



RtE Act and Inclusive and Discrimination-Free Schools

Nadim Ali Haider Khan

Children being non-essential or a weak constituency have no 'ballot value' for policy makers and perhaps this is one of the reasons why it took so long to legislate on universal elementary education. They are non-actors and have very little room to negotiate in an indirect and representative democracy. Despite the fact that children are the only beneficiaries of this fundamental right, they are often at the receiving end. It makes evolution of an inclusive education system a very difficult task. Their needs are often conceived from the point of view of parents, families, caste, tribes, community and society, who generally are carriers of ethos, values, mores and culture but not the only ones. They may not necessarily always be in sync with the constitutional ethos and usually patriarchal, feudal, caste-ist and communal/religious and are based on exclusion and largely discriminatory in nature. The Position Paper on SC and ST and Girl's Education, by NCF-NCERT and Justice Rajindar Sachar Commission's Reports attest that SC, ST, religious minorities and girl child are subjected to discriminatory practices in elementary schools leading to low enrollment and high dropout.

The Right of Children to free and Compulsory Education Act 2009 (RtE Act) is enacted to universalise elementary education for children irrespective of their caste, class, gender, religious and other socio-cultural and economic identities. It intends to promote and provide discrimination free schools and empowers the community and local bodies for monitoring, addressing, preventing and remedying discrimination in schools.

The question of inclusion in schools can be looked from various stand points: social demography (I prefer to call it neighborhood centered view), identification, classification and categorisation of children, representation, participation, content, curriculum and pedagogy, and finance points of views. All points of views are very important for a holistic appreciation of RtE Act vis-a-vis inclusion.

Firstly, the nature of neighbourhood, that is to say one marked by caste, class, religious or ethnic segregation, will determine the nature of neighbourhood schools. Therefore, a pertinent question follows that does RtE Act intent to address the question of social and demographic segregation through schools and how? Without addressing this effectively, would it not make the school a space for segregation instead of a syncretic space? Secondly, how far will 25% reservation in private schools ensure representation of children belonging to disadvantaged groups (henceforth C-DG) and weaker sections (henceforth C-WS) and help universalize elementary education irrespective of class and category of schools and make private and neighbourhood schools inclusive? Thirdly, the participation will add a bottom-up understanding to the school system. The nature of participation of beneficiaries and stakeholders will shape the school, create a model of community ownership and connect to their aspirations. The framework of RtE Act provides for spaces of participation in form of School Management Committee (SMC), local bodies, school development plan, community monitoring, and social audit. However the question at this stage is about the process of community participation: in what manner will such processes question and negotiate the existing social, cultural and institutional structure and enable inclusive planning, monitoring?

Lastly, finances and resource allocation is a very important area of concern. The RtE Act is a very ambitious Act and comes with a challenge to sustain the financial inflow and to progressively increase the allocation. Accountability Initiative, of the Azim Premji Foundation on the basis of DISE Statistics 2009-10 and SSA financial reports highlighted the disparity between States with respect to annual per capita expenditure on primary education by state and central governments. On one hand Meghalaya and Kerala spend Rs. 23,000

and 19,000 respectively, whereas West Bengal spends only Rs. 3500. Per capita expenditure of only ten states is greater than the national average of Rs. 9500. The challenge is to equalise on one hand and to upgrade on the other.

Identification, classification, and categorisation of children: the idea of inclusion of children belonging from disadvantaged groups and children belonging from weaker sections

The RtE Act provides for free education up to standard 8th to C-DG and C-WS in all private schools except unaided minority schools and in specified schools such as Kendriya Vidyalaya, Jawahar Navodaya Vidyalaya, and Sainik Schools etc. Accordingly, these schools are required to reserve 25% of total available seats for C-DG and C-WS in

Standard One [S. 12(1) (c) of RtE Act].

The RtE Act includes SC and ST children as two broad categories within C-DG and leaves it to State Governments to include socially and educationally backward groups or any group on the basis of social, cultural, economical, geographical, linguistic and gender related factors [S. 2(d)]. C-WS is classified on the basis of the income criteria decided by the State Governments [S. 2(e)]. Only fifteen states have classified C-DG and C-WS whereas all six union territories have adopted the Central Model Rules. Bihar, Jharkhand, Madhya Pradesh, Meghalaya, West Bengal, Arunachal Pradesh, Orissa, Sikkim, Chhattisgarh, Uttar Pradesh, Punjab, Goa, Assam, Jammu and Kashmir have not defined C-DG and the income criteria for C-WS. Tables 1 and 2 provide an overview of C-DG and CWS respectively and highlight the inconsistency in categorising C-DG and CWS.

