

## **Perceptions on Getting Children to Schools Before and After RTE Act**

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### **Abstract**

The current article shows how until the enactment of the Right of Children for Free and Compulsory Education Act, 2009 (RTE Act) the Indian State had never given a wholehearted commitment to make education a fundamental right. It traces the attitudes and perceptions of the protagonists for universal education and the arguments that had systematically thwarted any investment for universalisation of education in India. The RTE Act is a breakthrough, as it guarantees right to all children in 6-14 years age group in India, and makes it a State obligation to provide for it as per the Act. However its implementation becomes a challenge for an education system which over time, had developed practices to exclude children and had compromised children's access to schools. The system has to radically transform itself to reach out to every child by law.

### **Introduction**

Providing free and compulsory education by law for all children in India has been a long drawn battle. Ever since the British colonial regime, administrators have dithered in passing a law or even outlining a policy for universal school education. "Where are the resources?" has been the constant refrain. Even after India's independence, "paucity of resources" was perceived as a challenge in providing universal elementary education and, therefore, plans were made for the strengthening and expansion of only primary education. There was also a pervasive understanding that poor children had to work to earn a living; and accordingly, alternate education, night schools, non-formal education centers were to be provided for. It was also felt that children dropped out of schools because of lack of quality education interventions such as teacher's training programmes. All such perceptions were so conclusive that any contrary opinion seemed unreasonable. A commitment to getting every child into school was, in effect, never considered seriously.

After much discussion in the Constituent Assembly while drafting the Constitution of India, education was incorporated in Article 45 of the Directive Principles of State Policy and thus removed from consideration as a Fundamental Right (Juneja, 1998). Due to the intervention of Ambedkar the words 'primary education' were deleted, as he saw

that in doing so, children would be relieved from the drudgery of work.<sup>1</sup> This provision in the Article 45 of the Directive Principles of State Policy reinforces Article 24, which reads, “no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment.” It was also stipulated that the State should provide free and compulsory education to all children up to age of 14 within ten years of independence i.e. by the year 1960. The Constitution also directed that children cannot be abused or forced to work and “to enter avocations unsuited to their age or strength through Article 39 (e) and (f)”. The Supreme Court constitutional bench, in its final judgment in the *J. P. Unnikrishnan V. State of Andhra Pradesh JT 1993*, lamented that the promise of providing education to all its citizens remained unfulfilled and held education up to the age of 14 years to be a fundamental right.<sup>2</sup> This was a landmark judgment and added a sense of urgency to the measure. It took sixty years after independence to fulfill the promise of making education a fundamental right by law through the ‘Right of Children to Free and Compulsory Education Act, 2009’ (RTE Act).

The present paper seeks to locate how the justifications of lack of resources and poverty of parents impeded the realization of the children’s right to education and prevented many of them from completion of even primary education. It is with the RTE Act that States were compelled to ensure that every child of 6-14 years attends school. It also gives the poor a legitimate claim on State’s resources and is a big step in winning the battle for schools. All earlier perceptions that tolerated out of school children and school dropouts became irrelevant even as the education system altered to become inclusive and ensure that no child is left behind.

The paper also looks at the provisions of the RTE Act and the challenges in implementing them, especially those that address the entitlements of the first generation learner forming new sites for contestation of resources.

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<sup>1</sup> Ambedkar “Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words “every citizen is entitled to free primary education”. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years... a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word “primary” is quite inappropriate in that particular clause, and I therefore oppose his amendment.]Article 36, as amended, was added to the Constitution as Article 45 of the Directive Principles of State Policy.

<sup>2</sup> The Supreme Court of India, in 1993 said: “It is noteworthy that among the several articles in part IV only Article 45 speaks of time limit, no other article does. Has it not significance? Is it a mere pious wish, even after 44 years of the Constitution?” In *J. P. Unnikrishnan V. State of Andhra Pradesh JT 1993 (1)*, a constitution Bench of the SC held education upto the age of 14 years to be a fundamental right and held that it was incumbent upon the State to provide facilities and opportunity .... It would be therefore enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.

