

Research Article

Problems of India's Elementary Education System and Right to Free and Compulsory Education Act—A Critical Appraisal

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Abstract

Probably nobody can deny the fact that country's educational system has been to a large extent a failure. One of the biggest problem is of uneven, unfair and inadequate provision of education. In order to solve these problems Right to Free and Compulsory Education Act came into effect on April 1, 2010 and hence started the contestation whether the act was really going to help the students to get their basic right of education and help in ridding the education system from longstanding barriers in the way to right to education or not? Present paper is an attempt to critically evaluate the act and tries to provide pros and cons of different provisions of the act. In doing this a brief historical context and basic framework of human rights approach to education is provided. It is argued that like many other acts the intentions of the act are noble, yet it is full of farcical, unworkable and contradictory provisions and there is a need for certain radical changes to ensure that children get their right to education in real sense. Furthermore the best option before the government to assure the right to education is to go for Common School System functioning through Neighbourhood Schools.

INTRODUCTION

Problems of India's Elementary Education System

The failures of the present educational system in India hardly require reiteration. After over six decades of Independence, the basic statistics on education make a disappointing reading. Illiteracy remains high at about 25% according to the 2011 Census and functional illiteracy is certainly higher than this rate. According to UNESCO's report on progress in primary education, around 7.74 crore children around the world are out of school. Three-fourths of these out-of-school children reside in 15 countries including India, Bangladesh, Pakistan, Indonesia, China, Brazil and the African nations. With one-third of the world's illiterate, the report places India 105th among 128 nations (Rai, 2012) As a matter of fact from a total of 26 crore children

of school going age, around 18.78 crore children are in school. But there are almost 8 crore out-of-school kids, most of them involved in child labour or domestic work. In fact, of the children enrolled in school, 46% drop out before they complete their primary education, most of them being girls. The Annual Status of Education Report (ASER 2012) for rural India, released recently by Pratham, an NGO, exposes the shocking mess that our rural school education system is in. With longitudinal data from 2008, the report highlights that there has been a decline in quality of primary education in recent years and how there has been an increase in the onslaught of the private sector. Reading levels continue to be a cause for serious concern. More than half of all children in Std. V are at least three grade levels behind where they should be. In 2010 nationally,

46.3% of all children in Std. V could not read a Std. II level text. This proportion increased to 51.8% in 2011 and further to 53.2% in 2012. Around 65% students of government schools studying in standard 5th could not read hindi text of standard 2nd. About 50 percent of the 3rd standard kids cannot even correctly recognise digits up to 100, where as they are supposed to learn two digit subtraction. In 2008, about 70 percent of the kids could do this. Importantly, the report notes that the decline is cumulative, which means that the “learning decline” gets accumulated because of neglect over the years. The report notes that the private sector is making huge inroads into education in rural India. Quoting DISE (District Information System of Education) data, it says that Kerala, Tamil Nadu, Puducherry and Goa have more than 60% of private enrolment in primary schools. Andhra, Maharashtra and Karnataka are at 40 percent, while UP is at 50%. Ironically, the highest private sector enrolment is in Kerala. Besides private schools, parents also spend considerable amount of money on private tuitions, making quality education more inaccessible to people without a sound financial background.

In short there has been some progress in terms of official enrolment yet learning outcomes are really poor or may be deteriorating. There are other often talked about ills of education in India—teacher absenteeism, overextended teachers and infrastructure, poor systems of payments, poor quality of teaching and so on—remain pervasive. While the state school system educates nearly 80% of the student population, the remaining 20% of the students are educated in private institutions which may or may not receive state aid (the proportion of which is however increasing continuously). The private education system includes an elite highly selective school system which excludes a vast majority of the population and a low cost segment which attracts several parents dissatisfied with the state school system. The problem of an uneven, unfair and inadequate provision of education has been recognised for a long time, with various reforms being suggested by various commissions and committees like the promotion of the Common School System based on Neighbourhood Schools (CSS-NS).

