

# Right to Education: A Myth or a Reality

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There was a hope for a revolutionary change in the arena of universalisation of elementary education when the government of India decided to usher in the 86<sup>th</sup> constitutional amendment in 2002 by which the right to education for all children in the age group of 6 to 14 years was to be made a fundamental right through incorporation of article 21 A as part of the fundamental rights chapter in the Indian Constitution of India. After the passage of so many years, we prompted to ask this question, is the right to education- a myth or a reality? This question really calls for an in-depth study of developments during the post 86<sup>th</sup> constitution amendment act, 2002.

This paper entitled „Right to Education: A Myth or a Reality“ proposes to make a survey of the past, the present and the future in relation to universalisation of elementary education in India in order to provide an insight into the intention of the ruling classes in India in providing „Education for All“ which is presently the universal slogan of the World Education Forum“ which formulated this slogan in Dakar, Senegal in April 2000 and committed the international community to ensure that universal access to quality basic education is achieved and sustained by 2015. More than 1100 representatives from 164 countries adopted the Dakar Framework for Action- Education for All: Meeting our collective our collective commitments. While this was the commitment made by India, in the context of the Dakar Declaration of 2000, in the framework of this paper, I desire to analyze this subject in three parts, part –I: the past, part-II: the present and part-III: the future.

Part-I: The past:

During the struggle for independence, spearheading the struggle Mahatma Gandhi said in 1937 that education should be self-supporting and children’s education should begin not with formal literacy but by teaching a useful handicraft to enable them to produce from time to time when they begin its learning. A meeting was organized by Gandhiji at Wardha in October, 1937 in which national workers in the field of education and education ministers of different provinces participated. This conference appointed a committee with Zakir Hussain as the chairman to draft a detailed syllabus in this regard. The report of the committee was adopted by the Indian National Congress in March, 1938 at Haripura. The Central Advisory Board of Education of the Government realized the merit of the new scheme and appointed a committee which considered that basic education should first be introduced in rural areas to educate the children of ages 6 to 14 years with mother tongue as the medium of instruction.

In 1948 something important happened with regard to elementary education. The Central Education Minister, Maulana Abul Kalam Azad, proposed to achieve compulsory elementary education throughout the country within 40 years. A finance committee that was then appointed recommended that compulsory basic education should be introduced within a period of 16 years. The committee also recommended that the centre should bear 30% of the expenditure, while states should bear the rest. This scheme could not be implemented on account of paucity of funds.

The Constituent Assembly of India debated the draft constitution for a total period of two years, eleven months and seventeen days from 9<sup>th</sup> December 1946 to 26<sup>th</sup> November 1949 and adopted it. During these debates, when the provision regarding Universal Primary Education was discussed, it was suggested that in case of scheduled castes and scheduled tribes free and compulsory education until they complete the age of 18 years, while for all other children free and compulsory education in the age group of 6 to 14 years was proposed. Of course, this provision was included in article 45 of the constitution of India by making it a part of the Directive Principles of State Policy. However, in article 45, the suggestion to provide free and compulsory education for the children in the age group of 6 to 14 years, that was within ten years of the commencement of the constitution. Hence, 1960 was laid down as the target for this achievement. But remained a target on paper only and not realized.

However, efforts were continued for the universalisation of elementary education through the various five years plans. In 1964 an education commission was appointed by the government of India to advise on the national pattern of education in the fourth plan for its development at all stages in all aspects. The commission formulated principles for a national enrolment policy for next 20 years. It was stated therein that education should help in increasing production, achieving social and national integration, accelerating the process of modernization and the cultivation of social, moral and spiritual values. It was in 1968 that the government of India adopted a resolution on national policy on education that free and compulsory education to all children up to 14 years should be fulfilled early. The Planning Commission suggested some major changes in the existing education policy in the draft five year

