

Right to Education Act 2009 doomed to failure- Why?

(A talk by Chitta Behera at State level Conference on the Right to Education Act, 2011: Challenges & Opportunities on May 28, 2011 at Red Cross Bhavan, Bhubaneswar orgd by Janata Vikash Manch)

The Right to Education Act, properly speaking Right of Children to Free and Compulsory Education Act 2009 is doomed to failure, not because some eminent educationists like Dr. Anil Sadgopal predicted so since its inception, but because various state actors supposed to be its prime movers have by and large abdicated their responsibility to operationalise it in their respective domains. As is well known, no Act can be implemented without being followed up by the necessary Rules made by the appropriate Government to give effect to its provisions. Though the Act was declared by a notification dated 19 Feb 2010 to be enforced w.e.f. 1st April 2010, no Rules Central or State level was found in place on that crucial day. The Central Rules was notified on 9th April 2010, while as per the official release made at the end of the first year of the Act, as of 1st April 2011 only 9 out of 29 States (such as Andhra Pradesh, Arunachal Pradesh, Chhattisgarh, Haryana, Madhya Pradesh, Manipur, Orissa, Rajasthan and Sikkim) notified their Rules and only 2 out of 6 UTs (namely, A & N Islands and Chandigarh) adopted the Central Rules. Thus, legally speaking the Act is non-existent in more than two thirds of India's States/UTs.

Another glaring instance which puts the RTE Act on the spot in a statutory sense is the absence of a State Commission for Protection of Child Rights as of now in all but 11 States namely Assam, Bihar, Chhattisgarh, Delhi, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Mizoram, Orissa, Rajasthan and Sikkim, again less than a third of India. As per Sections 31 and 32 of RTE Act such a Commission ought to act as the apex level monitoring and grievance redressal authority in respect of RTE implementation in a State. Even where such a Commission is functioning, be it at national level or in a state, it is too poorly staffed and financed by their respective Governments to undertake even a hundredth fraction of its grandiose job profile envisaged under the RTE Act.

Following the circulation of model State Rules by the Centre in February 2010, a hope had been aroused among knowledgeable circles that thanks to RTE Act, we henceforth would have at least one primary school within 1 km and one upper primary school within 3 km of each neighborhood all over country. For instance, the Rule 6 of Orissa Right of Children to Free and Compulsory Education Rules, 2010 notified on 27.9.2010 mandated the State Government and as well local authorities to set up such schools so as to fulfill the prime goal of the Act enshrined in its Section 3(1) which reads, "Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education". But ironically enough, the selfsame Government of Orissa only after a few months, to be exact 3 months and 20 days, effected an amendment to State RTE Rules on 17 January 2011, which inter alia stated, "...where no school exists within the area or limits of neighborhood the Government/ local authority shall make arrangements, such as free transportation, escort facilities and residential facilities, for providing Elemental Education in a school, in relaxation of the area or limits specified in the said rule". It implied that the State Government without having to set up neighborhood schools where they didn't exist, could manage with such cheaper, ad hoc alternatives as transport and escort facilities etc. Thus, a single administrative fiat of the State Government could practically abrogate its obligation to ensure the availability of neighborhood schools as guaranteed under the RTE Act and State Rules made there under.

The Schedule appended to the RTE Act captioned as 'Norms and Standards of a School' had inter alia prescribed 1:30 and 1:35 teacher-pupil ratio for primary and upper primary schools respectively. Section 25 (1) of the Act had categorically mandated, "Within six months from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school". As a matter of fact, such provisions had greatly kindled the hope that the new Act by ensuring the compliance to the prescribed TPR would at once put a befitting end to the chronic malaise of teacher deficit that has ever since plagued our primary

education. However, as irony would have it again, the Central Government issued a guideline on 22nd June 2010, that virtually nullified the above mentioned statutory commitment in respect of TPR. The said guideline suggested to the concerned States inter alia to “rationalize the deployment of existing teachers to address the problems of urban-rural and other spatial imbalances in teacher placements”, which in other words meant unscrupulously abandoning the mandatory TPR as provided under the Act.

