

Equity Issues in the Context of the RTE Act, 2009

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ABSTRACT

One of the most debatable issues in the global context is to provide free, compulsory, universal elementary education to all children, irrespective of caste, creed, colour, religion and all other social stratifications across the globe. Education is a basic human right and has been recognised since the adaptation of the Universal Declaration of Human Rights (1948, UNO). Since then numerous international treaties have reaffirmed this right and supported entitlement to free, compulsory and universal elementary education for all children. The right to education was finally made a fundamental right of Indian children in the 6–14 age groups to get free and compulsory education. It was enshrined in the Indian Constitution as a Directive Principle of State Policy in the Article 45 before the 86th Amendment, 2002. It was the visualisation of the Founding Fathers of the Indian Constitution that took almost 59 years to translate into reality. The Constitution (86th) Amendment Act introduced new Article 21A – “the State shall provide free and compulsory education to all children of the age of 6–14 years, in such a manner as the state may, by law determine”. The Right of Children to Free and Compulsory Education Act, 2009, commonly known as RTE Act came in force with effect from 1st April, 2010. The enforcement of the Right to Education Act brings the country closer to achieving the objectives and mission of the EFA (Education for All) and MDGs (Millennium Development Goals), especially MDG2 on (Universal Primary Education) and MDG3 on (gender equality) by 2015 and hence is a historic step taken by the Government of India. This article intends to explore the provisions for equity issues related to gender disadvantaged and weaker sections of the society in the RTE Act, 2009.

Key Words: Human Rights, Right to Education, Underprivileged Sections, Equity, Development

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Introduction

Education is a human right and essential for realisation of all other human rights. It is a basic right which helps the individual to live with human dignity. It is for this reason, perhaps that framers of the Constitution realised the importance of education and thus imposed a duty on the state under article 45 as one of the Directive Principles of State Policy to provide free and compulsory education to all children until they complete the age of 14 years within 10 years from the commencement of the constitution. The framers expected that the government would make effective and honest implementation of this directive and abolish illiteracy from the country but their expectation remained in vain. Later, the National Education Policy of 1968 talked of a free and compulsory education but the Right to Education Act came into effect only in April, 2010. The government took more than six decades after independence to provide free and compulsory education as a fundamental right for all children in the age group of 6-14 years. It is now a matter of satisfaction that the RTE Act is the first Central legislation in the landscape of Indian elementary education that puts the responsibility of ensuring enrolment, attendance and completion of elementary education by all children on the government. The title of the RTE Act incorporates the words 'free' and 'compulsory'. **'Free education'** means that no child, other than a child who has been admitted by his or her parents

to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. **'Compulsory education'** casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups.

Main Objectives of the Study

1. To give a brief historical account of the Right to Education Act, 2009 and its salient features.
2. To explore the provisions for equity issues in the RTE Act, 2009.
3. To find out the provisions for the disadvantaged and weaker sections of India under the RTE Act, 2009.
4. To suggest some pragmatic steps for implementing those provisions related to gender equity and underprivileged sections.

Methodology and Data Collection

The present study has been executed by adopting the historical research method. The study has been developed by an analysis of a variety of primary and secondary sources of data. These sources include reports, periodicals, monographs, newspapers, pamphlets, records, theses, dissertations, journals and other research studies. The primary sources used in the development of the study consisted mainly of the RTE Act, 2009, official reports and publications

of different national and international organisations.

Right to Education: a Historical Account

The Right to Education Act came to its present form after the concerted efforts of many groups and agencies in the country. The first law on compulsory education was introduced by the State of Baroda, in 1906. This law provides education for boys and girls in the age group of 7-12 years and 7-10 years, respectively. In 1911, Gopal Krishna Gokhale unsuccessfully moved a Bill for compulsory education in the Imperial Legislative Council. The Legislative Council of Bombay was first amongst the provinces to adopt a law on compulsory education. In spite of all these efforts, universalisation of education in the country was poor due to lack of control over resources. Thereafter, National Policy on Education, 1968 was formed and implemented. It was the first official document evidencing Indian Government's commitment towards elementary education. Thereafter, the country witnessed the National Policy on Education in the year 1986. In this policy also, Right to Education was not recognised. Again, emphasis was given to the universalisation of elementary education. In the year 1990, the policy was reviewed by the Acharya Rammurthy Committee. The committee recommended that right to education should be included as a fundamental right in Part III of the Constitution. However, this

recommendation was not implemented immediately. But, on the basis of the committee's recommendation, National Policy on Education, 1992 was formulated.

