Independence Period –

[I] Period prior to 86th Constitutional Amendment making Right to Education a fundamental right.

a) Preamble to the Constitution of India

I am quoting below preamble to the constitution of India for ready reference–

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the _2[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

The thread of education runs through the Preamble and Constitution as Democracy, Justice, Freedom and Equality cannot be achieved without education.

b) Article 45 of Constitution of India - Provision for Free & Compulsory Education for Children, ' provided,

"The state shall endeavour 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 14 years".

Art. 45 is part of directive principles of our Constitution Directive Principles of state policy are not justifiable. No one can get directive principles enforced in a court of law like a fundamental right. However, Directive Principles as stated by Dr. Babasaheb Ambedkar serve as a guiding light for the govt and the citizens. In fact he expected that at the time of election people would vote to a particular party or particular person on the basis of their commitment to Directive Principles. At any rate Directive Principles can be used to interpret and give meaning to fundamental rights. The Supreme Court has done so in many of its Judgments.

c) Article 21- Protection of Life and Personal Liberty – provided

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

Art. 21 has been given a wide meaning by the Supreme Court in various Judgments starting with Maneka Gandhi.²

The Supreme Court has interpreted life as comfortable life and therefore whatever is necessary for a person to live a comfortable life is made part of right to life. Under Article 21 the Court has thus included all Environmental rights, right to privacy, right of under trials etc.

(d) Supreme Court and Right to Education :-

"In Mohini Jain V/s. State of Karnataka in the year 1992, the Supreme Court observed, "Without making the Right to Education under Article 45 of the Constitution, a

reality, the fundamental rights under Chapter 3 would remain beyond the reach of large majority which are illiterate".

"In Unnikrishnan V/s. State of Andra Pradesh, (1993) Justice P. Jeevanreddy observed;

"The citizens have a fundamental right to education. The said right flows from Article 21. The right of education which is implicit in the right of personal liberty guaranteed by Article 21 must be construed in the light of directive principles in Part 4 of the Constitution. The democracy is one where education is universal, where people understand what is good for them and the nation and people know how to govern themselves The right of education in the context of Article 45 and Article 21 means :

Every child / citizen of this country has a right to free education until he completes the age of 14 years.

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. The time limit is found only in Article 45".

[II] Constitutional 86th Amendment 2002 adding Article 21A, Substituting Article 45 & amending Article 51A, making Right to Education a fundamental right.

It took about 64 years of Independence and 10 years of Supreme Court Judgment for our nation to recognize right to primary education as fundamental right. In the year 2002 the Parliament passed following amendment to the constitution by adding Art. 21 A:-

"21A. The State shall provide free and compulsory education all children of the age of six to fourteen years in such manner as the State may, by law, determine."

The Parliament also changed Art 45 and added Art. 51A(j) as under :-

"45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

Amendment of article 51A.- In article 51A of the Constitution, after clause (j), the following clause shall be added, namely:-

"(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

[III] Right to Education Act, 2010:-

It took another 8 years for Parliament to pass legislation for enforcement and implementation of right to primary education. The Right to Education Act, 2010 came in force from April 1st 2010.

Our Prime Minister Dr. Manmohan Singh on this occasion stated :-

"I am what I am today because of Education. I want every Indian child, girl and boy to be touched by the light of education". India became one of 135 countries to make education a fundamental right of every child.

THE SALIENT FEATURES OF RIGHT TO EDUCATION ACT, 2010 ARE AS UNDER:

1. Child means a male or female of the age of 6 to 14 years.
2. Elementary Education means education from 1st Class to 8th Class.
3. School means any recognised school and includes
 - (i) Government and Local Authority: Free and Compulsory education to all children admitted therein.
 - (ii) Aided Private : Free and Compulsory education to such proportion of children admitted therein as its Annual Recurring Aid bears to its Annual Recurring Expenses subject to a minimum of 25 %.
 - (iii) Specified Category like Kendriya Vidyalaya, Navoday Vidyalay, Sainik School etc & Unaided Private Schools : to admit in Class 1, to the extent of at least 25% of the strength of that class children belonging to weaker section and disadvantaged group and provide free and compulsory elementary education which shall be reimbursed in such manner as may be prescribed.

Supreme Court in a recent order has insisted on 25% seats in private school for the poor.