In order to solve the problem of an uneven, unfair and inadequate provision of education the Right to Free and Compulsory Education Act came into effect on

April 1, 2010. However different sects of scholars have reached different conclusions (sometimes diametrically opposite) regarding the effectiveness of the act. While as one group believes that the act will address the problems of millions of children in the age group of 6-14 years that are out of school. They are of the view that the act will help in ridding education of long standing problems and has been hailed by them as revolutionary and historic landmark in the history of education related legislation in India. However second sect of scholars are of the view that the act is neither revolutionary nor historic, rather they accuse it of being farcical in nature. They argue that all the progressive sounding rhetoric are only a disguise for policy changes which spell what the world bank etc have recommended for long that is freeing of the government from its responsibility of education and institutionalising privatization of education.

Present paper is an attempt to probe deeper into the debate and try to critically evaluate different aspects of Right to Education Act. Section II provides a brief history of the Rights based approach towards education at the international level. Section III provides a brief historical background of right to education in India. Section IV elaborates on description of the different provisions of the act. Section V provides a detailed critical appraisal of the Act. Finally the concluding remarks of the paper are given in section VI.

Rights based approach to education—an international perspective

Education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1981). These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to

provide basic education for individuals who have not completed primary education. (UNICEF, 2007).

In 1990, at the World Conference on Education for All, in Jomtien, Thailand, 155 countries including India took a pledge to ensure education for all by the year 2000. The pledge promised:

1. Care for development and early education of children in the age-group 0-6 years.
2. Spreading awareness about primary education for all.
3. Motivating youngsters to learn more.
4. Bringing down the illiteracy rate, with a special focus on female literacy.
5. Life skills for youngsters.
6. Education to improve overall quality of life. (Rai, 2012).

However in 1998, when UNESCO and other agencies reviewed India's position in achieving these goals, it was found that very little progress had been made. The country was among those at the bottom of the list. In April 2000, 180 of a total of 193 countries assembled for the World Education Forum in Dakar (Senegal). Participants acknowledged that a lot of people-people from the disadvantaged class, with low socio-economic status, and the underprivileged-were bereft of basic education. Amid discussions it was agreed that the right to education was a basic right. Thus the Dakar Framework was born. India was among the 180 countries that took the pledge that by the year 2015, education would be made available to everyone. As part of this objective, India promised to:

- a. Expand and improve comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children.
- b. Ensure that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities have access to free and compulsory primary education of good quality.
- c. Ensure that the learning needs of all young people and adults are met through equitable access to appropriate learning and life-skills programmes.
- d. Achieve a 50% improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults.

- e. Eliminate gender disparities in primary and secondary education by 2005, and achieve gender equality in education by 2015, with a focus on ensuring girls full and equal access to basic education of good quality.
- f. Improve all aspects of quality of education and ensure excellence of all so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills (Rai, 2012).

All these treaties were guided by the rights based approach to education. The rights-based approach focuses on the inalienable human rights of each individual, as expressed in UN instruments, and on governments' obligation to fulfil, respect and protect those internationally defined human rights. The principles that inform the right based approach are universality, indivisibility, interdependence, equality and non-discrimination, inclusion, empowerment etc. In doing so, it aims to support and empower individuals and communities to claim their rights. In addition, a distinctive feature of this approach is that it requires an equal commitment to both process and outcomes. Thus the development of a human rights-based approach to education requires a framework that addresses the right of access to education, the right to quality education and respect for human rights in education. These dimensions are interdependent and inter-linked, and a rights-based education necessitates the realization of all three;

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.

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.

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 (UNICEF, 2007).

