

# A study of Right to Education in context of Human Rights in India

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**Abstract:** *This paper takes a look at Indian education policies and underscores the urgent need for a human rights approach. Though the Indian constitution gives its citizens the fundamental right to education with effect from 1<sup>st</sup> April, 2010, whether the requirements of a rights based approach have been met is yet to be seen.*

**Key Words:** *Human rights, right to education, elementary education, public policy.*

## 1. INTRODUCTION:

The Indian education system under the British rule had been primarily based on the truancy model. This should have changed after independence but did not on account of various reasons. It is clear that the system has failed in leveling the Indian society, in fact has helped in widening the chasm between the haves and the have-nots. The state is glaring at the greatest challenge in the form of poverty, hunger, malnutrition and unemployment—all pointing towards the urgent requirement of addressing these issues with the tool of education.

In modern times education determines living standards and people without access to education and knowledge cannot make two ends meet, leave alone live a life of dignity. According to the 2011 census though the literacy rate has risen to 74 %, a major proportion consisting of 320 millions of Indians remain illiterate. Not only this, gender discrimination persists with a literacy gap of 17% and a falling sex ratio, from 927 girls to 1000 boys in 2001 to 914 girls per 1000 boys in 2011 (Education World, 2011). These figures show a grim picture of the nation and the lackadaisical approach of the government policies –development policies and education policies in particular. It is important to understand why even in 60 years of long time the governments could not fulfill the promises made by various education policies.

## 2. Education as a Human Right:

Covenant on Economic Social and Cultural Rights, 1966[ICESCR] [Articles 13 and 14], UNESCO Convention, the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 [CEDAW] Article 10, the Convention on the Rights of the Child, 1989 recognize education as a human right. A human right is a right a person acquires, is entitled to, which a person can claim just by the virtue of being a human. Human rights are universal, that is, same all over the world, belong to all human beings when they are born and cannot be taken away by anyone (state or individual). Also, human rights are non-discriminatory and are the basis of principles like freedom, peace and justice (RTE Project, <http://www.right-to-education.org/node/233>). Whenever a human right is violated the victims cease to live a life of dignity.

Right to Education has been recognized as a human right as far back as in 1948 with the Universal Declaration of Human Rights. More than 776 million adults in the world are illiterate (Taylor, Action Aid). All these people who did not get education have been violated and Right to Education is the tool through which these people can raise their voice and claim their right from their respective governments/states. The Right to Education is also an obligation on the governments which can be held accountable in case of violation. Also, the Right to Education is a right helping people claim; realize their other social and economic rights.

Along with the Universal Declaration of Human Rights, the Right to Education is recognized by several international conventions like the International Convention of the Rights of the Child (CRC). Various regional human rights instruments also recognize and guarantee the Right to Education. Some of these are the American Declaration of the Rights and Duties of Man (Article 12), the European Convention on the Legal Status of Migrant Workers (Article 14 and 15) and The African Charter on **Human and People's Rights** (Article 17).

## 3. Right To Education In India:

The Indian constitution guarantees a number of human rights to its citizens and education found place in part IV, Directive Principles of State Policy. Education was not a fundamental right and so not enforceable in a court. It was

left at the will and financial capacity of the states to make education policies. Later in 1976, education was removed from the State list and placed in the Concurrent list so as to give the central government a bigger responsibility in providing education to the masses. But it was only after the Supreme Court's Unnikrishnan judgement in 1993 that education was to be understood and seen in the context of the right to life and the right to equal opportunity of work already given by the Indian constitution. The judgement held that **'though right to education is not state expressly a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21'** Right to Education is a human right and should be read with the right to life, right to equal opportunity of work etc. It is connected with right to life because education enables a person to lead a dignified life. Similarly, it is connected with right to equal opportunity of work because with education people become aware of other rights and can understand and claim their right to equal opportunity of work. This judgment gave the **power in people's hands and they could claimed compulsory free education.**