In 1992, in the case of *Mohini Jain vs State of Karnataka*, the Supreme Court of India held that right to education is concomitant to fundamental rights enshrined under Part III of the Constitution and that every citizen has a right to education under the constitution. Subsequently, in the case of *Unnikrishnana, J.P. vs State of Andhra Pradesh*, the Supreme Court held that "though right to education is not stated expressly as a fundamental right, it is implicit in and flow from the right to life guaranteed under Article 21 and must be construed in the light of the Directive Principles of the Constitution. Thus, 'right to education', understood in the context of Article 45 and 41 means (a) every child/ citizen of this country has a 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. The landmark judgements of the Honbl'e Supreme Court and initiatives from many other agencies forced the government take initiatives in this direction. In 2002, Indian Constitution was amended which states that the state shall provide free and compulsory education to all children of the age of six to fourteen years. This is the

86th amendment of the constitution. In 2005, a draft Right to Education Bill was circulated but could not get its final shape because of the apprehension that Government may not be able to bear the high financial costs involved in implementing the act all throughout the country. Later on, the bill was placed before the Rajya Sabha in December, 2008. The Bill was then returned to a Standing Committee on Human Resource Development. After the formation of UPA II Government, the bill was finally passed by the Rajya Sabha on 20th June, 2009 and by the Lok Sabha on 4th August, 2009. The Right of children to Free and Compulsory Education Act, 2009 received assent of the President of India on 26th August, 2009. With the Right to Education Act, 2009 coming into force, India has joined the league of over 130 countries which have legal guarantees to provide free and compulsory education to children. According to the UNESCO's Education for All Global Monitoring Report 2010, about 135 countries have constitutional provisions for free and non-discriminatory education for all.

The Salient Features of the RTE Act, 2009

The title of the RTE Act incorporates the words 'free and compulsory'. '**Free education**' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be

liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. '**Compulsory education**' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups. The main features of the Act are as follows:

- Makes Elementary Education Free.
- Makes Elementary Education Compulsory for the State to provide.
- Mandates education of children along their peer age group ("age-appropriate"); provides for "special training" to facilitate age appropriate education.
- Sets quality norms for all schools.
- Sets qualification and working norms for Teachers in all schools.
- Mandates curriculum in all schools to be in consonance with Constitutional Values.
- Mandates a system of evaluation that is free of the oppression of annual exams.
- Enhances role of PRIs in implementation as well as grievance redressal.
- Mandates participation of civil society in the management of schools, makes teachers accountable to parents and the community.
- Democratizes education delivery in the country by mandating

25 per cent reservation for children from weaker sections in private schools.

- Separates agency for implementation of Act (Education Department, MHRD) from agency charged with monitoring the implementation of the Act (NCPCR).
- Calls for a fixed student-teacher ratio;
- Will apply to all of India except Jammu and Kashmir;
- Provides for 25 per cent reservation for economically disadvantaged communities in admission to Class One in all private schools;
- School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
- Financial burden will be shared between state and central government.

Equity in School Education – a Concept

The concept of equity in school education is poorly defined. Equity means different things to different people. The OECD (2012) recognises two dimensions: **fairness and inclusion** to equity in education and sees them as intertwined. Equity as fairness implies that personal or socio-economic circumstances, such as gender, ethnic origin or family background are not obstacles to educational success. Equity as inclusion means ensuring that all students reach

at least a basic minimum level of skills. Equitable education systems are fair and inclusive and support their students to reach their learning potential. Equity means equal opportunity for all children to complete elementary education irrespective of their gender, religion, caste, socio-economic, cultural or linguistic background and geographical location. Equity also means creation of conditions in which the children from disadvantaged sections and weaker sections girls of the society, children of SC, ST and Muslim community, and children with disabilities etc., can avail of the opportunity (MHRD, 2011). The RTE Act integrates gender and other social disadvantages both explicitly and implicitly in its different sections for quality and equity. Equity has been seen as an integral part of the agenda on improving quality in the context of the RTE Act.