Once States ratify international human rights instruments, they commit themselves, through whichever government is in power, to compliance with the rights embodied in those instruments. States hold the primary responsibilities and are accountable to the holders of those rights for their implementation. To ensure the realization of the right to education for all children, States have three levels of obligations:

- To fulfil the right to education by ensuring that education is available for all children and that positive measures are taken to enable children to benefit from it, for example, by tackling poverty, adapting the curricula to the needs of all children or engaging parents to enable them to provide effective support to their children's education.
- To respect the right to education by avoiding any action that would serve to prevent children accessing education, for example, legislation that categorizes certain groups of children with disabilities as uneducable.
- To protect the right to education by taking the necessary measures to remove the barriers to education posed by individuals or communities, for example, cultural barriers to education or violence and abuse in the school environment (UNICEF, 2007).

Right to Education and Its Genesis in India

The debate on Right to Education was initiated in India by Jotirao Phule more than 125 years ago when a substantial part of the memorandum presented by him to the Indian Education Commission (i.e. the Hunter Commission) in 1882 dwelt upon how the British government's funding of education tended to benefit "Brahmins and the higher classes" while leaving "the masses wallowing in ignorance and poverty." Phule drew attention to the irony that this happens when most of the revenue collected by the British government is obtained from the poor masses themselves. However the comprehensive vision

of the Constitution relating to education emerged when the Article 45 directed the Indian State to "provide within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years". The Article 45 has been interpreted to include (a) early childhood care, balanced nutrition, health support and pre-primary education (kindergarten, nursery) for children below six years of age; and (b) elementary (not primary) education of eight years (Class I-VIII) for the 6-14 age group children. Although not enforceable as a Fundamental Right, the sense of urgency attached to the fulfilment of Article 45 "within a period of ten years from the commencement of the Constitution" was remarkable. This was the only Constitutional provision with a time frame. The time frame ended in 1960 (Sadgopal, 2010).

A historic judgment by the Supreme Court of India in 1993 radically transformed the status of Article 45. In its Unnikrishnan Judgment (1993), the Supreme Court ruled that Article 45 in Part IV has to be read in 'harmonious construction' with Article 21 (Right to Life) in Part III of the Constitution, as Right to Life loses its significance without education. The Supreme Court declared that Article 45 has acquired the status of a Fundamental Right. The Unnikrishnan Judgment went a step further. It ruled that the Right to Education continues to exist under Article 41 (Part IV) even beyond the age of 14 years but is limited by the State's "economic capacity and [stage of] development". The Constitution is clearly directing the State to envisage the entire sector of education—from kindergarten to higher and professional education in a holistic manner (Sadgopal, 2008; 2010).

In November 2001, the 86th Constitutional Amendment Bill was presented to the Lok Sabha. 86th Amendment Act (2002) via Article 21A (Part III) seeks to make free and compulsory education a Fundamental Right for all children in the age group 6-14 years. A first draft of the legislation envisaged in the above Article, viz., Free and Compulsory Education for Children Bill, 2003, was prepared and posted on this website in October, 2003, inviting comments and suggestions from the public at large. Subsequently, taking into account the suggestions received on this draft, a revised draft of the Bill entitled Free and Compulsory Education Bill, 2004. The CABE

(Central Advisory Board of Education) committee drafted the Right to Education Bill and submitted it to the Ministry of Human Resources and Development (MHRD). MHRD sent it to NAC (National Advisory Council). NAC sent the Bill to Prime Minister for his observation. The finance committee and planning commission rejected the bill citing the lack of funds and a model bill was sent to states for the making necessary arrangements. Finally the rough draft of the bill was composed in year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The subcommittee of the CABE which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools. The government drafting this piece of legislation, however lost the elections, and the new government came up with its own version. This passed the approval of the cabinet on November 1, 2008, was tabled in Parliament in 2008 and passed in 2009 (Uma, 2013).

