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Implementation of Rights Based Public Policy: A Study of Issues and Concerns of Right to Education in India

Nagendra Ambedkar Sole

Abstract

There has been a growing Policy engagement with the rights regime witnessed by the formulation of rights –based laws as policy instruments. The Right to Information Act 2005, the Forests Rights Act 2009, the Right to Education Act 2009, the Food Security Act and The Mahatma Gandhi National Rural Employment Guarantee Act are the examples of the shift from a policy based on the perception of development as a welfare activity of the government to a policy that recognizes basic development needs as the rights of the citizens. In this paper an attempt has been made to discuss the nature of rights based public policies in the overall context of Right of children for free and compulsory education and the policy issues and concerns in implementation of the landmark policy in the country. The study concludes that despite limitations in its implementation, the Right to Education Act which came about as the result of a long struggle by people’s movements remain a remarkable achievement. As a new law enshrining the rights of all children to free and compulsory education will further lift enrolment, bringing closer the government’s goal of universal elementary education, which comprises eight years of schooling. While concerns regarding privatization and quality of education, high dropout rates and low attendance in schools remain, the Right to Education Act offers a first step towards an educational system in India that offers **access, equity, equality and inclusion** of all children.

Keywords: Right to Education; Access; Quality; Out of School Children; Social Inclusion and Exclusion.

Introduction

There has been a growing Policy engagement with the rights regime witnessed by the formulation of rights-based laws as policy instruments. The Right to Information Act 2005, the Forests Rights Act 2009, the Right to Education Act 2009, the Food Security Act and The Mahatma Gandhi National Rural Employment Guarantee Act are the examples of the shift from a policy based on the perception of development as a welfare activity of the government to a policy that recognizes basic development needs as the rights of the citizens. This compels a commitment of resources by the government, even

challenging some of its existing systems. In this paper an attempt has been made to discuss the nature of rights based public policies in the overall context of Right of children for free and compulsory education and the policy issues and concerns in implementation of the landmark policy in the country.

The Rights-based approach to education embodies three interlinked and interdependent dimensions. It contends that human rights related to education cannot be realized unless and until all three are addressed. (A Human Rights Based Approach to Education For All (New York, UNICEF) P.4)

- i. The right of access to education – the right of every child to education on the basis of equality

of opportunity and without discrimination on any grounds. To achieve this goal, education must be available for, accessible to and inclusive of all children.

- ii) The right to quality education – the right of every child to a quality education that enables him or her to fulfil his or her potential, realize opportunities for employment and develop life skills. To achieve this goal, education needs to be child-centred, relevant and embrace a broad curriculum, and be appropriately resourced and monitored.
- iii) The right to respect within the learning environment – the right of every child to respect for her or his inherent dignity and to have her or his universal human rights respected within the education system. To achieve this goal, education must be provided in a way that is consistent with human rights, including equal respect for every child, opportunities for meaningful participation, freedom from all forms of violence, and respect for language, culture and religion

The RTE provides legally enforceable rights. The act mandates that every child in the age group of 6-14 have a right to free and compulsory education in a neighbourhood school and if a school does not exist in an area, the government has to establish a school within three years.

As far as India is concerned, the right to education was discussed extensively in the Constituent Assembly. The Sub Committee on Fundamental Rights of the Constituent Assembly included the right to primary education as a fundamental Right. The Constituent Assembly rejected the Proposal and placed it in the Directive Principles of State policy. However, the Constituent Assembly has provided a policy frame work for elementary education in India. Since Independence, the Indian Constitution included this right in the form of a Directive Principles that aimed guiding governance. This meant that the country aspired to achieve universal elementary education for all children up to the age of 14 years from the time of independence and successive governments also adopted policies they could facilitate this aspiration.

