

WHITHER THE MUCH HYPED RIGHT TO EDUCATION ACT 2009?

If there be any single law in the country which promised so much only to belie it the next moment and all through, out here it is- THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009, or popularly called Right to Education Act, which was published on official Gazette dated 27th August 2009. In scale of deceit and misfeasance it can only be compared to the overambitious but inherently abortive Article 45 in the Directive Principles chapter of Constitution, which was uplifted by 86th Constitution Amendment 2002 to a position of pride i.e. Article 21-A in the Fundamental Rights chapter. Curiously, it had promised way back on 26th January 1950 when democratic and republican Constitution of India was born- “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 fourteen years”. However, one can mark, semantics apart, a big difference between the straight talk that imbued the erstwhile Article-45 and the indecisive construction of its posthumous counterpart i.e. the newly inserted Article 21A (Right to Education) in Fundamental Rights chapter, which reads, “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”. On a careful comparison several striking differences between the two do stand out with their fateful implications for the nation in general and millions of its children in particular. The new dispensation, though embellished now a Fundamental Right, enables the State to bypass not only any definite commitment in terms of time or manner for ensuring universalisation of elementary education but also its obligation, deserving of any civilized nation, for early childhood education for 0-6 age-groups. That is to say, constitutionally speaking, any damn thing the Indian State now does or refrains from doing on the front of elementary education can be justified by the cunningly marshaled crafty phrase “in such manner as the State may, by law, determine”. Needless to say, any perceptive commentator has to keep this historical and constitutional backdrop in mind while partaking of any discourse on nuances or progress of RTE Act 2009.

Coming to the windy trajectory that the RTE Act traversed to this day, the whole of the Act, to start with, as if by a fatwa from above, came into force w.e.f. 1st of April 2010 covering the entire country except the State of J&K as per a central gazette notification dated 19th Feb 2010. Theoretically it meant that all the provisions of the Act including the norms and standards of the would-be school envisaged under the Schedule appended to it were in place everywhere across the country on the day of its commencement. However, as the irony would have it, the whole nation including the prime stake-holders of the new law, be they educational administrators, teachers, school managements or parents of the children were then blissfully asleep over it. Then came the notification of Central Rules made on 8th April 2010 as required under Section 38 of the Act, applicable to concerned educational authorities of the Centre and Union Territories. It is worthwhile to mention here that no State came forward voluntarily, as required under the above Section to frame the necessary Rules for operationalising the provisions of the Act in their respective domains. Only after the draft Model Rules for the States were circulated in February 2010 by the Centre along with a favorable hint for sharing of funds between the Centre and States, some states started mulling the implementation of the Act albeit with hesitation and doubts that persist even to date.

More than a precious year on, the implementation of RTE Act across the country, despite a lot of expensive hullabaloo made around it by the Centre, presents today as wretched a scenario as it existed at the moment of its cryptic commencement.

As per the official release ‘Status of implementation of RTE Act, 2009 in States/UTs as on 15.3.2011’(<http://ssa.nic.in/rte/8Status..RTE.pdf>), out of 29 States, only nine (Andhra Pradesh, Arunachal Pradesh, Chhattisgarh, Haryana, Madhya Pradesh, Manipur, Orissa, Rajasthan and Sikkim), that is a little more than one third, and out of 6 UTs only two (Andaman & N Island and Chandigarh) that is one third, have notified the Rules, a statutory obligation under the Act. Interestingly, according to the said release, nothing could be ascertained in this respect from two units, State of Goa State and Union Territory of Dadra and Nagar Haveli.

As regards another mandatory provision of the Act i.e. State Commission for Protection of Child Rights supposed to be in place as the monitoring authority and highest appellate body for grievance redressal as per Sections 31 and 32 of the Act, has as per the above release, been complied with by one-third of the States i.e. only 11 in total, namely Assam, Bihar, Chhattisgarh, Delhi, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Mizoram, Orissa, Rajasthan and Sikkim. Thus, broadly speaking, two-thirds of India still remain outside the ken of RTE Act 2009 in statutory sense of the term- a fact which not only makes this particular law a joke par excellence, but has already cast indelible aspersion on the law-framing caliber of Indians.