The bill was approved by the cabinet on July 2, 2009. Rajya Sabha passed the bill on July 20, 2009 and the Lok Sabha on August 4, 2009. It received Presidential assent and was notified as law on September 3, 2009 as the Children's Right to Free and Compulsory Education Act and came into effect on April 1, 2010. Although the provision 12 [1] [C] of the act had been contested by many associations of private schools in 2010 itself immediately after the notification for implementation of the act was issued. On 12 April 2012, the Supreme Court of India in *Society for Unaided Private Schools of Rajasthan vs Union of India* upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act 2009.

RTE-ACT: An Overview

The title of the RTE Act incorporates the words 'free and compulsory'. According to MHRD website '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, and '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 group. It maintains that with this act, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act. The basic provisions of the act are as follows:

Responsibility of the government and parents, (See Section 6, 7, 8, 9, 10 and 11)

The appropriate central or state government and local authority are responsible for ensuring quality education, providing infrastructure, and monitoring admission, attendance and completion of elementary education. If no school exists within a neighbourhood, they are responsible for establishing one within 3 years from the commencement of this act. It is the duty of every parent or guardian to admit his or her child to an elementary school in the neighbourhood.

Provision for children from weaker sections and disadvantaged groups, (See section 2 and 12 of the act)

Unaided schools not receiving any form of aid or grants from the government and "specified category" schools such as Kendriya Vidyalaya, Navodaya, and Sainik School shall admit at least 25% of the children in class 1 from economically weaker sections and disadvantaged groups. They shall provide free and compulsory elementary education to these children till completion of class 8. Disadvantaged groups include scheduled caste, scheduled tribe, and socially and educationally backward classes. Aided schools receiving grants from the government to meet part or whole of their expenses shall do the same for an equivalent proportion of children from weaker sections and disadvantaged groups.

No capitation fee and screening procedure for admission, (See section 13 of the act)

The act states that no school or person shall collect any capitation fee that may prevent the child from pursuing and completing elementary education. Children and their parents or guardians shall not be subjected to a screening procedure to gain admission to the school. Children cannot be denied admission or discriminated

based on caste, creed, social class or gender. Children cannot be denied admission on the basis of lack of age proof. A child already admitted cannot be held back in any class or expelled from school till the completion of elementary education.

Additional training for out of school children being admitted, (See section 4 of the act)

If for any reason, a child above 6 years has not yet been admitted in any school and not completed elementary education, the child shall be admitted to a class appropriate to his or her age. The child has a right to receive special training within permissible time limits to be on par with the other students in his or her class. Such a child is entitled to completing elementary education even after 14 years of age.

Right of transfer to another school, (Section 5)

If the child's current school does not have the facilities for completing elementary education, or if the child is required to move to another school for any reason, he or she has the right to transfer to a government school or a government-aided school to complete elementary education. Lack of a transfer certificate cannot be grounds for delaying or denying admission to such a child.

School curriculum, (Section 29)

The curriculum and evaluation procedure shall be determined by an academic authority specified by the government. The authority shall take into consideration several factors: all round development of the child, development of physical and mental abilities to the fullest extent, learning through discovery and exploration in a child friendly manner without an environment of fear and trauma, medium of instruction in the child's mother tongue as far as possible, and comprehensive and continuous evaluation of the child's learning levels. No child is required to pass public education until the completion of elementary education. After completing elementary education, the child will be awarded a certificate.

National and state advisory councils, (Section 33 and 34 of the act)

The central government to constitute by notification, a national advisory council, consisting of less than 16 members, to be appointed from among the persons having knowledge and practical experience in the field. Similarly the state government governments were to

form state advisory council on the same considerations. The function of both the councils was to advise the respective governments on the implications of the provisions of the act in an effective manner.

Teacher responsibilities, (Section 23, 24 and 28 of the act)

Teachers are appointed if they meet the qualifications set by the academic authority. Under circumstances where there is shortage of teaching staff, the teachers are given a period of 5 years to be trained to meet the minimum qualification requirements. Teachers are required to be punctual in attending school, complete curriculum within the specified period, hold parent-teacher meetings to track progress of the child, assess the learning ability of each child, and give additional instructions, if necessary, to children requiring more attention. To meet the pupil-teacher ratio, teachers can only teach in one school without taking up any non-education related work excluding disaster relief, election or census related duties. Teachers cannot hold private tuitions. Teacher vacancies in government schools cannot exceed 10% of the sanctioned strength.