The Supreme Court of India first recognized the right to education as a fundamental right in 1992. In its judgment in Mohini Jain vs. Union of India, it has observed that “Right to life is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The

right to life under article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. Therefore, every citizen had a right to education under the constitution and thus, the state an obligation to provide educational institutions at all levels for the benefit of all the citizens.” (Mohini Jain vs Union of India)

Again in 1993, the Supreme Court of India in Unnikrishnan vs. state of Andhra Pradesh observed that: the right education which is implicit in the right to life and personal liberty guaranteed by article 21 must be construed in the light of the directive principles in part IV of the constitution. So far as the right to education is concerned, there are several articles in part IV which expressly speaks of it. Article 41 says that the “state shall, which limits of its economic capacity and development, make effective provision for securing the right to work to education and to public assistance in cases of unemployment, old age, sickness, want”. Article 45 says that “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”. Article 46 commands that “the state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. The three articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41 meant (a) every child/citizen of this country has right to free education until he completes the age of fourteen years, and (b) 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. (Unnikrishnan, J.P and others vs state of Andhra Pradesh., 1993)

Following the 1993 Judgment, several attempts were made by governments to incorporate the right to free and compulsory education as fundamental right under Article 21. Nearly after 10 years of the Supreme Court Judgment, in December 2002, Parliament passed the 86th Constitutional Amendment inserting a new Article 21A.

“ 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 “

Though the right to education was inserted in

constitution, it took another six years to bring the right of children to free and compulsory education Bill, 2008, which was passed in both Houses of the Parliament in 2009 and law received president's assent in August 2009. The Right to Education is a landmark law. With the enactment of Right to Education Act, India has joined the league of over 135 countries that have provided legal guarantee for free and compulsory education to children and make education as fundamental right. The act is also the culmination of efforts made by educationists, policy makers, members of civil society organizations and the Judiciary for the last many years. As a matter of fact, Gopal Krishna Gokhale introduced the elementary education bill in 1911 to enable local authorities to introduce compulsory education. However, the bill was rejected.

The Act saw a two fold increase in the country's elementary education budget and a renewed emphasis on universalizing enrolment and improving schooling infrastructure. (Accountability Initiative, 2012, DO Schools Get Their Money? PAISA 2012 (, 2012)

Salient Features of the Right of Children for Free and Compulsory Education Act

- ☞ The act provides for free and compulsory education to all children in the age group of 6 to 14 age group;
- ☞ No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
- ☞ No child should be denied admission in a school for lack of age proof.
- ☞ After completion of elementary education the child should be awarded a certificate.
- ☞ The act Provides for 25 per cent reservation in private schools for economically disadvantaged communities in admission to Class One.
- ☞ It mandates improvement in quality of education;
- ☞ The act stipulates that teachers should acquire professional degree within five years.
- ☞ The infrastructure of schools should be improved in three years, otherwise the recognition of school would be cancelled.
- ☞ Financial burden will be shared between state and central government.

Issues and Concerns of Right to Education

Access

With the advent of RTE act, though the access to

education has increased, still there are issues of increasing attendance, reducing drop outs and increasing enrolments at the secondary level. It is officially reported that elementary school enrolment has almost 100 per cent, yet there is a cause to be sceptical about this finding, because it is 'blind' to sizeable numbers of children who are completely 'invisible' to the state. This invisibility is particularly shocking with respect to one category of these children, namely Urban Street children, who are physically visible to policy makers every day but continue to be excluded from the education system. UNICEF estimated that, there were 11 million street children in India in 1994. (2, 2014)

Out of School Children

While there has been a decline in the percentage of out-of-school children (OoSC) across gender and social categories, Muslim, scheduled caste (SC) and scheduled tribe (ST) children need greater and focused attention. The number of OoSC who are physically or mentally challenged remains a cause for concern. The proportion of disabled out-of-school children in 2005 was 34.19 per cent and remained unchanged at 34.12 per cent in 2009. It is important to note that the maximum number of OoSC are those with mental disabilities (48 per cent), followed by children with speech disabilities (37 per cent). Neither the school system nor any other institutional mechanism is equipped to address the challenging needs of mentally disabled children who are most disadvantaged both socially and educationally in the system. (GOI, 2012)

A large number of children are still OoSC. Of the 8.1 million OoSC in the country in 2009, UP (34 per cent), Bihar (17 per cent), Rajasthan (12 per cent) and West Bengal (9 per cent) account for 72 per cent. The surveys conducted have reported a decline in the proportion of OoSC to the corresponding child population of various communities such as SCs, STs and Muslims. A study conducted for rural India places the proportion of children not enrolled in schools at 3.5 per cent. However, in a few States like Rajasthan and UP, the percentage of OoS girls in the age group of 11-14 years is as high as 8.9 per cent and 9.7 per cent, respectively. (Ibid)