Slowly pressure was built on the parliament with PILs (Public Interest Litigation) being filed in different high courts to enforce the judgement. In 1997 July, the 83<sup>rd</sup> Amendment Bill was introduced in the Rajya Sabha to make Right to Education a fundamental right but could not be passed due to change in the governments and lack of necessary political will. In 2002, the bill was passed as the 86<sup>th</sup> Constitutional Amendment Act. After several failed attempts in 2005 and 2008, finally the Right to Free and Compulsory Education Act was passed in 2009 and came into effect from 1<sup>st</sup> April, 2010. Now under the Indian constitution, article **21 reads** every 'child between the ages of 6-14 years has a fundamental right to education which the state shall provide in such manner as the state may by law determine.' The State Cabinet of Assam unanimously approved the RTE Act on 6<sup>th</sup> July 2011 (The Assam Tribune, Guwahati, and 6th July, 2011). According to Katarina Tomasevski, only a human rights approach can effectively redress the issues of right to education, eliminate poverty as well as child labour as all are connected.

The 4-A's **scheme developed by her is** the correct tool to assess right to education and structure the required framework. These are as following:

- **Availability.** Education as a civil and political right makes government establish schools which respect freedom of and in education; education as a social and economic right will mean that the government has to ensure availability of free and compulsory education to all children; education as a cultural right will require that diversity be respected as well as protected and expressed through minority laws. In simple language education is free and government-funded; there are enough schools with proper infrastructure and there are qualified and trained teachers to ensure and support education delivery.
- **Accessibility.** This will mean that the government must work towards eliminating gender and caste discriminations to ensure equal realisation of all human rights, that positive steps are taken to reach the most poor and marginalised.
- **Acceptability.** This means that minimum guarantee for quality of education is given, fixed, monitored and enforced by the government. These may include content of education, prioritising language of instruction, prohibition of corporal punishment, safety of school premises, professional teachers etc.
- **Adaptability.** This means that education and schools can evolve with changing times and requirements of the society. Also this means that every individual's needs are catered to according to Convention on the Rights of the Child (CRC) and can be adapted at local levels to suit diverse needs (Alston and Bhuta, 2005).

#### 4. Suggested Policy Options:

All of the above theoretical approaches are not definitive but do help to assess the rights issues. Now that the right to education has been declared a fundamental right to children, it is logical to shape the policy according to the human rights approach. Incorporating this theoretical approach, the policy options are:

- Amend the age-related clause in the right to education act and include 0-6 and 14-18 years.
- Amend labour laws.
- Establish integrated schools: pre-school to 12th standard according to the number of school-age children.
- Adopt the Common School System in letter and spirit.
- Incorporate skills development/vocational subjects in schools.
- Adopt an integrated approach to school education, adult education, youth development, workforce training and teacher training to fulfill 21<sup>st</sup> century requirements.
- Develop capacity of district administrative machinery and schools.
- Involve parents and community in school administration.
- Promote active interface of schools with corporate bodies and businesses.

## 5. CONCLUSIONS:

A year after the RTE coming into effect there is no visible and marked change in the status of schools according to the surveys, interviews and observations carried out in selected schools. Schools were randomly selected and the sample was a mix of government, government-aided, private, convents and Kendriya Vidyalayas. According to general observation the government schools fare badly in all areas such as buildings, water and electricity, toilet facilities, discipline, cleanliness, education-delivery and motivation level of the teachers as well as the students.

The analysis of Indian Education system spells out the urgent need for a complete and new orientation. The Right to Education Act, 2009, brings forth the solace that some if not all provisions have been made as per the international human rights instruments. It is a wishful thinking that more can be done at the implementation level. Half of the work has been done with the legislation of the Right to Education Act, 2009, whereas a lot more is yet to be done to ensure its proper implementation. The positive provisions of the right to education policy, if implemented in the true sense of the term at the ground level, the schools, can have positive impact on enrolment and retention. But the negative provisions will limit the benefits of the Right to Education. The ex-HRD minister stated that at least five more years are required to implement all the provisions of Right to Education. Indian public and the NGOs have been very vocal in pursuing the campaign for Right to Education at the policy-making level but have to do more when it comes to work at and realise Right to Education. This will check further violations of child rights. At local levels the communities need to do an in-depth analysis to be able to make strategies, build partnerships, mobilise people, increase awareness, communicate with government, media and the NGO's.

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