
RIGHT TO EDUCATION

DR. A. K. SHIVA KUMAR

I will restrict my comments to the Right to Education (RTE) and highlight some policy tensions that arise with the implementation of legal standards on the RTE.

In the last ten years, in the field of development a very influential idea that has captured the minds of policy makers is the notion of human development (HD). The origins of HD are traced to the writings of Amartya Sen where he argues that the way to look at development and progress in society is not in terms of looking at an expansion of goods and services or, following what the WB and IMF and traditional economists do, in terms of growth in terms of GDP, but rather in terms of the widening of choices, expansion of freedoms and enhancement of human capability. That is the real basis for arguing for what is HD. A very interesting development from this discourse on HD has been the interaction between human rights activists and social scientists. That interaction has expanded this notion of HD in terms of enhancement of capabilities as an assurance of human rights.

If one looks at what poverty is in the sense of human deprivations – the traditional interpretation would be that ill-health, illiteracy, malnutrition, ignorance or even the lack of opportunity of political participation are all dimensions of poverty and one interpretation could be that these occur as a result of policy failures. But the HR perspective brings in the argument that while these are policy failures they are also clear violations of human rights, that people are *entitled* to basic education, health and a decent standard of life. If these are violated then there is a violation of human rights; what the violation brings in terms of a rights perspective is the possibility of some legal action. In a sense, the interaction between human rights and human development gives it greater muscle because it introduces some hope that some legislative action may be possible in order to remedy this deficiency.

In this context, when I talk about the RTE I will confine myself to the right to primary education and focus on India. It is very important to look at the context of India in which we are addressing this issue. It is common knowledge that 260 million people live below the poverty line in India. In fact, according to WB estimates 1 out of every 3 persons in the world earning less than US\$ 1 a day is in India. According to the 2001 census, 290 million people in India cannot read or write and 2/3 of them are women. 60-75 million children are malnourished below the age of 5. And 47% of children below 5 are malnourished; this is about twice the level reported in most countries of Sub-Saharan Africa where the proportion is 20-40%.

So we are really living in a country where, on the one hand, there is extraordinary progress in terms of science and technology but, on the other, there is this huge backlog of human deprivation and the only way to address these forms of human deprivation is to see them as strict violations of human rights that need some kind of immediate action.

The Right to Education

The Right to Education (RTE) becomes extremely important because it is important in itself but also because many of the problems that I address in terms of improving child survival, improving health or improving people's participation in democratic processes or accelerating and sustaining economic development in India depend a lot upon how educated a society is.

Several international, regional and national legal instruments recognize the right to elementary education and they argue for free and compulsory education. This can be found in the Universal Declaration of Human Rights (UDHR), in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in Articles 28 and 29 of the Convention on the Rights of the Child. In India last year there was a constitutional amendment¹ making the right to education a fundamental right.

When you look at the implementation of this right, our commitment to the CRC establishes that it is the obligation of the State to provide this fundamental right. There are four elements of the State's obligation with respect to the RTE. They are:

- Availability;
- Accessibility;
- Acceptability; and
- Adaptability.

Where do we stand in this country on the issue of **Availability**? The CRC argues that the state parties are required to provide functional educational institutions in sufficient quantity, which means that you must have a school building with classrooms, trained teachers, sanitation facilities, drinking water and so on. In 1993, the Government of India claimed that 94% of the rural population had access to primary schools within a walking distance of 1 km. Since then this claim has been repeated that in terms of physical access we have ensured this requirement in terms of availability. But even in 1993 if you asked what kinds of schools these were, it was reported that:

- A third of them had no black boards;
- 35% had no mats or furniture for the children; and that
- 47% had no furniture for teachers.

If one asks what has happened in the last ten years, then the truth is that we really do not know; because the Government of India has not done any survey after 1993 on educational facilities available in this country. There are small surveys available but the moment one goes into small surveys their reliability is always questionable by the government. For example, a recent survey in Assam showed that 74% of primary schools have one classroom and that, on the average, there are 70-90 children in one classroom. There is one teacher between 70-90 children in grades 1-5, being simultaneously taught different subjects. The teachers have to be super human to manage this but the plight of the children is also pathetic.

A more recent survey showed that 54% had no drinking water and 84% had no toilets. So in terms of availability we have a long way to go.

¹ INSERT CITE.

When it comes to **Accessibility** there are three dimensions that are often talked about:

- Physical Accessibility;
- Economic Access; and
- Non-discrimination.

Physical Accessibility, particularly when it comes to girl's education, becomes a matter of concern and is extremely important. The issues here are nearing puberty, the safety of traveling to school.

In respect of **Economic Access** – most laws argue for free and compulsory primary education. But till today there is no clear definition of what is considered to be “free”. Most surveys show that even when the government charges no tuition fees, a family has to spend close to Rs. 350-400/- per year on a child's education. This may not seem a large amount to most of us here but for a daily agricultural labourer in Bihar with three children, who has to educate all three of them, we are looking at 40 days of wages in a year to be devoted to education of your children. And repeatedly in surveys this is coming out as a major factor why parents are pulling out children out of school.

