

Promote co-operative federalism

After the Independence of India, the main challenge was the consolidation of hundreds of states in the Indian Union which was accomplished with great skill, thanks to Sardar Vallabhai Patel. Hence, the problems that the new Republic would face, especially in terms of security and political stability, was foremost in the minds of the framers of the Constitution. Therefore the Art 356 was included.

The action of the governor of Karnataka to recommend the imposition of President's rule in the state and the refusal of the Centre to accept it raises fundamental questions about the role of the governor in state affairs.

The circumstances under which the provision relating to bringing a state under President's rule was included in the Constitution. Art 356 was derived from Sec 93 of the government of India Act, 1935. The governor of a province, if satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the said Act, he could by proclamation assume any or all the powers vested in a provincial authority including the ministry and the legislature. The colonial powers did not trust the ministries and therefore used their powers whenever the occasion demanded.

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It was only after the Supreme Court ruled in the S R Bommai case that the state governments cannot be dismissed when they enjoyed a majority and the right place for testing it was on the floor of the Assembly, there is some application of mind by the Centre before imposing President's rule.

As far as Karnataka, the governor without examining the prevailing political situation, was in a great hurry to recommend imposition of President's rule casting to the wind the clear-cut observation of the Supreme Court: "The power conferred by Art 356 is a conditional power, it is not an absolute power to be exercised in the discretion of the President." Fortunately, better wisdom prevailed in the Central cabinet and it decided not to heed the governor's recommendation.

The issue is whether we need Art 356 six decades after functioning as a democratic republic. Circumstances that prevailed in initial years after independence no longer exist. Three factors stand out. First, India is now a stable democracy as is evident from successful conduct of elections from time to time. Secondly, the emergence of regional parties has ensured that national parties cannot be certain of ruling in states all time or on their own. Thirdly, the emergence of regional leaders even within national parties, as in Karnataka, shows that the central leadership of national parties cannot ignore them and impose their will on the states. Congress for obvious reasons has not recognised this.

It is clear that states have evolved into strong entities and are capable of governing themselves politically. Time has come to do away with Art 356 of the Constitution.

B R Ambedkar said that states are supreme, 'sovereign' in the field allotted to them and in our system no single entity can claim superiority. Ours is a federation and as pointed out by several constitutional scholars, it is only the spirit of 'cooperative federalism' that can preserve the balance between the Centre and the states.



Challenges before Right to Education Act, 2009

By Chitta Ranjan Behera

The Right to Education Act, 2009 properly speaking Right of Children to Free and Compulsory Education 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 by the necessary Rules made by the appropriate government to give effect to the provisions of the Act. 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 were 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, Odisha, 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, Odisha, 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 RTI 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 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 September, 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". The State Government without having to set up neighborhood schools where they didn't exist, could manage with such cheaper and 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 PTR as provided under the Act.

Another debilitating measure that has afflicted

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



the implementation of RTE Act 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 had put the total cost for next five years at a staggering amount of Rs 2,31,000 crore. Of this, Rs 24,000 crore would come through the Finance Commission's allocation to state governments. The remaining Rs 2,07,000 crore is to be shared by the Centre and the states based on a 65:35 formula.

Leaving aside the lingering plea of most state governments struggling with ballooning budget deficits, for a larger Central share to the extent of 90% of the total, the Central share at 65:35 formula 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 Shiksha Abhiyan-cum-RTE programme, making for as much as Rs.13,000 crore short of 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

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, runs however 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, may 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 premises.

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.

Letters to the Editor

After former telecommunications minister A Raja, it's the turn of Dayanidhi Maran to be in the news for all the wrong reasons. It appears DMK's nominees in the Union Cabinet have been systematically looting the government.

Surabhi, Rajajinagar

Yoga Guru Baba Ramdev too has jumped onto the bandwagon and is threatening the UPA government with a 'fast unto death'. He should realize that his actions are actually causing more harm to the anti-corruption movement and may delay the bill further.

Ragini, VV Puram

Bangalore University's decision to introduce an online digital evaluation system is a step in the right direction. By screening and storing answer scripts in computers, the university can steer clear of cases of missing answer sheets or mishandled bundles.

Praveen, JP Nagar