## “Paucity of Resources” for Education

There have always been competing demands for investments in education of children, even before India attained independence. During the colonial regime, Gopal Krishna Gokhale moved a resolution to bring about a law on compulsory education in the Central Legislative Assembly in 1910 and took the proposal up again in a Bill in 1912, neither of which achieved its objective (Nurullah & Naik, 1943, pp.417-425). The Indian Education Policy in 1913 provided for State aid for expansion of education in provinces, but could not commit to provide for free and compulsory education to all on the ground of financial difficulties and advised the local self-governments to provide some relief to the poorer and deprived sections of the society (Nurullah & Naik, 1943, pp.417-425). A committee under the chairmanship of B. G. Kher called the ‘Ways and Means (Kher) Committee’ was set up to explore ways and means of achieving Universal Elementary Education (UEE) within ten years at a lower cost. It proposed that this goal could and should be met within a period of 16 years from 1944 to 1960 (Planning Commission 2001). Here again, the argument of cost became an important consideration for implementing compulsory education in India.

It was in the ‘Post War Plan for Educational Development in India’ (Sargent Plan) in 1944 that for the first time a proposal for provision of free and compulsory basic education to all children in the age group 6-14 was made. It emphasized that universal coverage alone would guarantee equality of opportunity. Indeed the Post-War Plan had argued forcefully against compulsion up to primary stage, which lasted only five years up to the age of eleven, and felt that such an education could not be regarded as an adequate preparation either for life or livelihood.<sup>3</sup> It also stated that economic grounds cannot come in the way of education of all children.

In 1947, the Constituent Assembly Subcommittee on Fundamental Rights placed free and compulsory education on the list of Fundamental Rights under Clause 23. It stated that, “Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years”. This clause was removed from the chapter on Fundamental Rights in the Constitution of India as it was vehemently argued that the government would have no money to fulfill that promise and consequently the issue would not be justiciable. Yet another consideration for deleting the section on education as a fundamental right was its impracticality<sup>4</sup>. Thus, even while drafting the Constitution of India, the founding

<sup>3</sup> ‘Post-war educational development in India- Report by the Central Advisory Board of Education’, January 1944 NIEPA – DC G0197 1964 Ministry of Education, Govt of India

<sup>4</sup> See Nalini Juneja, ‘Constitutional Commitments’ Seminar 464, April 1998 for a detailed description and analysis of how the clause on ‘right to education’ was shifted from a justiciable to a non—justiciable’ right.

Also see <http://parliamentofindia.nic.in/ls/debates/vol11p6.html> for debates of Constituent Assembly of India, VOLUME VII Friday, the 19th November, 1948.

fathers were hesitant to make it a fundamental right<sup>5</sup>.

Although, Article 39 of the Constitution of India under its chapter on Directive Principles of State Policy guaranteed free and compulsory education to all children up to 14 years of age there was not a wholehearted effort to make this possible. It is in the Second Plan (1956) that the priorities of education policy were made explicit, i.e., to create the scientific and technological human capital in consonance with national development goals and objectives of building an independent and self-reliant industrial base in India. Thus, while all stages of education were seen as important, University education received the maximum impetus since the Second Plan (1956), as seen in the Table below.

**Table 1: Distribution of outlay between different fields of education in the First and Second Plans (Rupees in crores)**

	First Plan	Second Plan
Elementary Education	93	89
Secondary Education	22	51
<b>University Education</b>	<b>15</b>	<b>57</b>
Technical and Vocational Education	23	48
Social Education	5	5
Administration and Miscellaneous	11	57
<b>Total</b>	<b>169</b>	<b>307</b>

Source: Govt of India (1956)

In each Plan subsequently there is a mention of the promise of making education free and compulsory by law until the Twelfth Plan (2012-17) even as the State claimed that it had no resources to invest in education.