plan(1971-76) and laid emphasis on adult and elementary education programmes for non-school going children of the ages 6-14 and 15-35 years for equalization of literacy-level education opportunities to backward and underprivileged classes. The fifth five year plan adopted the principle that formal and non-formal education should be correlated and integrated to meet the educational needs. The plan laid emphasis on enrolment of girls, children of weaker sections such as scheduled castes and scheduled tribes and landless agricultural labour. Elementary education of two stages: primary and middle was envisaged. The primary stage was expected to be completed within 6 to 11 years and the middle stage within 12 to 14 years. The Union Education Minister announced on April 05, 1977 that Universal literacy would be attained within a definite timeframe of not more than 30 years. The aim was not only to universalize elementary education for all children of 6-14 years, but also to remove illiteracy of adults in the age group of 15 to 35 years by achieving 90% enrolment of children of 06-14 years by the end of the Sixth Five Year Plan and 100% by 1985.

Evidence of state's tendency to abdicate its constitutional obligation towards the provision of education of equitable quality for all children was already visible in the National Policy on Education, 1986 as well as in its modified version of 1992 in accepting the low-quality, low-budget non-formal education as a parallel stream for the poor, especially the child labour and girl children. However, the market agenda and the IMF-World Bank regime of structural adjustment programme, as reflected in the Jomtien Declaration had a significant impact on the state's policies, resulting in further attrition of its commitment during the 1990s to fulfil its constitutional obligation.

This is a concise survey of the past and we realize on a keen perusal of this past that universalisation of elementary education remains a mirage even to this day and the various declarations of targets and timeframes have remained unfulfilled, though this is not to suggest that there has been no progress at all. The incontrovertible fact remains that free and compulsory education for all children in the age group of 6 to 14 years as envisaged in article 45 of the constitution remained an unfulfilled dream. The target of ten years originally fixed in article 45 in 1950 remained unfulfilled. Even the later targets as presented above through the five year plans till 2017 remained only as mere desires and declarations and these remained unfulfilled.

## **PART II-PRESENT**

The World Education Forum's Dakar Declaration of 2000 created a new responsibility on India, which was party to this International Covenant, which has set the goal of „Education for All“ as 2015. It is in this new context that the role of the government of India and the steps taken by it after the Dakar Declaration deserves special attention.

The most important step taken the Govt. of India in the direction of realizing „Education for All“ is the 86<sup>th</sup> amendment brought about to the Indian Constitution. This was introduced as Bill No. 106 of 2001 and passed by Lok Sabha on November 28, 2001. The President of India gave assent to this bill on Dec. 12, 2002 and this became an act of Parliament under the nomenclature-“The Constitution(Eighty-sixth amendment) Act, 2002, and was gazetted on Dec 13, 2002 in the Gazette of India, Extraordinary Part II, Extra Section- I. In this Act, Section 2, 3 and 4 deserve special attention and a critical analysis.

Section 2 of the above Act lays down as follows:

Insertion of new article 21A: After article 21 of the constitution the following article shall be inserted, namely:“21 A: Right to Education:

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.”

**Section 3:** Substitution of new article for article 45: for article 45 of the constitution, the following article shall be substituted, namely: “45: provision for early childhood care and education to children below the age of six years. The state shall endeavour to provide early childhood care and education, for all children, until they complete the age of six years.”

**Section 4:** Amendment of Article 51 A:

In article 51 A of the constitution, after clause (j) the following clause shall be added namely:

“(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

The above provisions are self-explanatory. However, a critical appraisal of 86<sup>th</sup> constitutional amendment needs to be undertaken, in order to realize the present constitutional status of „Education for All“ or Universalization of

primary education. This appraisal has three main dimensions. The first is the fundamental rights dimension, the second is the directive principles of state policy dimension and the third is the fundamental duties dimension. Before these dimensions are taken up for an analysis, the significance of the 86<sup>th</sup> amendment itself needs to be understood.