School norms and standards, (see Section 19 of the act)

No school, other than government schools, shall be established or function without meeting certain norms and standards. Infrastructure requirements mandate at least one classroom for every teacher and a shared office-cum-storage room space. Other facilities include separate toilets for boys and girls, safe drinking water, kitchen where mid-day meals are cooked, playground and arrangements to secure the school. Every school is required to have a library containing books including storybooks, newspapers and magazines related to all subject matter. Teaching learning equipment and sports equipment shall be provided to each class as required. Teachers are required to follow minimum working/instruction hours per week and academic year. Where a school established before the commencement of the act does not fulfil such norms and standards specified in the schedule, it shall take steps to full each of the norms and standard within a period of 3 years from the date of the commencement of the act. Those schools who do not fulfil the minimum criteria even after the deadline to be unrecognised.

Pupil-Teacher ratio, (see sections 19 and 25 of the act)

Classes 1-5 should have a pupil-teacher ratio according to a schedule prescribed by the act. For example, a ratio of 30:1 is prescribed up to class strength of 120. Beyond that a ratio up to 40:1 is allowed. Higher classes from 6-8 require one teacher for every 35 students, so that there is at least one teacher each for Science and Math, Social Studies and languages. If any of these classes 6-8 have more than 100 children, there should be a head teacher and part-time instructors for art, physical and work education. The schools should adhere to the prescribed pupil-teacher ratio within six months of the act coming into effect.

School management committee: (see Section 20 and 21 of the act)

Every government, aided and specified category school such as a Kendriya Vidyalaya will appoint a school management committee, which is mainly responsible for preparing the school development plan and monitoring the working of the school and its utilization of funds obtained from the government. At least three-fourths of the committee must include parents and guardians of children attending the school. The rest may comprise elected representatives from the local authority. A proportional representation must include those from disadvantaged groups and weaker sections of the community. At least 50% of the committee must comprise women.

Protection of right of children, (See section 31)

The National or the State Commission for Protection of Child Rights is responsible for examining the safeguards for rights under the act and recommending measures for effective implementation. It is also responsible for inquiring into complaints relating to child's rights to free and compulsory education. Regardless of these commissions, any person having any grievance relating to the right of a child may make a written complaint to the local authority and the local authority shall judge within three months. The decision of the local authority can be appealed to the State Commission.

Critical Appraisal of the Act

The act has been praised by many policy analysts as being historic and revolutionary landmark in education related legislation in India. It is maintained by them that the act

utilises the language of rights for the 1st time to create enforcement for primary education for all (Jayadev & Krishnaswami, 2012). They are of the view that the act clearly makes state responsible that every child in the age group of 6-14 gets free education. According to Krishna Kumar (2012) the most ambitious among its objectives is the social engineering it proposes by guaranteeing at least 25 per cent share of enrolment in unaided fee-charging schools to children whose parents cannot afford the fee. It is argued that the provision will lead a way for mixing the children from different socio-economic backgrounds and make a classroom experientially and linguistically richer and diverse. The act has also been hailed for many other initiatives like minimum qualification norms for teachers, responsibilities of teachers, standard norms, specified pupil-teacher ratio, school management committees etc. already discussed above.

The act has come under a severe criticism from various circles. It has been criticised for not challenging the existing multi-layered school system that in itself is based on discrimination and stratification leading to exclusion. It is held by many scholars that the government should have adopted a common school system through neighbourhood schools. Common School System functioning through Neighbourhood Schools would have instead enabled children of different class, caste, religious and language backgrounds to study and socialise together. This would have helped promote equality and social justice and also an appreciation of India's rich diversity and composite culture. With their own children studying in the Neighbourhood School, this would have also provided an objective basis for the more powerful and privileged sections of society to have a vested interest in the state-supported school system, thereby maintaining both its quality and political credibility. Further it would have been most appropriate to follow the Common School System functioning through Neighbourhood Schools to fulfil the obligations towards the right to education, respect the right to education and protect the right to education in true sense.