[Source : Times Of India, Dec 22,2010]

4. Every child shall have a right to free and compulsory education in a neighborhood school, till completion of elementary education :- Free for Children, Compulsory for State.
5. The Central Government and the State Governments have concurrent responsibility for providing funds for carrying out the provisions of the Act.
6. No child shall be subjected to physical punishment or mental harassment . Whoever contravenes this provision will be liable to disciplinary action.
7. Within six months from the date of commencement of the Act, pupil – teacher ratio to be maintained as per Schedule, to the Act.
8. No teacher shall be deployed for any non-educational purpose other than population census, disaster relief duties and duties relating to elections.
9. No teacher shall engage himself or herself in private tuition.
10. No child shall be required to pass any Board examination till completion of elementary education.
11. The Act mandates improvement in quality of Education, adequate professional degree to school teachers within five years, school infrastructure in three years.
12. All screening of pre primary children, interview of parents, donation or capitation fees are banned and are made an offence, under the Act.
13. There is also provision for special training for school drop outs to bring them at par with the students of same age.
14. The Act provides for a special organization, the National Commission for protection of child rights an autonomous body set up in 2007, to monitor implementation of the Act, together with the commissions to be set up by the States.

CRITICAL ANALYSIS

Though much awaited the Act is welcome as it is never too late to begin. However the Act can be critically analysed on the following lines:-

1. The Act gives responsibility to Central as well as State Governments to share funding for its implementation . The same has been debatable due to the politics of the matter and also due to lack of will in the part of both Central and State Governments to make education a top priority. In spite of the report of Kothari Commission advocating rise in 3 % funding by the Central Govt, not much has been done on this count by Central Govt. It is expected that contribution by the central govt. in implementation of the act would be 65% while by the state would be 35%. The estimates shows that an amounts of Rs. 35,000/- crores would be necessary every year for implementation of the Act.
2. The implementation of the act requires infrastructure and about 5 Lakh additional teachers. The act has kept an ideal teacher pupil ratio of 30:1 which is not easy to achieve.
3. The Act does not mention mid day meal schemes. In a PIL filed by Civil Liberties Organisation, the apex court has observed that without mid day meals rural and poor children cannot come and stay in schools.
4. The Act does not address the problem of dropout form schools.
5. Fundamentally the act aims at free education. However, it is not clear as to what is free education. If free education means only exemption from school fees the following statistic would be eye opener :- A study in Economic and political weekly shows that out of Rs. 5 of education expenses only 20 paise is spent on school fees. The question therefore would be where would remaining Rs. 4.80 come from.
6. The Act makes it compulsory to reserve 25 % seats for weaker and disadvantaged group in a neighborhood for aided, private and specific category

schools. It would be debatable ask to determine weaker, disadvantaged group in a neighborhood .

7. Recent survey by an NGO Pratham records Overall decline in students ability to do basic mathematics and only 53.4 % of children in Class V could read class II level text books. and Decline in teachers attendance in Govt. Schools, leading to big increase in enrolment in private schools and in private tuitions. [Source : Times Of India February 16, 2011.]
8. There is no clear mention of certain socially and educationally backward classes like Nomadic Tribes and Denotified Tribes in the Act.
9. Experimental schools and Home schooling is ignored, by the Act.
10. Some minority educational institutions have challenged the provisions of the Act as being violative right of minorities of under Art. 30 of the Constitution of India. The Supreme Court at present is seized with the matter.

[F] SOME STATISTICS

- I. Out of Two Hundred Million children in the age group of 6 to 14 barely half manage to get even eight years of elementary education.
- II. Almost 16 Crore children in the age group of 0 to 6 - ??????
- III. Literacy rate in India lower than many Asian, African and even Islamic countries.
- IV. A committee set up to study the funds requirements and funding initially estimated that Rs 171,000 crores or 1.71 trillion (US\$38.2 billion) would be required in the next five years to implement the Act, and in April 2010 the central government agreed to sharing the funding for implementing the law in the ratio of 65 to 35 between the centre and the states, and a ratio of 90 to 10 for the north-eastern states. However, in mid 2010, this figure was upgraded to Rs. 231,000 crores, and the center agreed to raise its share to 68%. There is some confusion on this, with other media reports stating that the centre's share of the implementation expenses would now be 70%. At that time rate, most states may not need to increase their education budgets substantially.