Till Dec 13, 2002 when the 86<sup>th</sup> amendment was gazetted and thus promulgated, education of children in the age group of six to fourteen years was in the zone of the Directive Principles of State Policy at article 45 of the constitution of India. What is important to be realized is that universal primary education, which was incorporated in article 45, was not justiceable and it only said that the state shall endeavour. Though a provision in the Directive Principle of State Policy imposes a fundamental duty on the state and becomes a part of the fundamental aspect of governance, this cannot be enforced in any court of law. Thus it is described as non-justiceable or unenforceable. Thus education of all children in the age group of 6 to 14 remained only a pious declaration of state policy which could not be enforced by the citizens by the citizens against the state. 86<sup>th</sup> amendment to the constitution brought about a fundamental change in the character of education to all children in the age group of six to fourteen years. What is radical is that this right of the child to education in the age group of 6-14 was elevated from the zone of Directive Principles to the zone of Fundamental Rights and thus an altogether new character was given to it. It takes a place under article 21, which is fundamental right to life. Hence, right to education gets incorporated as Article 21 A, and becomes a fundamental right. This is a phenomenal change as a fundamental right is justiceable right and an enforceable right – enforceable right- enforceable by using the writ jurisdiction in the High Court or the Supreme Court under article 226 or article 32 of the constitution. Hence, we should say that after the Dakar Declaration by the World Education Forum in 2000, the government of India seems to have taken a big leap in the direction of realizing „Education for All“. Why is the expression “seems to have taken” used? This is where the catch lies and an analysis of the three dimensions of 86<sup>th</sup> amendment would amply explain this catch.

### **THE THREE DIMENSIONS**

The first dimension regarding the 86<sup>th</sup> amendment that needs an in-depth study relates to article 21 A of the constitution. While it is a fact that right to education is transformed into a fundamental right from the Directive Principle of State Policy which has an inbuilt rider, which is both an enabling provision and a limiting provision. The inherent contradiction in article 21 A is, while the provisioning begins by stating, “The state shall provide free and compulsory education to all children of the age of 6-14 years”, what follows states- “in such manner as the state may by law, determine”. While the first part is mandatory, as it states “shall”, the second part is obligatory as it states “may”. What a contradiction! The right to education for all children in the age group of 6-14 is mandatory but it becomes enforceable only when the state determines the manner of its implementation and here it is stated as “May”. The state may make a law, and the implied aspect is that it “may not” make the law also. So, the paradox is that an enabling fundamental right is subject to a statutory legal obligation on the part of the state to make law, which it may make implying thereby that it may not. There is neither a time-limit laid, nor the nature of the content specified. So the making of the law itself limits the implementation of the right. Hence, while the right to education is elevated to the status of a fundamental right, it is limited to the whim and fancy of the state which is to make law. To go back into history, the right to education remained illusory because it was a directive principle under article 45 and unenforceable for decades and continues to be illusory as the „law“ which the „state may make“ is yet to be made. What a paradox and what a tragedy! Before we part with this dimension let us have a perusal of the „so called efforts“ made by the state in making the law to implement the right under article 21 A.

There were two bills which had been formulated since 2002, when article 21 A was incorporated. One was the “Right to Education Bill, 2005 and the second was „Model Right to Education Bill, 2006. „Right to Education Bill, 2005 was meant to be a central Law, hence this bill in the preamble states- „Be it enacted by parliament in the fifty-sixth year of Republic“. While this is so, „Model Right to Education Bill, 2006 in its preamble states- it was meant only to be a „Model Bill“ for enactment by the State Legislature and Legislatures, as the case might be. A general observation regarding these bills is that they were in line with the globalization, liberalization and privatization policies of the government of India being pursued since 1990 and thus need to be thoroughly overhauled. Finally, there was a Right to Education Act, 2009.