### Focus on Primary Education

The education strategy mainly focused on the expansion of primary education (class I to V) to start with. This did not help in reducing the number of school dropouts. At the time of independence, in the year 1951, the population of children in the 6-14 years age group was 60.8 million with 2.23 million children enrolled in elementary education. There were 0.38 million teachers and 223,287 schools at elementary level with a teacher pupil ratio of 1: 160 and 60% dropouts with only 23.3% girls in schools (Govt. of India, 1956). By 2011 this child population had increased to 230.5 million with 193 million children enrolled in schools, 7.35 million school teachers, and 14,31,702 schools (DISE, 2013). While there was a huge apparent jump in the infrastructure of teachers and schools,

<sup>5</sup> During the deliberations in the sub-committee on Fundamental Rights, there was a near unanimity in making education a fundamental right. See B. Shiva Rao, *Framing of India's Constitution: Select Documents*, p. 124-126.

investments in school education since independence exacerbated the situation wherein the national average of school dropouts continued to be as high as 42.39 per cent and for Scheduled Caste (SC) and Scheduled Tribe (ST) children at 51.25 per cent and 57.58 per cent respectively. In absolute numbers these children constituted a significantly large population.

The National Policy on Education, 1986 while emphasizing the need for education of scheduled castes and scheduled tribes, and girl children, paid attention to universal enrolment and retention of children with quality education and once again laid emphasis on primary education. Consequently, the 'Operation Blackboard' was pioneered to guarantee that every primary school had at least two teachers, and classrooms. It was only at the time of Seventh Plan (1985-90) that there was a mention of universalisation of elementary education (Govt. of India, 1985). Yet the government's flagship program in the early 90's through the District Primary Education Project (DPEP) was to scale universal coverage of primary education. From the 42 districts in seven states planned for in the first phase between 1993-4 (De et al., 2011)<sup>6</sup>, the DPEP covered 249 districts in 15 states in its fourth phase. Subsequently with the Sarva Shiksha Abhiyan (SSA) in 2001-2 there was a further push with coverage of all districts but the goals of SSA remained more or less the same. Elementary education, that is, at least 8 years of schooling was still not in the agenda.

Until the Seventh Plan (1985-90), other stages of education were not considered seriously and attention on primary schools sounded reasonable and practical. Translated, an argument of impracticality meant that the government was unwilling to make investments in education beyond class five. Consequently, a message that it is adequate for poor children to study up to class five was deeply engrained in the system. Never was the movement of children from one stage to the next, up to the university level, seen as an organic whole where sufficient investments could be made. Such a halfhearted policy resulted in denial of children to their right to education and also in inefficiency and wastage. How unfair it is that class five was regarded as the maximum most children should aspire to!

### **Letting Children Work and Non-Formal Education Centres**

The argument that government had no resources and so could not invest beyond primary education was compounded by an even more powerful argument that people were poor and could not afford to send their children to school. Thus, it was suggested that "the burden on him of supporting the child should be lightened by providing in schools free lunch, wherever possible, and by organizing, voluntary work outside school hours to enable pupils to produce essential consumable or marketable articles. Holidays should

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<sup>6</sup> The criterion for first phase was based on low female literacy and those that had successful Total Literacy campaigns. The second, third and fourth phases of DPEP were implemented between 1996 and 2006.

be so timed that labour of children is available to their parents in the busy season (Govt of India, 1951)". It was also felt that "busy agricultural seasons ought to coincide with school holidays as far as possible to enable a child attend schools. Further, especially in rural conditions, effort should be made to give a practical bias to education as far as possible (Govt of India, 1956)". With regard to children who contribute to family income, especially those in the age-group of 11-14 years, continuation schools could help keep up their education (Ibid, 1956). It was also perceived that one-half of the children do not reach class four due to extreme backwardness of certain areas and certain sections of the population caused wastage by taking away children from school as soon as they are able to add to the family income (Govt. of India, 1961). Some of these States are Bihar, Madhya Pradesh, Orissa, Rajasthan, and Uttar Pradesh where a large number of parents withdraw their children from schools (Govt of India, 1969). More than lack of schools, the socio-economic conditions of the poor seemed to be standing in the way of children achieving 100% education. Further, the not-too-relevant nature of the curricular programmes was considered responsible for the high dropout rate (Govt. of India, 1980) in these schools. The Ninth Plan acknowledged that there were 11.28 million working children in the country and 90 per cent of them who constituted out of school children were engaged in agricultural labour, rearing of livestock, forestry and fisheries (Govt of India, 1997).