Tardy progress in statutory compliance apart, the situation at ground zero remains as unwelcome as before. Even Human Resource Development Minister Kapil Sibal who seems to be fanatically committed to RTE Act from the day one, had to perforce admit to some stark realities afflicting it while releasing the 1st year report card of RTE on 1st April last. Of course calibrating his release with an orchestrated note of optimism, Sri Sibal couldn’t but put on record, "It's unfortunate that 81,50,619 children in the age group of six to 14 are still out of school and there's a shortage of 508,000 teachers country-wide. . . 21 percent teachers were found to be without professional qualification and nine percent schools were with a single teacher. . . only 2.74 lakh classrooms have been provided till now against 14.25 lakh planned within three years". Besides, he also conceded to the lackadaisical approach by the States/UTs in complying the statutory obligation to put the Rules and SCPCRs in place. However, holding on to his shibboleth, Sri Sibal concluded by saying, "This is just the first year, things will be better next year".

A day earlier to the drama of above mentioned official report card, a coalition of civil society organizations called RTE Forum presented a stock taking report on the progress of RTE Act if any achieved during its first year 2010-11. In the stock taking meeting where Smt. Shanta Sinha, Chairperson of the National Commission for Protection of Child Rights was the Chief Guest, Sri Ambarish Rai, spokesperson for the Forum taking a swipe at the official release, commented, "It is a shame that one year after the enforcement of the (RTE) Act we have yet to get off the ground on key provisions. The dream of universal education remains a distant reality." Their report dubbed the official figures to be gross exaggerations or gross underestimations depending on whether the Government sought to hype or hide a fact. For instance, the tall enrolment figures quoted by the Government should be read with caution, since ‘School figures generally depict enrolment and not attendance’. A child might have been enrolled during the last year, but he or she might not have attended any class at all since there is no compulsion for it as a criterion for class promotion under RTE Act (vide Section 16). Similarly, the official figure for child labour is 12.6 million, who are perforce out of school, a fact which renders the official figure of 8.1 million for the out-of-school children a gross underestimation. Moreover, the Stocktaking Report estimates the national shortage of teachers at 1.4 million in contrast to official figure 508,000, with the state of Uttar Pradesh alone requiring 200,000.

According to the above stock-taking report the RTE Act remained a non-starter because of grossly inadequate budgetary provisions attenuated by Centre-states disputes over who would pay for rolling it out countrywide. Previous estimates drawn up by the National University of Education Planning and Administration (NUEPA) - the basis of financial planning for RTE provisions, had pegged the requirement at Rs 171,000 crore. 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 however put the total cost for next five years at a staggering amount of Rs 231,000 crore. Of this 231,000 crore estimate, Rs 24,000 crore will come through the Finance Commission's allocation to state governments. The remaining Rs 207,000 crore will be shared by the Centre and the states based on a 68:32 formula. However, most state governments struggling with ballooning budget deficits are pressing for a larger Central contribution, even to the extent of 90% of the total. But, as if adding salt to the injury, in the Union Budget 2011-12 presented to Parliament on February 28 last, Finance Minister Pranab Mukherjee allocated a mere Rs.21,000 crore to the Sarva Shiksha Abhiyan (Education for All)-cum-RTE programme Rs.13,000 crore short of the HRD Ministry's demand for Rs.34,000 crore which itself is inadequate to meet the share already committed by the Centre. Under the circumstances, consistently low budgetary allocations by the Centre coupled with Centre-State squabbles over the sharing ratio has already marred the implementation of the RTE Act during the last year and if persisting further is sure to nip it in the bud.

CRY (Child Relief and You) a civil society group working on child rights at international level has in a year-end review of RTE progress highlighted certain fundamental snags that dogged its operationalisation ever since. According to them many children still can't go to school simply because there isn't one to go to. 17282 eligible habitations in India do not have a primary school within one kilometre of the habitation. Within the sphere of infrastructure, 1, 48, 696 government schools in India are without a building, 165742 schools without drinking water, and 4, 55, 561 schools without toilets. 1, 14, 531 primary schools are single-teacher schools. The Act has not made any visible dent into such infrastructural deficit during its first year of implementation.

