

India's Journey towards Achieving the Fundamental Right to Education: Analyses of Past, Present and Future

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Abstract

This study intends to give a holistic view of the fundamental right to education, its origin, existence and future. The study can be broadly divided into three parts. In the first part, it gives an insight, how we started!, i.e., on how did the fundamental right to education came into place, by describing the chain of events which led to the 86th Constitution Amendment Act, its history from the Constituent Assembly debates, the pressure from the international forums, the various important educational policies and commissions to the various important judicial decisions related to the subject matter. The second part tells about where we are! i.e., how the RTE Act, 2009, came into existence and laud the various provisions which have proven to be fruitful for the right to education from there onwards, and what have proved to be the lacunas in the statute. It goes on to make various recommendations. The third part seeks to give an idea about, where we may be! i.e., the future of the educational policy in the country by analyzing the Draft of the National Policy on Education, the areas which the draft seems to have rectified and the areas left. Some controversial points included as well as some required points left and how this draft shall impact the education in the country.

Keywords: Right to education, RTE Act, Draft education policy, International forums, Judicial decisions, Fundamental rights

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INTRODUCTION

The fundamental right to education has been recognized officially worldwide by the international forums by the Universal Declaration of Human Rights, the Convention of the Right to Child and the UNESCO Convention against Discriminating Education, etc. In India, the idea of officially establishing the right to education as fundamental right came up at the time of drafting of the Constitution, even though later not accepted, it was enumerated as a directive principle in the Constitution under Art. 45[1]. It emerged its voice later through judicial decisions, educational policies and awareness among people. Therefore, subsequent to these events, the 86th Constitution Amendment Act, 2002, brought the right to education officially and as in the Constitution as a fundamental right. The right to education is now enumerated as a fundamental right for children between the ages of 6 and 14 years in the Article 21(A) of the Constitution. However, even though established as a fundamental right, it saw very

little of its practical application due to absence of its delivery system on ground level till 2009, when finally, the Right to Education (RTE) Act was passed which contained and strived for the practical application of the spirit of Article 21 (A)[2]. Even though it has comparatively from the past has provided with better educational delivery system for children and has made us improve significantly in the concerned field, it has its own problems associated with it, with the provision of legislation to procedural as well as substantive application of it. Thus, to change and modify the elementary education delivery system in India, the National Policy on Education, 2016, was being made and its draft had been declared. But the draft even though suggesting to rectifying some of the errors in the RTE Act as per the current situation, also is failing on some issues. We for the national and individual human progress need to effectively implement the Fundamental Right to Education and deliver it to all the children of our nation.

VIEW OF INTERNATIONAL FORUMS

The right to education and the challenge of providing it efficiently, to all the people is not only a national but perceptibly an important concern at the international level. Many steps have been and are being taken at the international level too, to ensure implementation of this right.

UNESCO believes that education is a fundamental human right and it is essential for the exercise of all other human rights. Education promotes individual freedom and empowerment and yields important development benefits. Normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education [3] and these instruments work to enhance and build the right of every person in this world to access good quality education, without any discrimination or exclusion.

Article 28 of *The Convention of the Right to Child* also provides for a 'right to education'. It propagates that all children have the right to free primary education. The Convention places a high value on education. Young people should be encouraged to reach the highest level of education of which they are capable [4]. It remains the first international instrument with binding force in international law that develops the right to education in all its dimensions [5]. The great importance of the right to education can also be marked from Article 26 of the *Universal Declaration of Human Rights*, which says that everyone has the right to education and at least in the elementary and fundamental stages it should be free, and afterward goes on to say about the various merits of education [6].

And about a decade after this declaration the UNESCO Convention against Discrimination in Education happened whose importance can never be plunged while discussing and propagating for the essential right to education. It was the first international instrument in the field of education having binding force in international law and inspired the writing of other instruments, particularly Article 13 of the International Covenant on Economic, Social and Cultural Rights. This Convention

expresses the fundamental principle of non-discrimination and equality of opportunity in education. Article 4 enjoins upon States Parties to make: primary education free and compulsory; secondary education in its different forms generally available and accessible to all and higher education equally accessible to all based on individual capacity. It also recognizes the right to basic education for youth and adults [7].