Let us now proceed to the second dimension which deals with new article 45 of the constitution of India, which has come to replace the old article 45 through the 86<sup>th</sup> constitution amendment act. This provision is in the zone of Directive Principles of State Policy and this is non-justiceable. Hence, the state shall endeavour to do this, but the citizen cannot get this enforced in any court of law. It reads as follows:

Article 45: “The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

This new provision enhances the scope of education as childcare was not part of our constitution before the 2002 amendment of the constitution. While the old article 45 provided for free and compulsory education to all children in the age group of 6-14 years, the new provision covers children till they complete six years of age and places a duty on the state to provide care to these children and also education. Hence, the responsibility of the state to provide pre-school education as also care for children up to six years is provided for. While the duty of the state before 2002 under article 45 covered children from 6 to 14 years with the shifting of this provision to the zone of fundamental duty, the state is now directed to provide care and education to all children up to six years of age in the zone of Directive Principles of State Policy. As this is non-justiceable, this is bound to face the same face of inaction as free and compulsory education to all children in the age group of 6-14 years faced till it was amended in 2002 by 86<sup>th</sup> amendment act. When the state is trying to wash its hands off from free and compulsory education for children in the age group of 6-14 years, we cannot expect the states to provide pre-school education and child care till they complete six years. This would remain at best an intention and a pious declaration and these children are left to the sweet will and mercy of the state for its realization, particularly in the context of liberalization, privatization and globalization- policies, when the state is ceasing to be a welfare state and getting transformed with a Laissez Faire State.

Now let us probe into the third dimension of the 86<sup>th</sup> amendment which covers the zone of fundamental duties. Article 51 A(k) which has been added after (j) reads as follows:

“(k) Who is a parent or a guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

This provision imposes a fundamental duty on the parent or guardian to provide to his child or ward in the age group of 6-14 years. While the 86<sup>th</sup> amendment on the one hand through article 21 A, makes the state to provide free and compulsory education in the age group of 6-14 years as a fundamental right, on the other hand, through article 51(A)(k), it imposes the fundamental duties of the parent/guardian to provide opportunities for all such children. This is paradoxical and funny. This exposes the dual character of state policy, which on the other hand, owns the fundamental responsibility of imparting free and compulsory education for children between 6 and 14 years, and on the other hand, makes it a limited right and further shifting the unlimited burden of providing opportunity to such children on the parent/guardian. This is a principal contradiction. This exposes the hollowness of the state in imparting education freely and compulsorily to the children in the age group of 6-14 years.

### **PART-III- THE FUTURE**

On August, 26, 2009, the government of India enacted „The Right of Children to Free and Compulsory Education Act“ (hereafter, Right to Education (RTE) Act). The RTE Act, 2009 came into force on April 01, 2010. Twelve years have already passed since this Act came into being. The Act in article 3(1), chapter II makes a provision that „every child of the age of 6-14 years shall have right to free and compulsory education in a neighbourhood school until completion of elementary education.“ We are well acquainted with this fact that in one way or another was not the first attempt to universalize elementary education in India.

The RTE Act, 2009 is there where there is a multilayered school system and thereby accelerates both commoditization of school education, on the one hand, and exclusion of the poor, on the other hand, will become a major obstacle in the implementation of the existing system. The bitter truth is that the Indian state of late has been acting more as an agent of the neo-liberal capital than as the guardian of the people’s democratic rights, equitable development and welfare as guaranteed in the constitution. Its policy focus is on throwing open Indian education as one of the most lucrative markets for global investment as per the World Trade Organization- General Agreement on Trade in services (WTO-GATS) agenda. This is evident in a range of initiatives such as the PPP, voucher schools, refinanced loans and tax exemptions to both the investors (corporate houses, non-governmental organizations and religious bodies) and the consumers (children and parents) and a range of pro-market laws on the anvil, including the foreign university bill. Policymaking, a sovereign function of legislatures, is being outsourced to corporate houses or their NGOs and foundations, further, the objective of education is no more the building up of a democratic, socialistic, secular, egalitarian and enlightened society. The financial plans and other policy documents such as the reports of Sam Pitroda’s Knowledge Commission and the Yash Pal Committee on renovation and rejuvenation of higher education make it clear that the entire education system is being geared to the sole objective of preparing a highly skilled but entirely slavish workforce or foot soldiers from plumbers and electricians to economists, information technology specialists, nuclear engineers and biotechnologists for the global market.