Further CRY observes, "The Act itself says that Local Self Governments should be empowered to play a role in governing education, which is ignored by all but 2 states in the State Rules for the RTE Act". It is interesting to note that a major portion of the allocations to education are earmarked for the Sarva Shiksha Abhiyan (SSA), which is the main vehicle to implement the RTE Act. However, CRY's analysis points to the fact that the Government's allocation to the SSA has increased by only 10.53%, most of which comes from the 2% education cess on central taxes. The allocations for SSA from sources other than Education CESS have gone down from Rs. 7769.10 crore (Revised Estimate 2010-11) to Rs. 7096.15 crore (Budget Estimate 2011-12). Thus, insufficient budget is an issue that plagues RTE implementation all through. Puja Marwaha, CEO CRY draws attention to another crucial gap in the Act. According to her, even though the Act was proclaimed as revolutionary, it practically left out half of India's children comprising those below six and those between the ages of 14 and 18 from its purview.

The Chairperson of NCPCR Smt.Santa Sinha, who is the chief monitoring authority in respect of RTE implementation at national level, has drawn attention to a serious anomaly that exists between RTE Act 2009 and Child Labour (Prohibition and Regulation) Act 1986. As per the Child Labour Act only the employment of child labour in hazardous occupations is punishable as cognizable offense, while its employment in non-hazardous occupations is permissible subject to regulation (vide Section 7). Given such a peculiar provision, a vast bulk of children shall continue to work in various permissible occupations and thereby remain outside the precincts of

education even if it is made free and compulsory for every child under the RTE Act. Under the circumstances, Smt. Sinha has argued for a drastic amendment to the Child Labour Act rendering employment of children in any occupation a cognizable offense.

Besides the RTE Act has been subject to a series of serious challenges in different High Courts and Supreme Court, especially from associations of unaided private schools over the Section 12 of the Act which mandates these schools to keep 25% of its seats reserved for students from weaker and disadvantaged sections. They seem to have justifiably argued that given the Government's obligation to bear only the officially fixed per-pupil expenditure of these children, their parents can ill afford to pay the remaining dues chargeable by the school. Further, in absence of any clear guideline as to what syllabus and evaluation pattern an unaided private school shall adopt in respect of the reserved quota of students, there prevails a lot of confusion among both private schools and implementing officials, as a result of which the above mentioned provision, apparently a dispensation furthering social justice, remains to this day a grand fiasco. With no respite in ever growing parade of court litigations challenging the principles and provisions of RTE Act coupled with weak defense by the concerned Governments, the possibility of the Act being declared ultra vires by the apex court any day in near future can hardly be ruled out.

In a situation where neither Centre nor any State is sincere in giving RTE implementation a fair trial, a deliberate but surreptitious move is now afoot to dilute and defraud the RTE Act of whatever standards and norms it prescribed in respect of various inputs for ensuring quality education. For instance, as per Schedule to the RTE Act, the pupil-teacher ratio for classes 1 to 5 should be 1:30 while for classes 5 to 8 to be 1:35, and the Section 25(1) required all concerned authorities to put in place such PTR as a matter of course. But most of the State Governments complained of the inordinate difficulties faced by them in ensuring the compliance to PTR within 6 months of notification of the Act. Heeding to their complaint, Dept of School and Mass Education, GoI issued a guideline on 22nd June 2010 which largely dilutes the mandatory PTR mentioned in the Schedule. The said guideline suggested to the concerned States 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 means abandoning the mandatory PTR as provided under the Act.

Under the circumstances, the day is not far off when the entire nation comes to grips with the truth about RTE Act, which was brilliantly foreseen by an eminent educationist of the country Anil Sadgopal a few years back, "It is a fraud on our children. It gives neither free education nor compulsory education. In fact, it only legitimizes the present multi-layered, inferior quality school education system where discrimination shall continue to prevail".

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