Therefore, it is evident from the articles, declaration and conventions mentioned above that the right to education has been one of the pioneer and important rights of the many that have been sought to be provided to every person in this world. It is pertinent to mention here that India is a signatory to the Universal Declaration of Human Rights as well as the Convention of the Right to Child.

BUILDING-UP TO THE 86TH AMENDMENT

From the enforcement of Constitution, to the 86th Amendment, there has been plenty of thought and discussion on the right to education or the importance/need for right to education in the country.

DISCUSSION AT DRAFTING OF THE CONSTITUTION

In fact, at the time of drafting of Constitution of India, it was thought that it should include the right to free and compulsory education, but due to some reasoning by some eminent personalities, which were later accepted, it was later on removed as fundamental right and was approved of only as a Directive Principle and not a fundamental right.

The Ways and Means (Kher) Committee was set up in 1947, with the objective of coming at the front of ways and means, which would have led us to achieve universal elementary education within the time period of ten years and with lesser cost.

In 1947, the Constituent Assembly Sub Committee on Fundamental Rights did in fact had put free and compulsory education in the list of Fundamental Rights [8]. It read, "Clause 23 – 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 ten

years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of fourteen years”.

The Advisory Committee of the Constituent Assembly in April of 1947 rejected the free and compulsory education as being a fundamental right (costs being the reason) and sent the clause to list of “non-justiciable fundamental rights” (later termed as Directive Principles of State Policy).1949: Debate in Constituent Assembly removes the first line of Article 36...”Every citizen is entitled as of right to free primary education and it shall be the duty of the State to...” and replaces it with “The State shall endeavor to...”1950: Finally, Article 45 of Directive Principles of State Policy accepted: “The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”[8]. Dr. B.R. Ambedkar clarified that the objective of Article 36 (at then) is not restricted 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” (which was included in the article before the amendment) is quite inappropriate*”[9].

However, there arises a question in one’s mind that when the objective of the article was such a determinant factor for the future of the children of our country and to guide them away from child labor then on the grounds of cost reasons, were we justified even at that time, of being shy for it to be a fundamental right?

THE EDUCATION (KOTHARI) COMMISSION

In order to analyze and in the interest of promoting national development, the government set up an Education Commission, whose task was to survey and examine the

condition and status of education in the country in order to make recommendations and provide information to the government for building up a powerful, integrated and well balanced system of education in the country, for national growth. The Commission was set up in October 1964, and was headed by Dr. D.S. Kothari, an eminent Indian scientist, as its Chairman. The Commission began its task on October 2, 1964, and submitted its report on June 29, 1966, to the Union Education Minister [10].

One of the tasks of the Education Commission was also to review the whole of the incumbent education system in the country at that time.

According to the Commission, education was intended to increase productivity, develop social and national unity, consolidate democracy, modernize the country and develop social, moral and spiritual values. To achieve this, the main pillar of Indian education policy was to *give free and compulsory education to all children up to the age of fourteen* [11].

The Commission made several recommendations for the reforms in the education sector, the key to it being one of the recommendations of promoting common schooling system in the country with a view to eliminating inequality in educational opportunities [12].

Some Limited Efforts

The *Constitutional Amendment of 1976* saw inclusion of education in the Concurrent List which required an essential shared responsibility between the union and the state governments administratively as well as financially to provide for quality education in the nation.

The National Policy on Education, 1968, was an initiative by the Indian government as a forward for education in the country. It dealt with issues of equalization of educational opportunity and sought to adopt a common school system in order to promote social cohesion. Interestingly, it even required special schools to provide a proportion of free studentships to prevent social segregation in schools [12].

This was followed by the *National Policy on Education, 1986*, which also showed its compatibility with the notion of a common schooling system but however both policies never advocated for right to education being a justiciable right and were satisfied with it being a non-justiciable directive principle.