The article 45 of constitution limited its scope to "all children until they complete age of 14 years", that is its scope limited till class 8th but covered early child care, nutrition and pre-primary education for those below 6 years of age. Anil Sadgopal (2010) argues that given

the radical changes of the recent times the education until 8th class takes a child essentially nowhere and in fact various vocational courses (also professional) nowadays also require a minimum qualification of class 12 and therefore the government should have amended the article so as to include the children until they complete 18 years. On contrary the act reduced the ambit to the age group of 6-14, and hence excluded child in the age group of 0-6 of child care and pre-primary education. Several studies on early childhood have shown that 3-6 years is the time when children need to be exposed to literacy-rich environment to enhance their literacy growth, and children who experience schooling for the first time at the age of 6 years are clearly at a disadvantage. Although it should be noted that Section 11, directs that “with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre-school education for such children.” There are no clear cut instructions that how this goal will be envisaged. This country does not have the wherewithal to provide primary education to all and yet the Act envisages universal pre-school training facilities also being set up—farfetched and unworkable statements of good intent. Furthermore one of the big unanswered question relates to the fate of children from the weaker sections after they complete their free elementary education in the elite schools, where the tuition fee would be more than the annual income of their parents (if at all they get this opportunity). Predictably, these children will have to leave these schools and slip back to schools of questionable standards, which is bound to be psychologically traumatic, and in essence against the right to education.

Research has shown that “learners learn best in their mother tongue as a prelude to and complement of bilingual education approaches.” The use of children's mother tongue in school is pedagogically sound. It encourages community mobilization and social development, overcomes exclusion and marginalization, and provides for a political voice. It also increases economic opportunity and mobility (UNICEF, 2007). The policy makers so far have failed to come to terms with this fact that the most effective way to learn any language (including English) is through the medium of child's mother

tongue as a component of her multi-lingual ambience. The consequence of this misconception and lack of a sound policy is the widespread phenomenon of a rapid attrition of the capacity to articulate one's thoughts or ideas. The vast majority of the Indian children grow up in the prevailing multi-layered school system without acquiring the capacity to learn and articulate in either the state language or English and, in the process, losing the capacity to do so in one's mother tongue as well. It is in this context that Anil Sadgopal (2010) argues that that we need to evaluate the implications of the ambiguity introduced in the RTE Act, 2009, as reflected in the provision on the required curricular framework [Section 29 (2) (f)]. It is maintained that the act reluctantly promises “medium of instruction shall, as far as practicable, be in child's mother tongue” but the law seems to be unaware of the history of denial of mother tongue as a medium of education in India's school system since independence. He argues that this has been partly due to confusing the state language as the mother tongue and partly due to the hegemonic practice of imposing the Three-Language Formula (NPE-1986, Section 8.7).

In spite of inclusion of the disabled children in the category of ‘disadvantaged group’ through an amendment as an afterthought, there is hardly any provision in the Schedule of norms and standards, except for barrier-free access in the case of locomotor disability, to ensure that the rest of the disabled children will be able to study in a regular school. This means that budgetary allocations for such special provisions (e.g., books in Braille, teachers for supporting teaching through Braille & sign language and teachers for mentally challenged) are unlikely to be made. Most of the disabled children will continue to be either excluded altogether from the regular schools or remain at a substantial disadvantage; NGOs, religious bodies and corporate sector will continue to be relied upon, as at present, through PPP for running Special Schools as per their convenience which implies continued denial of Fundamental Right to the disabled for education of equitable quality with dignity (Sadgopal, 2010). The Right of Children to Free and Compulsory Education Amendment Act (2010) approved by parliament in 2012, apart from somewhat broadening the definition of disability, has also legalised home based education for severely disabled. It has been argued that the home based education is contrary to

the “Statement of objectives and reasons” annexed with the RTE-Act (2009), which proclaims that every child has a right to be provided full time elementary education of satisfactory equitable quality in formal school (not at home) which satisfies certain essential norms and standards.