Key Provisions Related to Gender Equity and Underprivileged Sections

Education is the most potent tool for socio-economic and social mobility and a key instrument for building an equitable and just society. That's why the RTE Act attempts to ensure that all children get the optimum opportunity to enrol in schools, acquire and complete elementary education, irrespective of their gender, caste, socio-economic, cultural or linguistic background and geographical location.

The Act contains specific provisions for disadvantaged groups, such as child labours, migrant children, children with special needs (CWSN), or those who have a disadvantage owing to social, cultural, economical, geographical, linguistic, gender or any such factor. Different sections of the Act refer to gender issue either explicitly or implicitly.

Section 3(1) of the RTE Act, 2009 Chapter II states: Every child of the age six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Section 3(2) states: For the purpose of sub section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

It is worth mentioning here that in the first chapter of the Act '**child**' has been defined as "a male or female child of the age of six to fourteen years". The Act further points out that "child belonging to disadvantaged group" will include groups having disadvantage owing to social, cultural, economical, geographical, linguistic, **gender** or such other factors as specified by the government.

Section 8(c) of RTE Act states while clarifying the duties of appropriate government: The appropriate government shall "*ensure that child belonging to weaker section and the child belonging to disadvantaged groups are not discriminated against*

and prevented from pursuing and completing elementary education on any ground". In fact articles like these are clear indication of the objective to do away with any kind of disparity on the ground of gender. The main objectives of the gender concern of RTE Act, 2009 are not only to enable to keep pace with boys in education but to bring a basic change in the status of women in the society.

However, RTE Act, 2009 integrates gender and other social disadvantages in its concern for quality and equity. It is seen as a part of the quality agenda. Gender does not operate in isolation but in conjunction with other social categories. This results in girls' facing multiple forms of disadvantages. In order to address gender and equity issues in regard to RTE, a strong conceptual understanding of the issue is really necessary. Gender should not be taken as a stand-alone category segregated from other issues of discrimination. The dimensions of location (rural, urban), caste, class, religion, ethnicity, disabilities etc., intersect with gender to create a complex reality. Curriculum, textbooks, pedagogic practices need to capture the entire web of social and economic relations that determine an individual's location in the social reality and shape her life experiences. Developing such an understanding is necessary to reach all the children who are still out of school. Civil society interventions would be crucial here. Despite significant improvement in the enrolment of girls, girls from

disadvantaged communities continue to form the bulk of out-of-school children. Therefore, access continues to be an equity issue in the case of girls which RTE tries to address.

Teachers are to play a very important role in implementing the mission of RTE Act, especially so in case of gender equity. If teacher is not sensitised to actively dispel traditional perceptions regarding gender or caste roles, she is unlikely to take measures to help girl students to pursue education which is equitable and free from anxiety. The teachers' own pattern of communication with children, seating arrangement in the classroom, allotment of works among the children may serve to reinforce or dispel societal perception about the appropriate role and place of girls. The RTE Act (2009) emphasises the importance of teachers' training which would enable teachers to promote inclusive classroom practices. The emphasis on professional training as a requisite qualification for recruitment of teachers in RTE, Act, 2009 (**Section 23 sub-Sections 1 and 2**) tries to ensure empathy of teachers towards every child. It clearly states (24[d]) that it is the duty of a teacher to *assess the learning ability of each child and accordingly supplement additional instructions, if any, as required and [e] hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child.*

Girls from SC, ST and minor communities and from families below poverty line usually face greater challenge in continuing education after the primary level. Localised context has to be analysed and a policy needs to be developed on the basis of such analysis to provide support to girl children to bring back girls who dropout of school without completing primary education. Community support and monitoring play an important role here. The RTE Act, 2009 has provided scope for community to intervene in smooth functioning of the school. The act requires each school to constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers. The act makes it mandatory that fifty per cent of members of such Management Committee shall be women (**Section 21[1]**). The School Management Committee shall monitor the work of the school, prepare development plan and thereby monitor use of allocation of grant and its use. The fifty per cent women members are expected to safeguard the interest of their girl children and protest against any kind of discrimination on the basis of gender (**Section 21[2]**).