The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the *Acharya Ramamurti Committee*. Thereafter, several political as well as policy-level changes influenced the course of free and compulsory education [12]. Just when the idea of free and compulsory education was starting to get its voice noticed, it was given a push by the Supreme Court of India in the case of *Mohini Jain vs State of Karnataka*.

The Mohini Jain Case

In 1989, the Government of Karnataka issued a notification that permitted the private medical colleges in the State of Karnataka to charge *capitation fee* from the students admitted other than the 'Government seat quota'.

The Supreme Court raised a valid question: "Is there a 'right to education' guaranteed to the people of India under the Constitution?"

The Supreme Court in its judgment held, "It is no doubt correct that "right to education" as such has not been guaranteed as a fundamental right under Part III of the Constitution but reading the above quoted provisions cumulatively, it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens. And that the right to education flows directly from right to life. The right to life under Article and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The state government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens" [13]. Therefore, it is

clear from this judgment that Supreme Court gave voice to what was mere lip service by the governmental agencies for the need and presence of taking the 'right to education' as a 'right guaranteed by the Constitution'.

But in a subsequent case, the Supreme Court narrowed the ambit of fundamental right to education as propounded in this case.

The Unni Krishnan Case

In *Unni Krishnan v State of Andhra Pradesh* [14], the Supreme Court reconsidered its principle established in the *Mohini Jain* case and narrowed the ambit of fundamental right to education as propounded in the *Mohini Jain* case.

The case involved a challenge by certain private professional educational facilities to the constitutionality of state laws regulating capitation fees charged by such institutions.

The court (majority judgement) held that "though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21... (and) must be construed in the light of the Directive Principles of the Constitution. Thus, 'right to education' understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes fourteen years, his right to education is circumscribed by the limits of the economic capacity of the State and its development." [12]

The court expressed its disagreement with its own finding that the right to education at all levels is guaranteed by the Constitution. However, the court still held that in order to constitute a fundamental right, it is not necessary for it to be expressly stated in part II of the Constitution. And further stated that the provision of part III and IV of the Constitution are complementary and supplementary to each other [14].

Therefore, this judgment again provided a support to the concept of right to education

being a fundamental right and its implicitly of flowing from the right to life and personal liberty guaranteed in Article 21 of the Constitution.

In a later case, taking the reliance of this judgment had held that article 45 of the Constitution had acquired the shape of fundamental right [15].

And therefore as a result of the clear support provided by the Supreme Court, relatively more aware population, grass-root level campaigns and pressure from the international forums, led the government to eventually bring the 86th Amendment Act, 2002, to the Constitution and finally incorporate and establish “right to education” as a fundamental right and marked the birth of the Fundamental Right to Education, officially.

However, this right was also criticized as it read, “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,”[2] which meant that this discretion will enable the government to justify cheap and low-cost alternatives in the name of education as the enjoyment of this right would depend upon the whims and fancies of the government[16], and as it expected the state governments to draft their own laws relating to free and compulsory education[17].

THE CONSTITUTION (86TH AMENDMENT) ACT, 2002

The Constitution (86th Amendment) Act, 2002, which was notified on 13th December, 2002, sought to make three changes in the Constitution, they are as follows:

- In Part III (“Fundamental Rights”), it added the following new article:

21A. 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. [2]

- In Part IV (“Directive Principles of State Policy”), replaced the existing Article 45 (“Provision for Free and Compulsory Education for Children”), with the following:

“45. Provision for early childhood care and education to children below the age of six years.

The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.” [1]

- In Article 51A (“Fundamental Duties”), after clause (j), added a new clause (k) as follows:

51A Fundamental Duties

It shall be the duty of every citizen of India: ... (k) who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years [18].

Among the three provisions, Article 21(A) is of the most importance, as it gave a fundamental right to all children between the age of six to fourteen a ‘fundamental right to compulsory and free education. ‘Art. 21(A) of the Constitution covers primary as well as secondary education [19].

The provision for early childhood care and education to children below the age of six years is a directive principle of the State Policy enshrined in Art. 45 of the Constitution of India, thus it is non-justiciable in nature. Therefore, it propagated for providing children with early childhood care and education in their most feeble age.