What lies at the core of the neo-liberal policy framework of school education is (a) opening new markets by demolishing the vast government school system, except some specified categories of elite schools such as Kendriya

Vidyalayas and Navodaya Vidyalayas or the block-level model schools or their counterparts in various states/union territories; (b) shifting public funds to corporate houses. NGOs and religious bodies through PPP, school vouchers, refinanced loans, cash transfers and tax exemptions and (c) expediting abdication by the state of its constitutional obligation to ensure education of equitable quality to all children. It is precisely in this policy background that the farcical RTE Act was conceived.

In spite of the tall claims by the government, the political will to guarantee universal quality education has steadily declined, as is evident from the declining or almost static public expenditure on education as a percentage of the gross domestic product since 1986. In conceiving the RTE Act, the state was guided by two key features of neo-liberal economic order. First, children of different sections of society shall have access to varying quality of schooling in accordance with their socio-economic and cultural status or purchasing capacity or both. This is evident from the very definition of school in clause (n) of section 2, which provides for four categories of schools of varying quality and provisions.

The Act insists on compartmentalizing RTE in these categories. For instance, section 5 provides for the right of the child to seek transfer to another school under certain circumstances. However, in the very next breath, it restricts the right of the child to seek transfer to schools of specified category (that is, Kendriya Vidyalayas, Navodaya Vidyalayas and other similar elite schools) and private unaided schools. This implies that almost 80% of the children in the 6-14 age group shall be denied education in schools which the state itself considers, rightly or wrongly as providers of higher quality education. This deception destroys the very basis of education as fundamental right read in conjunction with article 14(equality before justice).

The RTE Act misleads people in more ways than one. Hopefully, the vast NGO section that has been mobilized by UNICEF and other international agencies in collaboration with the government in support of the Act will take a second look at their agenda of pushing an Act that not only denies the fundamental right to education but also lacks a transformational vision. This self-introspection may help the NGOs to challenge the apologists of the Act who have used the something is better than nothing trick to confuse the RTE discourse. This something, too, might have been acceptable if it did not lead to distracting the people from their struggle to gain the right to education of equitable quality along with an education that liberates rather than enslaves. The fundamental right must not be reduced to crumbs or patronage.

With such a past and a present what is in store in future for the right to education is the million dollar question. It can be said without fear of contradiction that the fundamental right to education of all children in the age group of 6-14 years has remained a myth and is yet to become a reality even after the passage of the RTE Act, 2009. In this context of the RTE being a mirage despite its inclusion in the fundamental rights under article 21 A followed by an act, popularly known as, RTE Act, 2009, it is pertinent also think of the other vital fundamental rights like right to life, which is supposed to include the right to livelihood being more seen as being flouted than followed, when thousands of starvation deaths and lakhs of suicides by farmers and others are witnessed even till date. The greatest misery is that the state till date, after 74 years of independence, has not even been able to ensure the minimal existence and subsistence to implement right to life. Even the vital freedoms ensured under article 23, prohibition of forced labour and beggar, have not been achieved and naked exploitation by the bourgeois-landlord ruling classes, has been the order of the day.

The freedoms of speech, expression, association are severely curtailed under several draconian laws. Hence, it can be said that right to education will also go the same way as the other fundamental rights have been going till now. It can be said that while the constitution of India apparently reflects a political democracy even a semblance of social and economic democracy are yet to be seen.

A question automatically crops up: What is in store for the future? Even after 74 years of independence the inequality is rampant, the frustration of the suffering people is being pent up, the anger against exploitation is brewing. The mask of equality and democracy has been blown off. What awaits the future is being anxiously awaited.

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