Table 1 - Groups within C-DGs

Disadvantaged Groups	State
SC and ST	All States and UTs
Backward Class	Karnataka, Gujarat, Tripura, Haryana, Rajasthan (income up to 2.5 lakh) and Uttarakhand and Delhi (excluding creamy layer)
Educationally backward Tribes	Nagaland
Orphan	Andhra Pradesh, Karnataka and Manipur, Kerala, Uttarakhand, Tamil Nadu, Nagaland
Children with Special Needs / Disabilities	Andhra Pradesh, Karnataka, Himachal Pradesh, Manipur, Delhi, Rajasthan, Delhi, Kerala and Uttarakhand
Migrant	Andhra Pradesh, Karnataka
Street Children	Andhra Pradesh
HIV +ve children	Andhra Pradesh, Karnataka and Manipur, Kerala, Uttarakhand, Tamil Nadu and Nagaland
Below Poverty Line	Mizoram
Community in traditional occupation	Kerala
Children of Scavengers	Tamil Nadu
Transgender	Kerala and Tamil Nadu
Children >14 years having alter enrolment	Kerala
Child of widow/divorcee mother having <Rs. 80,000 annual income	Uttarakhand
Children of Disabled Parents/ HIV + parents having <Rs. 4.5 lakh annual income	Uttarakhand

Table 2 - Groups within C-WSs

Weaker Group/s	State
BPL	Arunachal Pradesh, Himachal Pradesh, Rajasthan and Mizoram, Gujarat, Haryana, Kerala, Tripura
Orphan/ HIV+/ Child of War Widow, with Special Needs / Disability	Haryana
Nomadic Tribes and Denotified Tribes	Maharashtra
Religious Minority	Maharashtra
OBC and Special Backward class	Maharashtra
Backward Class, Minority and other class with annual income up to Rs. 60,000	Andhra Pradesh
ANNUAL INCOME	
<Rs. 40,000	Manipur, Nagaland
< 55000	Uttarakhand
< Notified Creamy Layer for BC	Karnataka
< 1 lakh	Delhi, Maharashtra
< 2 lakhs	Tamil Nadu
Rs. 2.5 Lakhs	Rajasthan

It is interesting to note that only Andhra Pradesh (AP) and Haryana provide for a formula of seat distribution amongst the C-DG and C-WS and according to Rule 9(4) of the AP Rule, 19% seats are earmarked for C-DGs including 10% to SC, 4% to ST and 5% to orphan, HIV+, children with disabilities, whereas the remaining 6% seats are reserved for C-WS inclusive of Minorities, BC and OC with an annual income up to Rs. 60,000. Similarly, provision to Rule 7(4) of Haryana Rule provides for 5% seats to SC, 4% to OBC Category-A and 2.5% to OBC Category-B. AP and Haryana Rule try to provide a mechanism to ensure access to education and representation to the most vulnerable children through stratified quota system.

The RtE Act intends to ensure discrimination-free schools. The government [Section 8 (c)] and local authority [S. 9 (c)] are duty bound to ensure every C-DG and C-WS in schools are not to be discriminated against and prevented from pursuing and completing elementary education. The Model RtE rule further obliges government and local

authorities to ensure that every school is free from caste/class/religion/gender-based abuse [Rule 5(3), Model Rules]. Rule 5(3) of Manipur Rule and Rule 6(3) of Andhra Pradesh Rules expressly provide for protection against denial of admission to schools on grounds of caste, class, religion and gender. The Model Rule [Rule 5(4)] and State Rules [e.g. Rules 6(4) of the Andhra Pradesh Rule] has further elaborated the scope by specifically mandating the government and local authority to guarantee every such child protection against segregation and discrimination in classrooms, during mid-day meals, in the playground, in use of common drinking water and toilet facilities and cleaning of toilets and classrooms in all schools including government and aided private schools. Further Rule 7 of the Model Rule and Rule 8 of AP Rule mandate every unaided private schools and specified schools, neither to segregate such children in the classroom nor to hold their classes at different places and timings. They shall not be subjected to any discrimination in relation to entitlements and facilities including textbooks, uniforms, library and ICT, extra-curricular activities and sports.

Conclusion and way forward

The question at the end is - will the new RTE regime emerge as a path breaker in synthesizing both public and private schools for cultivating citizenship and constitutional values? Or will it be just another brick in the wall? The next question follows from that how will it respond to the old challenges and new needs and balance between the two?

The present elementary education system doesn't have a definite and uniform mechanism to identify, address, monitor and remedy discrimination at this level. In the absence of which it is a felt need to evolve methodology and to introduce a mechanism based of specific quality indicators, to fulfill the aim of inclusive schools. In order to make institution of schools democratic, participative, inclusive and free

from discrimination, institutions including the PRI will have to show the way. Education and school are both means and ends to achieve equity but education alone and of itself cannot be a path to emancipation. It has to be freed from the discriminatory ethos perpetuated by these institutions. Active citizenship will transform the institution of education to an active, inclusive and discrimination free institution and an active, inclusive and discrimination free institution of schools will progressively develop an active citizenship. This will not happen in isolation. A discourse on the issue for articulation and adoption of broad principles and criteria for identification of C-DG and C-WS could be a good starting point towards inclusive schools.

Nadim has a Master's degree in International and Comparative Law from Gujarat National Law University. Presently, he is a Teaching and Research Associate at Gujarat National Law University and has worked for seven years on issues of access to justice. He can be contacted at nadimnikhat@gmail.com and nakhan@gnlu.ac.in