This provision substituted another provision in Art.45, which was about the state endeavoring to provide free and compulsory education to all children within the period of 10 years of the commencement of the Constitution, which was indefinably not satisfied by the State, within the period of 10 years from the commencement or even after the said time. In respect to this provision, a question which evolved later in front of the Supreme Court, in Unnikrishnan case was, “Can the State flout the said direction? Does not the passage of 44 years convert the obligation into an enforceable right?” [14] One may say that the spirit of this Article had been later instilled in Article 21(A) by the 86th Constitutional Amendment Act.

And lastly, it gave a fundamental duty to all of the parents or guardians being citizens of India

to provide opportunities of education to their children, when they are between the age of six and fourteen years [2].

THE RIGHT TO EDUCATION ACT, 2009

After its declaration and incorporation in the Constitution its message had become clear but the application of it by the government to fulfill the spirit of its words on ground level was absent until 2009, when finally, the Right to Education Bill came into force. which was the first perceptible legislative action to promote the execution of the spirit of this fundamental right.

The Parliament of India has passed this Act on 4 August 2009 and became one of 135 counties that had made education a fundamental right of every child. RTE Act came into force on 1 April, 2010.

While addressing from ramparts of the Red Fort on the occasion of Independence Day on 15th August 2009, the former Prime Minister, Dr. Manmohan Singh, said, "We know that good education is not only desirable, but it is also essential for the empowerment of our people. We have recently enacted the Right to Education Act. This law provides to each child of our country the right to elementary education. I wish to make it clear that funds will not be a constraint as far as education is concerned. We will give special attention to the needs of disabled children.

As a result of our efforts in the last few years, almost every child in our country has access to primary education today" [20].

This Act provides for every child of the age of six to fourteen years the right to free and compulsory education in a neighborhood school till the completion of elementary school[21]. The idea of neighborhood schools can be traced to the National System of Education as elaborated in the Kothari Commission report, whereby the neighborhood school is meant to be a common space, where all children cutting across caste, class, gender lines learn together in the best inclusive manner. It is therefore meant to be a site for inclusion, so that the school becomes a

common space for education. This concept has been incorporated in the RTE Act [22]. The Act also imposes responsibility on the state and local authorities and makes it obligatory for them to work for means to ensure the effective implementation of this Act, like funding for implementation of this Act, providing for schools and other directives relating to their regulation, etc.

Other relevant points of this Act are as follows:

- The Act makes it a right of every child to get education.
- "It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning.
- It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition." [23]
- Even private educational institutions must reserve 25% seats for children from weaker sections.
- A disabled child has the right to get free and compulsory education [24].
- As per the government's estimate, there will be a requirement of Rs 1.71 lakh crore between the years 2012 and 2017, for implementation of the Act.

- A child cannot have denied his/her right to education, on the basis of lack of proof of age.
- No child admitted in a school shall be supposed to be failed or suspended from the school till the completion of elementary education.
- No teacher of these schools shall engage themselves in private tuitions or teachings.
- The state governments and local authorities are directed to establish primary educational institutions within the walking radius of 1 kilometer while for children of classes VI to VIII the liability is loosened to the extent of 3 kilometers of walking distance.
- Establishment of Separate toilets for boys and girls and the school shall also ensure enough drinking water facility.
- It focuses on construction of the National Commission for Protection of Child Right to inquire the complaints related to free and compulsory education [24].
- National Commission for Child Rights shall be the authority to deal with complaints relating to Free and Compulsory Education and has the authority to inquire into the matters of the schools for the effective implementation of the Act, even if it is the quality of education.
- “Teacher pupil ratio should be as:
Up to 60 students: Two teachers
61–90: Three teachers
91–120 students: Five teachers
Above 150 students: 5 teachers and one head teacher
Above 200 students: Pupil-teacher ratio (excluding head teacher) shall not exceed forty. [20]”

Some Major Problems Being Faced

Soon after the enforcement of the RTE Act, those who were demanding for an Act of such nature were disappointed because of some defects and loop holes that were present in the Act, which were in disparity of the effective implementation the object of the Act. And often the legislature has been criticized on this issue of drafting this Act in a hurry and not addressing and rectifying the defects in the draft Act properly. The Act has also been criticized for its hasty drafting [25]. Some of

the problems that are being faced at the present are as follows.