Infrastructure

The Right to Education Act lays down nine essential infrastructural facilities to be provided in all elementary schools. They are-

- √ School building

- √ One class room per teacher
- √ Separate toilets for boys & girls
- √ Drinking water
- √ Kitchen to cook mid-day meals
- √ Boundary wall
- √ Play ground
- √ Barrier free access
- √ One office-cum-store-cum-head teachers room

The large majority of schools are devoid of the above mentioned infrastructure facilities. Despite concentrated efforts and budget allocations to build adequate number of schools and classrooms with necessary infrastructure facilities and equipment the government reported that less than 10 per cent of the 1.3 million government schools in the country were RTE compliant in terms of infrastructure. While at the end of three year RTE deadline infrastructure shortfalls are felt by all students, some of them have a particularly detrimental impact on children from marginalized groups. As of now many schools still do not have separate girls' toilets, which often lead to girls dropping out of school, especially after puberty, or forces them to stay at home during menstruation. Similarly, the absence of ramps severely restricts school access for children with disabilities. (Prasad, 2014)

The Right to Education (RTE) Forum Stocktaking Report (2014) suggests that across the country, less than 10 per cent schools comply with all of the RTE norms. (Govt of India 2014, 2015)

All schools will have to adhere to norms laid down in the Act and schools that do not fulfill these standards within 3 years will not be allowed to function. The norms and standards of teacher qualifications are also being laid down and teachers in all schools will have to subscribe to these norms within 5 years.

Equality of Opportunity

Every child has an equal right to attend school. Making schools accessible and available is an important first step in fulfilling this right. Equality of opportunity can only be achieved by removing barriers in the community and schools.

Schools can directly or indirectly impede the access of education of children. For example, through reflecting a male dominated culture, pervading patterns of violence and sexual abuse or prevailing societal norms, such as caste bias, negative teacher

attitudes towards girls, biases in curriculum, lack of female teachers and lack of adequate access to hygiene and sanitation can also inhibit enrolment drop outs levels. Sometimes Schools may also refuse to accept children with disabilities. (UNESCO).

Issue of Private Schools

The RTE act 2009 has made it compulsory for every private unaided school to admit at least 25% class from children belonging to weaker and disadvantaged groups in neighbourhood schools. There is indisputably a growing shift towards private schooling, not only urban areas but also across rural India, where fee private school low have mushroomed, carrying a fashionable tag of English medium schools. The study conducted by Shekhar Mittal and Parth J shah of centre for civil society revealed that:

- a. The poor and disadvantaged neighbor hoods such as slums are likely to have relatively poor quality of private schools. Therefore, the neighbourhood restriction may limit the disadvantaged sections to access only to these inferior quality schools.
- b. The rules suggest that the reimbursement amount be paid directly in to bank account of private schools but do not specify whether the full amount be paid in one go or the amount be divided over the academic year.
- c. For the purpose of the implementation of 25% reservation, the whole town should be defined as the neighbourhood for urban areas. (Shekhar Mittal and Parth J shah)

The Supreme Court has upheld the constitutional validity of right of children to free and compulsory education Act 2009 and directed every school including privately-run schools to provide free education to students from socially and economically disadvantaged sections from class I till they reach the age of 14 years. However the Supreme Court Judgment has exempted said the private unaided minority schools from the RTE Act. The Private minority schools need not provide 25% seats to economically weaker sections of the society.

Quality of Teachers

Quality of teachers has been a major concern in the country and it is one of the basic prerequisites to improve quality. With the aim to recruit quality teachers, CBSE conducted the first CTET test on 26 June 2011. Around one lakh applicants cleared the test. The second test was conducted in 29 Jun 2012. It

is expected that such initiatives will enable to create a good quality teachers. Special efforts were made to impart in service training to the teachers. As a result the percentage of professionally trained teachers has gone up for both regular and contractual teachers. However, still half of the contractual teachers are untrained and about a quarter of regular teachers lack professional training. The percentage of teachers receiving in service training in govt schools has been much higher than the aided and unaided schools. With the exception of Mizoram, the teacher training percentage has been amongst the lowest in other North Eastern states as well as Bihar, Rajasthan, Uttar Pradesh, Haryana and Chandigarh.