Although the National Policy on Education 1986 laid emphasis on reaching out to the most marginalized, it was also guided by the understanding that poor children need to work and could ill afford to attend formal schools. A similar understanding was the basis for the Child Labour (Prohibition and Regulation) Act 1986 that prohibited child labour only in certain identified processes legally allowing child labour to persist in all other sectors.

### **Improvements in Quality of Education sans(without) Infrastructure**

Lack of quality of education in schools continued to be seen as a challenge for retaining children in schools. All Plans emphasised the need for improvement in quality of education and arresting of school dropouts. The Education Commission (1964-66) under the Chairmanship of Dr. Kothari emphasized universalisation of free and compulsory education up to the age of 14 by at least 1986, raising the national investment on education from 2.9 per cent of the GNP to at least 6 per cent by 1986, and, in keeping with the value of equal opportunities, introducing the concept of Common Schools. While a clarion call was made for democratisation of schools, it felt constrained to raise all schools to a higher level due to lack of resources and sought improvement in quality of education 'in at least ten percent of the institutions', as well as "admission of brighter children from all strata of society to receive the best education possible" in its final recommendation, thereby limiting its suggestion to cater to only a small number of schools and children (National Council of Educational Research and Training, 1971).

Inadequate infrastructure with crowded classrooms was accepted as given. Multi-

grade teaching became a norm leading to poor academic performance and high dropout rate in schools. Children were detained in the same class as they did not learn and were discouraged from continuing in school as if they were to be punished for non-performance, with little accountability or responsibility on the part of the system to provide services. Indeed, the number of children attending schools was not in proportion to the numbers of schools, teachers, classrooms, toilets and infrastructure that were available.<sup>7</sup> While there was an explosive demand for education, and with primary schools bursting at their seams with overcrowded classrooms, there was no corresponding increase in the numbers of schools at the elementary and high school levels. The system did not anticipate that every child who attended school would stay on and study at least until completion of class ten. Thus there was no preparation to hold them, engage them, and make all physical and other pedagogical arrangements with a view that children would actually be at least class ten graduates (DISE, 2013).<sup>8</sup> It was found that there was an inbuilt structural logic that kept children away from schools. The number of children attending schools is in proportion to the numbers of schools, teachers, classrooms, toilets and infrastructure that are available.

While the link between school dropouts and lack of quality education was made, at no time was the lack of quality education attributed to lack of teachers, classrooms, other infrastructure or any respect for the first generation learner. The problem of infrastructure was deemed resolved and yet children were not in school and teachers were not teaching. In a way it seemed that posing the issue of quantity versus quality of education was stuck for generations of policy planners. This allowed for the discussion to move out of the realm of hard issues such as investments in education, more teachers, classrooms, toilets, and so on.

No education plan since Indian independence, until the enactment of the RTE Act, held any conviction for the provisioning of education to all children up to 14 years of age in accordance with Article 45 of the Directive Principles of State Policy. Consequently, solutions that were offered laid emphasis on primary education catered to at least some children with merit, allowed children to work and learn through night schools, non-formal education centers with flexibility in timings, and compromised on child rights.

The Constitutional obligation to provide free and compulsory education for all children up to 14 years was time and again deferred. Over the years, an environment where children's right to education was considered unachievable got hardened. It did not matter if half the country's children ended up being outside the school. This non-

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<sup>7</sup> The average number of classrooms per primary school is 3.5 and 4.6 for all the schools. There are still schools with single classroom. 11.79% of primary schools and 8.65% of all schools have only one teacher. More than 6% schools do not have drinking water facility and almost 11% of schools of All Managements in India run without toilets for girls and boys. 7% of schools did not receive text books in the year 2012-13; more than 50% of schools do not have electricity connection (Flash Statistics 2012-2013, NUEPA).