The provision of 25 percent reservation in private and specified category schools (e.g., Kendriya/Navodaya Vidyalayas) for children from weaker sections and disadvantaged groups has also come under a serious criticism. It has been argued that the wonderful claims being made by the protagonists of this provision that it will be a great step forward towards socialization of both the rich and the poor, has no historical basis whatsoever. Although it seems highly desirable that children of different socio-economic classes are able to study and grow together, however, what cannot be denied is that several psychosocial and pedagogic issues would need to be addressed in order to integrate students from low-income families (who are often first or second-generation learners) with students from families that have a stronger educational as well as income background. Given the current exam-driven, competitive ethos of most private schools in India, children who lack academic support from their families are likely to remain low performing, and may suffer by comparison. Apart from this they would be faced with difficulties that stem from the contrast in social markers such as dress, possessions, parental profiles etc. All this could seriously affect the self-esteem of underprivileged students, and in the short run many schools may not be equipped or even inclined to respond to their specific needs (Dongre, 2011a). This provision has also been criticized for not giving any clue as to how the children admitted under this provision will meet the exorbitant and arbitrary non-fee costs of the private schools.

With a fear of being accused of oversimplifying and generalising, it seems that the framers of the act had a firm belief that the state school system has been a failure and will continue to remain so, hence, the assistance was sought from the private schools so that the children get their right to education. Otherwise, why cannot the government develop government schools to a level where people are not forced to send their children to private schools. As a matter of fact Anil Sadgopal (2011) describes the act as “Neoliberal Act” and the provision

of the 25% EWS reservation in un-aided private schools as its worst provision, for this provision amounts to the declaration that at present private schools are not only of higher quality compared with government schools but shall remain so even after the Act is implemented. It has been argued that the act actually provides for the deregulation of fee in private unaided schools. According to this act, all that private schools are required to do is to give a public notification of their fee structure before admissions every year. Therefore transparency and not fee regulation is the norm. The act does not even provide for minimum wages for teachers in private schools. Yet, in the name of fee reimbursement against the 25% EWS reserved seats the Act actually allows the siphoning of public funds to private schools and therefore encouraging commercialisation of education and will lead to greater dichotomy within the school system as a whole (Patanaik, 2013). As early as July 6, 2009, Dr. Pushpa Bhargava, then the Vice Chairman of the Knowledge Commission wrote to the Prime Minister expressing his apprehension about the way the Act was framed. To quote, “...The Bill ignores the historical fact that the decline in the standard and quality of government schools which were excellent till the late mid-1960s, started with commercialization of school education that led to the affluent sending their children to private commercial schools... The Bill will, de facto, open the gates for government subsidizing private profit-making schools for the rich and the affluent, instead of ensuring quality school education for all.... The 25 per cent reservation of seats in private commercial schools for poor children of the neighbourhood as provided in the Bill is, given the present situation in the country, bound to be a farce with only the school benefiting by the money from government towards their fees, and no benefit in return to those who need it most. There is no way that any existing provision can prevent this from happening...” (cited in Dongre, 2011b). While critically evaluating that what will be the benefits of the reservation, Patanaik (2013) gives an example of Andhra Pradesh. In Andhra Pradesh, around 5 lakh children are joining in unaided private schools every year in class one. About 2 lakh students from rich and upper middle class families join elite schools. The rest from the lower middle class are joining schools with standards that are often lower than that of the government schools. Around 8 lakh children

are joining in government schools in class one every year. Now if elite schools implement 25% EWS reservation, assuming they increase their seat capacity to make up 25% of the total strength after increase they will enroll a maximum of 66 thousand children in class one. The rest who are more than 10 lakhs, will have to join the same ill fated government schools or low standard private schools. In nutshell only 6% children among 11 lakh may truly benefit from this reservation provision.