Shortage of Teachers

Another constraining factor is the shortage of teachers. The problem is acute in same states where there is a huge backlog of untrained teachers. The capacity to train teachers is also very limited in these states. The states with large teacher vacancies are Uttar Pradesh (269539 Vacancies), Bihar (219066), West Bengal (105200), Jharkhand (69163), Odhisa (56103), Chhattisgarh (54692).

However, the UNESCO institute of statistics in its report "Teachers and Educational quality: Monitoring Global needs for 2015" estimated that India requires more than 20 lakh new teacher to meet the Millennium Development Goal of Providing elementary education to all children by 2015.

Teacher Absenteeism

A major challenge to RTE is to address the high level absenteeism among teachers. While the average of teacher absenteeism is around 20% world-wide, India has the highest teacher absenteeism in the world at 25%. The level of absenteeism among govt primary school teacher ranges from 15% to 40%, with higher rates in the case of poorer states. Difficult access to schools is a major disincentive for getting suitable qualified teachers to provide education in rural areas. Other reasons include lack of basic toilet facilities, poor electricity supply, lack of uniform policy for promotion, etc. As per the world Bank-Harvard university study, 25% primary school teacher in India were absent from schools and only about half were teaching. Rate of absenteeism varied from under 15% in Maharashtra to 42% in Jharkhand. (Michael Kremer et al 2004, 2004)

The World Bank study in 2014 observed that in an academic year of 220-225 days, on an average, at least one seventh (14 percent) of the school calendar days went unutilized of instruction. There were 3

main reasons-

- i. Teachers reported that they were not in school, either because of training, attending meetings or performing function outside of the education department for on an average 25-30 days of teacher duty days. These lost days were particularly high in govt schools, where teachers were absent 10 days more on an average than private school teachers. Moreover, within govt schools, regular, more experienced and better trained teachers were absent than.
- ii. Teacher's personal and sick leave reduces the teacher time available to school by at least an additional 12 days especially in the case of regular teachers in govt schools.
- iii. Around 3-4 days of were lost on account of local festivals, events of national importance. (Linden, 2014).

Deployment of Teachers to Non-Academic Work

The act Prohibits deployment of teachers for non-academic works, except decennial census, disaster relief and elections to Central, State, Municipality and Panchayati Raj institutions. The study conducted by Vimala Ramchandran and her colleagues have quoted a Primary School Teacher in 2005 as saying: We have five teachers in our school. One of them is a daktar, who responds to enquiries that came from above and dispatches data/information to the district or block office. The other is a halwai, who manages the mid-day meal. The third one is perpetually on training and the fourth is a clerk who has to maintain accounts and pay salaries. Who then, is left to manage five classes and teach around 200 children? The act has relieved teachers of all non-academic duties. However, it is silent on these non-academic responsibilities. (ramchandran, 2005)

Exclusion of Dalit Children

The RTE defined the Disadvantaged Groups as those that belong to "the SC, ST, socially and educationally backward classes or such other groups having disadvantage owing to social, cultural, economical, geographical, linguistic, gender, or such other factors as may be specified by the appropriate Government by notification.

The following are some of the documented experiences of exclusion faced by Dalit children.

Exclusion of Dalit Children by Teachers

- ☞ Separate seating arrangements in the classroom,

with Dalit children made to sit separately or outside the classroom.

- ☞ Undue harshness in reprimanding Dalit children. For instance, in scolding children for coming late to school, in resolving fights between children, condoning name-calling by upper caste children, etc.
- ☞ Not giving time and attention to Dalit children in the classroom, such as not checking their homework or class work, not answering their queries – even rebuking them for asking questions in class.
- ☞ Excluding Dalit children from public functions in the school. These include non-participation in the morning assembly or other public events such as on Republic Day or Independence Day.
- ☞ Making derogatory remarks about Dalit children – their supposed lack of cleanliness and inability to keep up with academic work.
- ☞ Denying Dalit children the use of school facilities, including water source.
- ☞ Asking Dalit children to do menial tasks in school, including cleaning the school premises and even the toilets.

Exclusion of Dalit Children by Peer Groups

- (i) Calling Dalit children by derogatory caste names.
- (ii) Not including Dalit children in games and play activities in the classroom or in break time when children go out to play; Dalit children often return to their own neighbourhoods to play with non-enrolled Dalit children.
- (iii) Not sitting with Dalit children in the classroom.

The above issues have to be urgently addressed by the authorities for the successful implementation of the RTE.