K] SUGGESTIONS:

1. The ceiling of age 6 needs to be removed as it is against the Judgment of Supreme Court. Former, Art. 45 and Judgments of the Supreme Court in Mohani Jain and Unnikrishnan no were lay down the ceiling age of six. Art 21A as well as the provisions of the Act putting the ceiling age of six is therefore susceptible to constitutional challenge. Medical Science has shown that the mental growth of a child is very fast upto the age of 6. It is therefore against scientific base that education should start at the age of 6 when the same should ideally start at the age of 3.
2. It is not at all enough to give right to education the right should be that of meaningful, quality and cheerful education. Our Governmental and Municipal schools are pathetic in terms of infrastructure and the commitment of teachers. It is our experience that children do not like to go to schools and invariably cry before going to schools. Apathy to education of children is so much that even in last 64 years of independence we have not even changed the colour of our back board from black to any other colour which would attract children. It is common knowledge that children do not like black and white but like colours. They like drawing, singing, dancing and playin, which our teachers invariably discourage. We lack teachers who would made teaching an enjoyable experience for our children. We therefore need to work on school being converted into places of cheerful education for children. This has given rise to opening of increasing number of private schools in the country.

On the one hand it is seen that there is apathy in Govt, local Authority and Aided schools while on the other hand unaided private schools which a maintain good pupil teacher ratio, infrastructure better teachers and which aim at innovative and creative teaching are in demand. Unfortunately, this may lead to further inequality in our society.

In the words of M.C. Chagla (Ex. Chief Justice of 1st Independent Bombay High Court) as Education Minister 1964:

“Our founding fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding They meant that real education should be given to our children between the age of 6 and 14”

3. Use of computers, Internet access, Web cams, video conferencing certainly aid in universalisation of quality education in the country.
4. Many youngsters from IIT, NGO's ----- by actor Amir Khan etc are doing commendable work by going to poor areas of this country for teaching our young children. Such efforts should be encouraged.
5. It is our experience and as stated by Ex- Prime Minister Rajeev Gandhi, out of Re. 1 which leave Delhi for particular purpose only 25 paise is actually used for the purpose. There is about 75% loss of funds in the process, due to various reasons of corruption , beurocratic expenses etc. To deal with the same, therefore it is thought that instead of giving funds to Govts, local authorities or schools it would be advisable to give “ Education Vouchers” to parents. The system of education voucher is used in U.S and Sweden with success. In Delhi in one neighborhood, the same system is successfully used on experimental basis by Centre for civil society with good results.

Education vouchers will give parents a choice of schools as the parents would use the voucher at the schools of their choice. It will increase competition among school to attract students and give quality education. The teachers salary would be paid by parents (making teacher more accountable) . It will also be in tune with the present era of Public Private Partnership (PPP).

6. Sarva Shiksha Abhiyan (SSA) launched in 2001 by central Govt would require a minimum payment of Rs. 1700/- per child per annum.

7. Encourage senior citizens, retired teachers, house wives to support teaching.
8. Encourage experimental schooling e.g. Aksharnandan in Pune, Srujan Anand in Kolhapur.
9. Strong and Powerful parent teacher Association named as School Management Committees in the Act for monitoring meaningful, quality and cheerful education, is necessary.
10. Framing of rules under the Act by the States is necessary.
11. Politics that recognizes, education as a most important right of the citizen, is call of hour and nation.
12. We must never forget that investment in Education is an investment for the development of the Country.

Epilogue:

It is heartening to note that the census of India 2011 records a 9.2% rise to reach 74.04% of literacy rate. Interestingly, literacy rate improved sharply among females as compare to males. The rate of effective literacy rate for males rose by 6.9% while it increased by 11.8% for females.

It is also welcome step that the Finance Minister while announcing the budget for 2011-12 has increased the budgetary provision for education to 52,057 crores and has provided for 15,000 crores for Sarva Shikshan Abhiyan.

It is said that instead of blaming darkness, light a candle wherever you can and that a journey of 1000 miles always starts with the first step.

Conclusion :

To conclude, building up public pressure and awarness is a need of the day for implementation of Right to Education Act, 2010.

End Notes :

1. Maneka Gandhi Vs Union of India , AIR 1978 SC 597 : (1978) 1 SCC 248: A case involving Maneka Gandhi's passport being seized led to SC introducing the concept of "due process" in our jurisprudence. The court held the mere fact that laid down procedures were followed before depriving Maneka of her passport did not amount to due process having been followed. It said due process – meaning that the law is "right, process – meaning that the law is "right and fair" – must be shown where fundamental rights are curtailed".

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