Quality of Education

Government schools being the biggest provider of elementary education in the country, lack the quality of education. There have always been allegations of the appointments of various teachers and heads of these schools based on their politically inspired sources. The aim of the RTE Act was not only to enroll children in school but also provide them with the necessary quality education, which can be met by only efficient teaching staff and the classes to be taken regularly by them, infrastructure of the school, child friendly and learning environment, etc.

According to the Annual Status of Education Report (2014), it is found that 32.5% of the children of Std. II are not able to recognize the letters as they are and only 48.1% of the Std. V children can read Std. II level text, while this percentage was around 50% in 2008.

This finding shows the level of quality of education. How can we expect a child to learn if he or she is not able to read anything properly? This problem is due to the lack of infrastructure, unavailability of books, frequent absence of teachers or even the classes when taken by them, they are being not engaging, lack of fulfillment of the teacher-pupil ratio, etc.

Thus, even though the enrollments of children have seen a significant rise, but the degrading quality of education is failing the objective of the RTE Act, which needs to be redressed immediately.

Public-Private Partnership

To address all the ‘quality of education’ concerns the governments have come with a concept of public-private partnership (PPP). As the excuse being that there is lack of funding thus inviting private sector in the public sector educational sector would do away with the funding problems and thus would cure the bad quality of education.

This move is based on several assumptions: one Ministry of HRD is encouraged by a

World Bank research study—*Public Private Secondary Education for Developed Countries—A Comparative Study*. This study presents findings on cost and achievement of performance in public and private schools in five developing countries, i.e., Columbia, Dominican Republic, Philippines, Tanzania, and Thailand. The study concludes that:

1. Students in private schools outperform students in public schools on a variety of achievements.
2. Unit costs of private schools were lower than those of public schools.
3. Private schools had greater authority for decision making at the school level and better emphasis on enhancing student achievement [24].

The government wants to invite public-private investment in infrastructural areas, support services and educational services. However, it is believed by some if this system is implemented then the model schools would eventually fall in the hands of the private sectors, thus far from the reach of the poor and needy.

Recognition Mechanism

The Act uses a recognition system to give recognition to schools according to the norms set by it. A Schedule in the Act prescribes the norms which are to be fulfilled by the private schools to get or retain their recognition. It penalizes the private schools for lacking the infrastructural qualities.

“These schools, which are extremely cost-efficient, operate mostly in rural areas or urban slums, and provide essential educational services to the poor. Independent studies by Geeta Kingdon, James Tooley and ASER 2009 suggest that these schools provide similar if not better teaching services when compared to government schools, while spending a much smaller amount. However, the Act requires government action to shut down these schools over the coming three years” [26]. This would be a blow to the system of encouraging education for the poor, by the people themselves. However, the government schools are exempted from the Schedule, one may lead to the reasoning that it may be justifiable that the government schools should not be shut

down on the mere absence of some requirements, keeping in mind that a large portion of them don't fulfill the norms, as it would hamper our efforts to provide education to all. But if the case is true, then I think some private sector schools operating for the poor, after some inquiry for the same, should also be exempted from the same.

The 25% Reservation

The RTE Act provides for the private schools to compulsorily give 25% reservation in their seats to the children belonging to the poor and disadvantaged section of the society. For this purpose, private schools would be reimbursed by the state to the value of fees charged by that school from other children or the per child expenditure incurred in ‘government school’, whichever is less [21]. This provision must be seen in the light that the per child expenditure may very well be less than the fees charged and incurred by private sector schools for providing the best of facilities to the children, thus the government should have provided for only reimbursement of the fees charged by the school, due to this fact till date many schools are seen often denying this model as it becomes unsuitable for their economic position as well as due to the often delay of the reimbursement to them by the government. Moreover the criteria for identifying the children from the backward and disadvantaged section have not been established. There is also a restriction in this rule as the 25% quota can only be taken in the ‘neighborhood’ private schools and thus reduces the choices available to the parents. The poor and disadvantaged neighborhoods such as slums are likely to have relatively poor quality of private schools. Therefore, the neighborhood restriction may limit the disadvantaged residents to access only these schools [25]. And most important of all effective implementation remains to be the biggest hurdle with this feature.