RTE Act, 2009 tries to involve all local stakeholders by making local authority responsible to ensure that the child belonging to any disadvantaged group may not be discriminated against and prevented from pursuing and completing elementary education.

Section 9 states that every local authority shall *maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed (sub-section-d); ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction (sub-section-e); provide infrastructure including school building, teaching staff and learning material (sub-section-f); provide special training facility specified in Section 4 (sub-section-g); provide training facility for teachers (sub-section-j); monitor functioning of the schools within its jurisdiction (sub-section-l)* and so on. **Section 10 of RTE Act, (2009)** makes it mandatory for the guardians to ensure admitting their children to school – *It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to elementary education in the neighbouring school.* Other provisions of RTE Act, 2009 to ensure girl child's right to education are provision of good quality education that includes equity issues, curriculum development in conformity with constitutional stipulations, training and enrolment in age appropriated classes which will largely apply to girls, especially from disadvantaged communities.

However, mere sensitisation of teachers and involvement of local authority and community to safeguard the rights of the girl child may not be enough and classroom practices would need to be monitored and

grievance redressal mechanisms have to be established at the school and other levels. RTE Act (2009) provides for grievances too. **Section 31** under Chapter VI: **(1)** *The National Commission for Protection of Child Rights constituted under Section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commission for Protection of Child Rights Act, 2005, shall in addition to the functions assigned to them under that Act, also perform the following functions, namely :* a) *examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;* b) *enquire into complaints relating to child's right to free and compulsory education;* c) *and take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Right Act.* In addition to this **Section 32(1)** clearly states that *notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction* and **Section 32(2)** mandates that *after receiving the complaint the local authority shall decide the matter within a time period of three months.*

Currently the *Sarva Shiksha Abhiyan* (SSA) is being implemented as a Centrally Sponsored Scheme in partnership with State Governments for universalising elementary

education across the country. Bridging gender and social category gaps in elementary education is one of the four goals of SSA. These provisions have been aligned with the legally mandated norms and standards and free entitlements mandated by the RTE Act.

Tasks Ahead

Despite many gains under the RTE-SSA programme, education faces several challenges. A matter of particular concern is the steep dropout-rate after the elementary level. The increasing enrolment gap from elementary to secondary or higher secondary suggests that the gains at the elementary level have not yet impacted the school sector as a whole. Now is the time to turn from inputs and focus on the challenges related to retention, bridging of gender and social gaps in enrolment levels and enhancement of learning levels of all children. Some of the suggestions for minimising gender disparity and strengthening the RTE-SSA programme for Disadvantaged and Weaker Sections are as follows:

- It is necessary to involve the Panchayati Raj Institutions (PRIs) in rural areas for implementing the RTE Act. Parents, teachers, professionals, social workers and NGOs should assist the government in this regard.
- Particularly in rural and poor areas, People's representatives – MPs, MLAs, PRI members should be made responsible for smooth

functioning of the schools in their areas.

- The quality of teachers is the backbone of any teaching programme. Teachers need to have at their disposal a deep fund of empathy, commitment, conviction and ability and motivation to persevere; of knowledge and resources to respond and create meaningful educational experiences for all children.
- Seminars, Workshops, Conferences, Orientation programmes should be organised for building awareness of all the stakeholders of education about the RTE Act, 2009.
- To effectively implement the RTE, the Human Resource Development Ministry, Labour Ministry, Women and Child Development Ministry and Rural Development Ministry have to work together with a common goal.
- The quality of Mid Day Meal (MDM) needs to be improved, which will attract children of the weaker sections of the society. Acts like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) should be more comprehensive so that rural people can't employ their children in any labour work instead of sending them to schools.
- In the rural areas, the school hours and the duration will have to be adjusted according to the needs of the community.

- Students coming from Scheduled Castes and Scheduled Tribes are also likely to be deficient in scholastic areas. The school may put emphasis on providing some remedial education programmes.
- Adoption of instructional strategies, such as peer group learning, monitoring assistance, diagnostic testing and tutoring would help to improve the educational levels of these learners.

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