<sup>8</sup> Enrolment at primary stage increased by 3.36percent from 1319 lakh in 2006-07 to 1370 lakh and that of upper-primary level increased by 36.63percent from 475 lakh to 649 lakh between 2006 to 2012 (Lakh denotes 100,000).

seriousness of the school made the poor child's continuance in the school system a daily struggle. The girl child's survival in school became even more precarious, as the social atmosphere condoned her being non-literate. Thus India got away with this gross injustice for 60 years since independence.

### **RTE Act – First Step towards Equity**

The 'Right of Children to Free and Compulsory Education Act' 2009 (RTE Act) is based on a totally different set of assumptions. In this Act, there is no room for justification and rationalization for keeping children out of schools. The State is obliged to make financial commitments to get every child to full time formal schools up to completion of elementary education (up to eighth grade) on the basis that education is a fundamental right mandated by the Constitution of India. The State has to ensure compulsory admission, attendance, and completion of elementary education of every child in the 6-14 years age group. By implication, the State is violating the law if any child is out of school, or is a school dropout. According to the Act, "free" education means that the State has to ensure that no financial constraints can 'prevent' a child from completing elementary education (Section 3.2 of RTE Act).

The Act seeks to remedy the structural deficiencies that have pushed children out of schools. It spells out in detail the norms and standards of a school, which includes an all-weather building consisting of at least one class room for every teacher; barrier free access, separate toilets for boys and girls, safe drinking water; kitchen where mid-day meal is cooked in school, playground, and boundary wall/fencing. It is also mandated that teachers are appointed for every 30 children at the primary stage and 35 children at the upper primary stage, subject-wise teachers at the upper primary school level, provision for part time teachers for art education, health and physical education and work education, library, play material, games and sports equipment. All teachers are to be in position within six months of passing of the Act and must subscribe to minimum qualifications and training norms within 5 years. The Act mandates a huge task that involves the recruitment of 15 lakh more teachers and provision for teacher training as well as teacher educators. By implication, para teachers are banned. (Ministry of Law, Government of India, 2009)

Anticipating the innumerable obstructions, especially those that the first generation learners would have to overcome to enjoy their right to education, the RTE Act spelled out guarantees to enable their continuance in schools. Thus, no child is denied admission or driven out of school for want of birth certificates or transfer certificates (Section 14 of the RTE Act), nor can they be held back in any class till the completion of elementary school education (Section 16 of the RTE Act). In order that older children and school dropouts catch up with their peers, they are to be admitted to an age appropriate class and receive special training to be on par with others (Section 4 of the RTE Act). There shall not be any form of emotional or physical punishment in school (Section 17 of the RTE Act).

The Act also democratizes schools by allocating wide range of functions to the



local bodies and the School Management Committees (SMC). The SMCs have a major role in monitoring schools, preparing annual school plans and making school teachers accountable (Section 21 of the RTE Act). As a first step towards equity and the bridging of gaps in the social and cultural hierarchies, the Right to Education Act makes it mandatory for all private schools to provide for 25% of its admission to poor students (Section 12 of the RTE Act). It provides for the State Commission for Protection of Child Rights (SCPCRs) as appellate authority and the National Commission for Protection of Child Rights (NCPCR) as the monitoring authority (Section 21 of the RTE Act). All the provisions reinforce a rights-based framework adhering to the principle of universality and inclusiveness for children in the 6-14 years age group.

However, in not including children below six years of age and those in the 14-18 years age group, the adherence to the principle of universality is still limited. This would entail yet another protracted struggle. Embedded in the rights perspective is the principle of equality. This has been compromised by allowing differentiation in the schools even within the government system<sup>9</sup>. Yet another battle is to be won if schools are to be democratised.

### **Provisions of RTE Act - Contested Terrain**

Almost every entitlement of the child has been a contested terrain in the three years following the implementation of the RTE Act. Although there has been an increase in the number of school teachers and schools under the Act<sup>10</sup>, services of untrained volunteers continue to be utilised and there is a persistence of lack of teachers and physical infrastructure and even lack of schools. It is reported that several schools have a disproportionately large number of children with little infrastructure and teachers, perforce pushing children out of schools. These are items requiring huge investments without which a school cannot even function. Although the Act gives three years for all these gaps to be filled, there remains a huge backlog.