Another debilitating measure that has afflicted the implementation of RTE Act all through has been the poor budgetary provision by the Centre itself. As per the revised estimates drawn up by Expenditure Finance Committee (EFC) of Ministry of Finance on 28 July 2010 after factoring in teachers' salaries under the existing Sarva Shiksha Abhiyan pattern, a staggering total of Rs 231,000 crore was needed for next five years. Of this, Rs 24,000 crore would come through the Finance Commission's allocation to state governments. The remaining Rs 207,000 crore is to be shared by the Centre and the states based on a 65:35 formula. Leaving aside the lingering plea for a larger Central share to the extent of 90% of the total, advanced by most state governments struggling with ballooning budget deficits, the Central share at 65:35 formulae comes around to Rs.34,000 crore for the year 2011-12. But the Ministry of Finance in the annual budget passed in Feb last allocated only Rs.21,000 crore to composite Sarva Siksha Abhijancum-RTE programme, accounting for as much as Rs.13,000 crore shortage from the required amount estimated by its own Committee. Under the circumstances, the moot question arises, how the Centre which is itself starved of funds to meet its estimated share can mobilize the States to enforce the RTE Act in their respective domains?

Above all, the RTE Act 2009 is in conflict with another well known law of the land i.e. Child Labour (Prohibition and Regulation) Act 1986. Contrary to the popular notion, this Act in its Section 7 allows an employer to engage a child in 6 hours of wage-labour in day-time with an hour kept for rest in between, albeit in non-hazardous occupations. Thus, while one law categorically allows a child to spend 6+1 hours of a day as wage-labour, how can another law obligate the State to ensure the attendance of such child in a neighborhood school to receive free and compulsory education? Even the duty of the parents added to the list of Fundamental Duties under Article 51A of the Constitution as per 86th Amendment 2002 i.e. ‘to provide opportunities for education to his child’ seems to be bereft of any substance in view of the prevailing child labour law which woefully legitimizes the child labour.

It may be recollected that unlike some recently enacted laws like Right to Information Act 2005 or Forest Rights Act 2006 which came about as culmination of prolonged, country-wide advocacy campaigns by the civil society, the drafting process for RTE Act 2009 was virtually a monopoly of the bureaucratic class, who had also their cunning hand behind the insertion of a peculiarly worded Article 21-A in the Fundamental Rights chapter of the Constitution as a sequel to the 86th Amendment 2002. The said Article, which has been hailed by some as a radical dispensation for the simple reason that it made elementary education a fundamental right of every child, however runs as follows: “The State shall provide 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.” Read carefully, does it sound a right at all, let alone a fundamental right? The qualifying provision in the Article that allows the manner of imparting education to be determined by the State virtually dilutes, nay negatives the right of a child to receive any quality education whatsoever. As a matter of fact, using the rationale of the above referred Article 21-A both Centre and States have already brought about some dilutive and dilatory measures, as already discussed, to denude the RTE Act of its grandiloquent promises. Thus the villain of piece obstructing the materialization of the free and compulsory education in a real sense seems to be securely saddled in the absolute discretion bestowed to the State in the so-called revolutionary Article 21-A of the Constitution.

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[Orissa-Education-Forum] Re: [focusorissa] Right to Education Act 2009 doomed to failure- Why?

From: ACHYUT DAS achyutdas@gmail.com, Tue, 31 May, 2011, 5:31:37 PM

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Dear Chitta,

Thanks for your excellent analysis and I have the satisfaction of listening to you during your presentation.

The debate on Right to Education Act is raging all these while as people have been divided into several camps. It is a boon or a bane, doomed or glorified, time will determine. But we should have a clear understanding on the shape of things to come.

I think we all should have a common understanding that every child should have access to quality education that will empower him/her and will ensure dignity and freedom. We should understand the accountability aspects as well- both downward and upward. If one child is not going to the school and getting the right education, someone should be held accountable.

We must work towards a system of education which is not promoting discrimination and isolation, division and diversion.

But how do we fight the injustice and inequality perpetuated since the days of our Independence? The country must ensure all citizens the basics now or never.

I know we have several lapses in our constitution as pointed out by you on many an occasion. We have to overcome these lapses somehow and make a fresh beginning. The RTE is perhaps one step forward though not the ideal one. Let us not repeat the lapses.

With your sharp analysis presented, I hope other civil society actors will join the debate by looking at RTE Act afresh.

With best wishes,

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