

IMPLEMENTING THE RIGHT TO EDUCATION ACT IN YOUR SCHOOL by Amit Kaushik,
Director, Education Strategy for India and SAARC, Cisco Systems

This session elaborates the new amendments to the Right to Education Act, which caters to bettering the education system in schools, which are government aided and non –aided. It emphasizes the Government’s role at a State and Central level, and the onus it takes on, the future governance of all schools, and the basis of education, as a fundamental right, for all children.

Discussion Questions raised during the session:

Why is right to education a constitutional right?

- It is a means to an end to
- It formed the basis of a fundamental debate when the constitution was being written

What are the major milestones of the Education Act?

- Kothari commission which talked of common school system, comprised of government and government aided schools (not including private schools)
- National policy – implementation of Article 45 of the constitution
- Concurrent list- central government could take up education as a proper agenda

What are the significant changes since the 1990s?

- There has been a marked increase in liberalization, privatization & globalization
- Heavy external borrowing of funds which helped open the economy
- More inclusion of the private sector, hence private schools mushroomed and became a self sustained model
- External assistance in education from overseas
- Middle class upliftment

Due to lack of space if a municipal school refuses admission, as per the new act, can a child apply to a private school under the 25% reserved quota?

- Since the Municipal school classes were filled to capacity (85 students per class), the municipal school was justified to refuse admission
- The onus is on the state Government to provide sufficient schools in the neighborhood for all children. The State Government also needs to provide sufficient and trained teachers
- The Act puts an onus of fulfilling the obligation on the state government, hence the private school is not obligated to take such a child if they are constrained due to capacity, mid-year admission, procedures & time bound applications

Right of children to free compulsory education

- To include disabled children is pending
- Aided & minority schools are exempted
- Private schools are not exempt

Concepts

- Compulsory education – state to be penalized for non compliance
- Free education to mean and include all incidental costs

State responsibilities

- Cost sharing ratio State: Central 35:65
- Cost budget of 2.5 lakhs crores for 6 years
- “*Compulsory Education*” is defined as the obligation of the State to take all necessary steps to ensure that every child participates in, and completes Elementary Education
- “*Free Education*” is defined as freedom from liability to pay any fee or charges or expenses as may prevent the child from participating in and completing Elementary Education

Responsibilities of the Schools

- Aided schools should provide free education to all admitted children, or in proportion to aid received
- State schools of specified categories and all unaided schools must admit at least 25% children from disadvantaged families
- Unaided schools are eligible for reimbursement of their expenditure towards those 25% at a rate of the average per child expenditure in state schools

Key Judicial pronouncements discussed:

- **Mohini Jain vs State of Karnataka** – when right to education became a fundamental right. Concept of private schools could be used/ recognized for public purpose
- **Unnikrishnana v/s State of Andhra Pradesh** – Key factors established include that right to life with dignity is a byproduct of right to education. Free education till age of 14 years (Article 45 of the constitution)
- **Pai Foundation v/s State of Karnataka** – highly developed private sector for higher education in Karnataka. Unaided private organizations cannot be commercially run unless entitled to some surplus but education is a philanthropic activity. PRE school is the most unregulated part and purely commercial.
- **Social Jurist v/s Government of Delhi** – schools on state owned property must give 25% freeships to children from disadvantaged backgrounds

History:

The first ever attempt to introduce the Right to Education Act (RTE) in the Indian Legislative Council was made back in 1910, by G.K Gokhale. Next, Mahatma Gandhi called for universal education in 1937. A fundamental debate raged about the RTE at the time of writing the Constitution. Article 45 was introduced as one of the Directive Principles *“to endeavour the State to provide, within a period of ten years, free and compulsory education for all children until they complete the age of fourteen years.”* The Article was simply a compromise and little affirmative action was taken to honour the promise. Education was not even an agenda in any of the budget speeches up until the 1960’s. Some of the important milestones for the RTE were the Kothari Commission (1964-66), National Policy on Education (1968 and later in 1986/1992), and Transfer of education to the Concurrent List (1976).

For India, the period after 1990 was truly a time of liberalization, increased aspirations, social transformation, and heightened civil society participation. This period saw increased privatization and focus on sectors such as Education and healthcare.

Next came the Constitution Act (86th Amendment), 2002, which added a new Fundamental Right (“Right to Education”) by inserting Article 21A. The article states that, *“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine.”*

Article 21A also changed the earlier Article 45 (in the Directive Principles) to *“The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.”*

The Act lays down a detailed set of criteria’s for teacher qualifications, conduct, school curriculum, and school norms, among other things. The Right to Education Act, 2009 is an exhaustive attempt to streamline the colossal gaps in India’s education system. How the Act pans out over the course of the next few years still remains to be seen. For a full list of Rules and Acts pertaining to the Right to Education Act, 2009, please refer to:

<http://www.education.nic.in>