RTE Act might at most bring in children who are out of school into the school system. However, it cannot actually address the core issue of the lack of meaningful learning in current forms of schooling across the country, that are important for retention of these children. Research has showed that in India the issue is more of 'push out' rather than 'drop out'. In addition to other reasons for push out, some basic reasons are a) a lack of relevance of the curriculum to children's experiences and needs b) rote-driven textbook-centred teaching c) lack of support as well as motivation among teachers to address the specific situation of diverse kinds of children. While these issues are well known and it is often acknowledged that a multi-dimensional approach is required to address them, the lines of solutions implied in the RTE Act are limited to: a) Requiring greater parent and local body representation in school managing committees b) Providing local authorities with the power and responsibility to ensure compliance of schools with specified norms c) Having many more trained teachers, etc. However these reasons are not sufficient for the retention of children. While parents and local bodies can ensure that teachers and students do attend school and are doing something in the classrooms, they cannot address the core problems of lack of motivation on the part of both teachers and children, or the perceptions that teaching is a chore and learning in school is a painful, ritualistic exercise. Children, from a very young age, are forced to sit for hours and made to listen to uninspiring textbook lessons from teachers, who in turn are often bored by carrying on with the same chore day after day. Whereas the RTE Act emphasizes the need for child-friendly approaches, very little mention has been made of the need for having teacher-friendly and teacher-initiated processes in the school system. One cannot see how the former is possible without the latter. Our current system of academic administration remains heavily top-down and vertically organized, with very little scope for

teacher participation or initiative. Therefore, even as more children are brought into the schooling system through the RTE Act, unless we bring in significant changes in our current approach to both children's and teachers' educational needs, its impact will remain limited. We will have more children going to school without the commensurate increase in educational attainment.

While ensuring that every child who traverses through the elementary education system acquires a certificate of completion, the Act fails to guarantee that a child has acquired competencies deriving from said education process—no standards are set for monitoring and measuring learning outcomes—a case of guaranteeing graduation but not education. Similarly the act has also been criticised for lack of proper grievance redressal mechanism. In order to make the RTE Act effective it was necessary to establish the modalities through which rights under the RTE Act are protected and violations of the Act are to be dealt with i.e. a system of registering, investigating and responding within a well-appointed time frame. Similarly the RTE Act has assigned the monitoring of implementation to the National Commission for the Protection of Child Rights (NCPCR). However Krishna Kumar is of the view that "currently, this fragile agency has hardly any institutional capacity to look after the millions of children whose right to education and dignity has been recognised for the first time in the nation's history".

CONCLUSION

Avoiding the Scylla of uncritical praise and Charybdis of denunciation it be concluded that the Right to Education Act cannot help in ridding the education system of India from the long standing problems regarding education. In fact it is true that right based approach to education is not a panacea of education system, but consistent adherence to its principles can definitely help in achieving the education goals of government, parents and children. Although it is true that the act is using the language of rights and like many other acts the intentions of this act are noble, yet it is full of farcical, unworkable and at times contradictory provisions. A closer look at the section II and V makes it clear that RTE ACT 2009 is a step towards right based approach to education but at the same time does not follow all the necessary dimensions of the approach, since the act does try to overcome the

inequality in quality education and does not try to challenging the existing multi-layered school system that in itself is based on discrimination. Thus there is a need of radical changes in RTE ACT in coherence with human rights framework to education, with equal commitment to mechanisms and outcomes to ensure that the children get their right to education. Furthermore the best option before the government to assure the right to education is to go for Common School System functioning through Neighbourhood Schools.

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