Apart from these problems, there are many other difficulties which we are facing to achieve the implementation of the spirit and objective of the RTE Act, like education only being up to the age of 14 years which excludes the most important years of school education without which a child cannot get a decent job

in the present time, leaving a child with just education and difficult chances of employment, etc. In the case of the reservation of 25% seats in private unaided schools, there is a lack of clarity in design and implementation strategy. Moreover, the method for calculation of per-child reimbursement expenditure (which is to exclude capital cost) may yield an inadequate resource low to private schools which may in turn give rise to resentment amongst private schools. Private schools, which have to implement this scheme, are already struggling to accommodate it within their existing admission process. Clear policy guidelines and support structures from the government in ways such as the one proposed by the Centre for Civil Society can go a long way towards ensuring effective implementation of this scheme [25].

The Pupil- Teacher-Ratio (PTR)

Another factor which has an important role in the quality and effectiveness of education is the pupil-teacher ratio (PTR) in schools. The impact of this ratio on effective education can be judged through a report by 'Azim Premji Foundation' in 2014 which "sought to establish a correlation between PTRs and the learning outcomes of children. A survey held at 1880 government schools in Karnataka revealed that schools with a PTR between 10 and 20 had the best learning levels. Performance dropped sharply as the PTR increased, particularly when the number of children was more than 30" [27]. The recommendation made by the RTE Act is a PTR of 30:1 for the primary classes and 35:1 for the upper primary classes, however, we failing to provide for the effective implementation of this norm.

PTR in primary and upper primary schools in India fell to 28:1 and 30:1 respectively in 2013-14, a sharp decline from the 46:1 and 34:1 ratios in 2005-06, say the official figures of the Ministry of Human Resources and Development.[27] Thus, as is evident from these facts we are failing on this level which means again the degradation of the quality of education. There must be some norms and specific regulatory mechanism, apart from the mere declaration of expected PTR, for the

effective implementation of PTR as assigned by the RTE Act. The District Education System Information report of 2015 revealed that 8.32% of schools in the country have just one teacher, and that out of every 100 teachers, seven are on contractual basis with many of them lacking professional qualifications as well. Moreover, 600,000 teaching posts at the primary level are lying vacant in government schools across the country [27].

SOME RECOMMENDATIONS FOR THE RTE ACT

- To ensure quality of education, regular and trained teachers should be recruited in place of untrained and para teachers. Para teachers recruited so far should be trained and regularized. [24]
- Since the possibilities of benefiting from later educational interventions get reduced if children do not come with the basic foundation leading to cumulative deficit later on, appropriate interventions need to be formulated and implemented to remove the quality-related deficiencies in ECCE services [28].
- The maximum number of O.O.S.C (out of school children) belonged to those with mental disabilities (48%), followed by children with speech disabilities (37%). This situation highlights the need to equip the schools to address the challenging needs of mentally challenged children who are both socially and educationally disadvantaged [28].
- Keeping in view that there are many schools that are needed to be de-recognized to ensure good quality of education, an effective mechanism shall be established so as to see the place of the school and the purpose it is serving. If it is as such which is essential for the children of that locality and there will be more loss than gain in de-recognizing it for not fulfilling the infrastructural standards, then we must be assisting such school instead of closing them.
- The 25% reservation for backward and disadvantaged children must be effectively implemented as in many states. Schools must be properly and on time be reimbursed which is at present not happening, overall. The neighboring

provision for children to go to any private school must be done away with, to give a chance for better schools to those children who live around slums or even in backward areas.