Schools continue to charge fees by stealth in the name of Annual Day, Sports Day, picnics and so on, in violation of the RTE Act. At times, this has been rectified when there has been a public demand or a complaint registered with the NCPCR<sup>11</sup>. Would schools dare to flout the Act and continue to extract such amounts from students if they received all the support for maintaining standards and norms of schools in accordance with the RTE Act?

The school teachers have not given up on any of those procedures that have resulted

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<sup>9</sup> There were well endowed Central Schools; Navodaya Schools; Sainik Schools, Model Schools all covered under 'special category' under section 2(n) and thus exempted from the stipulation of neighborhood school in which children could not be denied their right of admission.

<sup>10</sup> The number of schools increased from 13, 62,324 schools in 2010-11, to 14, 31,702 schools in 2012-13; and the number of teachers from 62,03,234 teachers in 2010-11 to 73,54,152 teachers in 2012-13 according to DISE Flash statistics 2012-13

<sup>11</sup> For example, the Haryana State returned all the school fees charged by the schools to the children responding to the complaint received from the NCPCR.

in children dropping out of schools. There continues to be an insistence on submitting proof of birth, transfer certificate and other documentation in spite of the RTE Act, as though these documents are indispensable for governance of schools, leaving the parents to deal with the school system, a myriad of procedures, and hidden practices. Messages of increase in allowances, service conditions of teachers, promotions and transfers, trainings, data sheets that are to be filled up to meet timelines reach at the speed of light even to the remotest of village. On the other hand, the pace and distance to be travelled for messages relating to children and their entitlements is slow and determined by pressure and demand from the ground. These entrenched practices earlier enabled exclusion of children from schools and emerged in the context of education not being a fundamental right. The issue of an inclusive approach under the Act is indeed a contested terrain.

Many a school continues with conducting screening tests for admission of children and justifies itself in the name of giving preference to meritorious candidates. That screening tests reinforce discrimination and exclusion and deny equal opportunities have not been internalized by school managements - both private as well as public. The fact that even government schools, mostly residential in nature, have flouted this provision shows how, in the context of scarce resources, there is a need to devise a transparent procedure for inclusion.

The private schools in most states have still not complied with the provision of 25% of seats for poor children each year in class 1. They continue to regard it as an act of welfare and thus burdensome. Most of the private schools have seldom regarded this as a constitutional obligation and considering the influence they wield in contemporary times, the governments have done little to compel them to comply. Other stubborn issues such as banning corporal punishment and detention of children in the same class have been more honored in the breach rather than in the observance with utter disregard for the provisions of the Act. Indeed, until there is a raised voice of the local community or civil society groups, some of these wrongs will never get rectified.<sup>12</sup>

Each one of the provisions of the RTE Act challenges the existing practices of the education system. Whilst over a period of time, poor children were systematically excluded and the education system was unprepared to absorb them, large numbers of children from the scheduled caste and scheduled tribe communities, children belonging to minorities, girls and children with disabilities could not survive the education system. The education system was seldom held accountable for pushing them out of school with impunity. After the enactment of the RTE Act, such a system has to now gear itself to embrace every child in the neighborhood and make it possible for them to continue in school up to class eight as a matter of right. This would mean that there are to be no more excuses for school dropouts and the attitude of all the functionaries in the system from top to bottom has to change radically. A wholehearted State commitment for ensuring the

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<sup>12</sup> These observations are based on notes made during my various visits and public hearings all over India as Chairperson, National Commission for Protection of Child Rights, (NCPCR) in the period 2007-2013

implementation of RTE Act is to become a non-negotiable. This is to state that while the RTE Act has empowered the poor to make legitimate claims on the system, implementing each and every provision of the Act begs for deep structural changes within the education system as well as the fixing of priorities of those who are in power and authority either directly or indirectly.

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