Poor Level of Learning out Comes

Though there are rapid gains in enrolment and attendance, average levels of educational attainments and basic skill acquisition, including reading and writing, remain low by international standards. (Sam Hill and Thomas Chalaux, 2011) The biggest concern in elementary education is the poor level of student learning-both scholastic and co-scholastic/non-cognitive. Evidence suggests that learning out comes for children in schools are far below corresponding class levels in other countries, and that the learning

trajectories for children who remain in school are almost flat. Clearly, the additional time spent by student in schools as they move from one class to another is not translating in too much improvement in learning levels. At the heart of the issue of quality are the weak teaching processes and transactions between teacher and learners that are neither child-friendly, nor adopt child centred approach to curriculum.

The Annual Status of Education Report (ASER) 2014 mentions that of all children enrolled in standard V, about half cannot read at standard II level. The survey also revealed that children in standard II cannot even recognize the letters. Even worse is in 2010 only 13.4 percent in Standard II children could not recognize the letters; their number has gone up to 32.5% in 2014. By the end of standard ii children should be able to read simple sentences easily.

With regard to number recognition, standard II children did not recognize numbers 1-9 and the standard III children did not recognize the numbers till 100.

The ASER 2014 further revealed that a growing proportion of standard ii children do not know numbers 1 to 9 in standard I. This means that they are not learning them in standard 1. The reports also revealed an increasing numbers of children in standard III do not recognize numbers till 100. This means that they did not pick them up in standard II. (ASER, 2014).

Increase in Private Schools Enrolment

The ASER survey 2014 report data reveals that private school enrolment has been rising year after year. In 2009, 21.8% children had enrolled in private schools where as in 2014, their number has gone up to 30.8 at all India level. However, there is a great deal of variation across states in levels and pace of growth over time. The high enrolled in private school states are Punjab with 49.3%, Haryana with 53.6%, Rajasthan with 43.5% and U.P. with 52.8% in 2014. (ASER, 2014)

Education Financing

Education resource requirements are massive, e.g., for construction of thousands of new schools, recruitment of 1.5 million additional teachers, education costs for millions of children added to the school population every year. The Act provides for a 65-35 per cent cost-sharing scheme for education expenditure between central and state governments.

However it is feared that states which are poor and have limited resources, or whose local administrations lack commitment to education, will not match the funding required.

Financing for RTE remain inadequate. Total public expenditure for education, at less than 3.5 per cent of GDP, is way below the 6 per cent commitment in National Education Policies. Accountability Initiative notes that with the launch of RTE, the total SSA budget including Government of India (GOI) and state shares increased over two-fold from Rs 27,552 crore in Financial Year 2009-10 to Rs 69,937 crore in Financial Year 2012-13. However, the total approved budget shows reductions. In Financial Year 2014-15, only Rs 54,925 crore was approved under SSA, a drop of 22 per cent from FY 2012- 13.

As Dr. Shantha Sinha has Rightly Observed

“What is missing is accountability in the Law. The RTE Act has 60 or 80 entitlements. But who is to be held responsible for failure to comply with each entitlement is not in the Act RTE is a complex Act involving several authorities. For toilets and water, you have one department, for buildings you have another, for Mid-day meal and corporal punishment another department you have to specify who is responsible for each. This is not in the Act.” (Limitations make RTE Act Difficult to implement, 2012).

Right laws have failed to some extent to tackle the question of administrative capability head on. It is striking that with each new law, the government expanded significant political capital in determining financial allocations for implementing the laws. However, no parallel effort was made to identify the human resources and administrative requirements—the staff, skill-sets, training needs, management system to implement these laws. This is particularly relevant given the limited capacity of the bureaucracy in its current form—both in terms of size and structure. (Accountability Initiative 2014, Rights, Accountability and citizenship: Examining India’s Emerging welfare State, 2014)

To conclude, despite limitations in its implementation, the Right to Education Act which came about as the result of a long struggle by people’s movements remain a remarkable achievement. As a new law enshrining the rights of all children to free and compulsory education sell further lift enrolment, bringing closer the government’s goal of universal elementary education, which comprises eight years of schooling. While concerns regarding privatization and quality of education, high dropout rates and

law attendance in schools remain, the Right to Education Act offers a first step towards an educational system in India that offers access, equity, equality and inclusion of all children.

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