- The idea of public private partnership, which is evident to lead further the commercialization of education and thus pull away education from the poor and disadvantaged children, must be dropped.
- Instead of NCPCR a separate and independent authority on national as well as on state level is created whose sole objective must be to ensure effective implementation of the RTE Act and sufficient budget shall also be provided for its implementation, as also only on these children of our country our future economy will depend. This separate body shall also ensure to see into the conflicts, complaints and resolving of them, without much political interference.

DRAFT NATIONAL POLICY ON EDUCATION, 2016, AND ITS CRITICISM

The government announced the National Policy in Education of 2016 and its draft had been prepared and declared in June 2016 and is subject to modification, if necessary, as per the inputs and recommendations from various individuals across the country, to bring the necessary changes, including in the RTE Act, in order to improve the education delivery system in the country as well as to improve its features. The government has engaged with the ground-level organizations and associations in the field of education in order to cultivate an effective education policy. The draft NEP 2016 provides a framework for the development of education over the coming years [29].

“The UN, on September 25, 2015, adopted a set of 17 goals called Sustainable Development Goals (SDGs) – including ending poverty in all forms, ending hunger, ensuring inclusive and equitable quality education, promoting lifelong learning opportunities for all, protecting the earth, ensuring prosperity and promoting peaceful and inclusive societies, to name a few.

Each of these has specific targets, 169 in all, to be achieved over the next 15 years. Of these, goal number 4 focuses on quality education. It has found mention in the draft NEP 2016. [29]”

Some of the key features of this draft report are:

- It calls for amending the RTE Act as to enable the detention of students above the Std. V. With the degrading performance of children being its reason.
- The Committee recognizes the importance that is of establishing a separate academic cadre to fill the crack having teacher and having good teachers. It proposes for the same qualification for those wanting to be teacher trainee as is for any college lecturer and would enjoy the same pay as well [29].
- To extend the scope of the RTE Act so as to include the pre-school education and the mid-day meal to secondary schools [31].
- It calls for strengthening pre-school education in the country. And for training and appointing pre-primary teachers.
- It promotes the use of regional language in the class room, if so, is desired, so as to make education more understandable as well as to promote Indian culture. It also stresses on the importance of Sanskrit and facilitates measures for its promotion on elementary and higher education level [31].
- The government will take steps for reaching the long pending goal of raising the investment in education sector to at least 6% of GDP as a priority. Instead of setting up new institutions, which require huge investments, priority of the Government will be to expand the capacity of existing institutions.
- Within the parameters prescribed by the RTE Act, states will have the flexibility to design and plan for the infrastructure keeping in view the local conditions.
- Within the parameters prescribed by the RTE Act, states will have the flexibility to design and plan for the infrastructure keeping in view the local conditions.
- Online maintenance of all records of a child from the time of admission till the time of leaving the school will be made mandatory. IT reporting systems will be a powerful tool to better school management and performance.

However, with the draft being declared officially, it has been subject to some criticism, many associated in the field of education on the ground level are dissatisfied with their views not being invited at the time of drafting. “Asserting that the draft has been compiled without involving the main stakeholders – students, teachers, parents, major education providers, and pioneers in the field of education, the CBCI (Catholic Bishop’s Conference in India) said more regulations than policy directives in the document would kill the freedom of educational institutions” [32].

Some have criticized it over segregation of students as meritorious and less meritorious and relegating the less meritorious to vocational stream and the meritorious to higher education [32].

It is also criticized that this policy is biased towards Hindu culture, evident from the fact that only Vedic and Gurukul model of education are contained in the preamble of the policy, with demand to promote other cultures also within the educational framework.

“Lots of space needs to be given to every section of society to express their culture. The preamble itself shows what line the government wants to take. What about the rest of the people? We have many cultures and subcultures that make up a mosaic of the nation.”[32] The objectives of education, according to the draft must contain Satya (i.e., truth), Dharma (i.e., righteous conduct), shanty (i.e., peace), Prem (i.e., love) and Ahimsa (i.e., on-violence) and another aspect which must be given some importance according to it is religion (to promote social and religious harmony), to build up a foundation of an education program (MHRD 2016: 11, 12) [30]. Strangely, this section places a little reference to the Constitution of India and thus some idea of the Constitutional framework and values to an extent is in an eye-catching position. However, all these factors may be right in their own but to what extent can they help for an educational system which is struggling to reach the children for which it is meant and enable to provide them quality education for getting a proper employment.

“More pertinent, perhaps, would be the need to nurture inquisitive and critical minds, who question social inequalities and oppression and work towards their removal and overall development of all social groups.” [30]

Knowing that in providing a suggestion for the early childhood care for children, the draft policy surprisingly fails to provide for amendment into the RTE Act, for the same, with the matter being of common knowledge that RTE Act, has important role in the concerned topic.

The report also amends one the criticisms of the RTE Act of shutting down private enterprises on the verge of simply not fulfilling the infrastructural norms of RTE Act, but also on the quality of education which would be determined by an independent authority. The latter provision would be fruitful for those private institutions that are by themselves providing quality education for the needy where the state has itself not been able to reach.

In its recommendation for improving the quality of education, it calls for amending of the RTE Act to include norms for learning outcomes. It also suggests that “learning outcomes (LOs) for each class should be laid down and evaluated by periodic internal and external assessments. Teachers should be held accountable for failure to achieve the learning outcomes within a prescribed time.” [30] While at first it may satisfy our eyes who want to see a change in the quality of education in the country, the suggestion has its own problems. This suggestion would shift the whole environment of a school from learning to testing, which may not be too fruitful again for quality education. And, from the teacher’s point of view, a teacher cannot always be held accountable for the learning outcome of the children as at different circumstances and places there are most external factors which may be the cause of the failure in the learning outcome at times.

Also, the draft policy seems to be forgetting the important and most controversial matters relating to the application of 25% reservation policy.

As already mentioned, the report suggests for amending the detention policy in the RTE Act, and propagates for allowing detention after Std. V, with behind it, the reason being that its non-detention has brought down the performance of children. However, the question arises that how rational it is to blame all the performance failure on the children when we all know that it is the educational mechanism that has failed? In the policy itself it is admitted that in the report itself that it is due to the failure of state over the years resulting to the collapse of our educational system. It shies away neither from admitting the lapses and damage caused to our educational system due to years of neglect by the state, nor from chastising respective stakeholders responsible for the same. [30]

Thus, we may conclude that the policy has its merits as well as demerits. And also, it seems to be if not less than surely not satisfactorily oriented towards implementation of right to education and more towards other factors. But, hopefully, it is being still under consultation and change, it will try to do away with its demerits and will satisfy its role for effectively providing the right to education across the nation.

CONCLUSION

India alone has 26.8 million primary school-age children who are not enrolled in primary school accounting for 23 percent of global absentees (Amuthan, 2014). [33] The Right to Education Act has been provided to us after long struggle of decades and it is fulfilling atleast if not all then some of our desires regarding education. The number of children enrollment in educational institution is on a rise and it is a whole a positive law which is giving a positive result as if now. But to effectively achieve the aim and objective for which this Act was made of providing the right to education to all the children between 6 and 14 years, some serious changes in it are in order. A committee must be made, several surveys must be done by the government to know, where, what and how difficulties are arising in its application on the ground level and the Act should be rectified as according to it and then afterwards effect implementation of the same would be necessary. The Draft of the

National Policy for Education, 2016, seems to be doing that but only in a limited sense. It has made some important provisions for importance of education in the country and its effective delivery to the children but still, it is not that well oriented or drafted towards the cause of the delivering the Fundamental Right to Education to all the children of the country as it should have been.

The answer to our 'right to education', lies in the RTE Act, all that is needed is a chain of essential changes both in substantive and procedural sense keeping in mind the ground level realities, to bring it out of its structure and be delivered effectively on the ground level for the poor and disadvantaged or any child of the Country because at last it is their fundamental right.

Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45(at then) and primary education is expanding. They meant that real education should be given to our children between the ages of 6 and 14 – M.C. Chagla, 1964. [34]

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CONFLICT OF INTEREST

The authors declare no conflict of interest.

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