Another issue comes up when you are talking of economic accessibility. Agencies like the World Bank will argue that if there are only 20-40 children in a village it is not viable to set up a full fledged school starting from grade 1–grade 8 to ensure that children below the age of 14 are guaranteed access to quality education. So what is the solution? Some people talk about transporting these children to a central school. But these issues are complex and are always brushed aside.

The third issue of accessibility has to do with non-discrimination. In this respect, the categories of children who are completely neglected are disabled children, children with learning disabilities and girls. There is no clear thinking in the government on how to reach these groups.

The third element is **Acceptability**. All the conventions provide that the form and substance of education, including curriculum and teaching methods, have to be acceptable, which means they have to be relevant, appropriate and of good quality. But most reports continue to say that even after five years of primary school, many children cannot read or write and cannot even sign their names. The truth is that there are absolutely no statistics available in the country on the learning achievements of children. We are thus really talking of steering a policy with no possibility of judging at the end of 5 to 10 or even 20 years on how much have children benefited. That leaves a huge gap.

Small surveys show that children are not learning very much because there is very little effective teaching that is going on in the classroom. In one of the calculations that we did, in a classroom of 50 children with all the holidays, teacher and student absenteeism, other routine duties of teachers, the time spent between a child and a teacher was approximately 1min per child per year.

Another aspect, which has to do with acceptability, is the lack of interest among children in going to school. In most surveys, parents and children say that they are not interested in the children's going to school. This is an interesting observation to make as to why children drop out of school or do not enroll at all. There is a high demand for primary education. Almost 90-95% of the parents amongst the poorest tribal communities argue that primary education is absolutely essential for their children. It is the only way out in terms of ensuring any kind of decent living for their families. Then why is it that so many children drop out? What is it to say that there is a high demand but no interest in going

to school? Part of it is do with the kind of education that is available but much of it has to do with the kind of teaching. All international covenants provide grounds to argue that it is imperative that education respects the right of the child to be curious, to ask questions and receive answers, to argue and disagree, to test and make mistakes, to know and not to know and to create and be spontaneous. And if there is one thing our education system has not guaranteed it is any kind of spontaneity or creativity or joy of learning. It is completely fair that children are not interested in going to school. First of all there is nothing happening. But it is also quite scary and torturous given the kind of discrimination that takes place. It is not so much the physical distance but the social distance that is playing up in many schools. Children are constantly rebuked for coming from poor families, from certain castes and certain minorities. They are humiliated publicly; corporal punishment, which has been abolished formally, is practiced widely and even supported by parents as well.

The last element is **Adaptability**. Again, all the conventions provide grounds to argue that education has to be flexible so that it can adapt to the needs of a changing society and respond to the needs of children. This had taken an interesting turn in India. There is a whole movement called the non-formal education system, of schools that came up about ten years ago as part of this policy. What were these non-formal education schools supposed to do? It is argued that girls normally do domestic chores and therefore cannot attend school. So these girls were meant to attend to all domestic chores in the morning and then in the evening sit down with a teacher for an hour and a half or so in these non-formal education centres.

Now new forms of non-formal education centres have crept up in India over the last five years. These are called Alternate Learning Centres. These were first started in Madhya Pradesh under the Education Guarantee Scheme and had a particular justification. Suppose there is a village but no teacher who wants to be posted there, but there is someone who has studied to class 10; then the government agreed to appoint that person as a teacher within 90 days at Rs. 1200/- a month, to give them two weeks of training and start the school. The argument now is that some education is better than none and that we should not make the best the enemy of the good. That is fair enough. But what is it that children are learning and is this the kind of education that a country like India is aspiring to for millions for children? This is the development of a two-track system. On the one hand you have an excellent system of education for the urban, rich and well to do child and on the other hand you have a second rate system of education for the poor, which is justified on the grounds that some education is better than none.

Two small points again link to the RTE. One is to do with child labour. Article 32 of the CRC states that State Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is hazardous. The Government of India recognises this part relating to hazardous work. But it often overlooks the second part which says "or to interfere with the child's education or to be harmful to the child's physical, mental, moral or social development", and so there are lots of schemes which involve schools for working children. So you may have a child who is working for six hours and it is also provided some education for two hours. In terms of justification it is said that this is a bridge school, that these are transition measures; that till the time these children get into regular schools this will happen. But the experience of non-formal education centres has been that they are growing faster than the growth in regular schools because that really becomes the norm. It is a low cost cheap option that the government pursues. Another point to be raised is that Article 31 of the Convention also states that "State Parties recognise the right of the child to rest and leisure, to engage in recreational activities appropriate to the age of the child". This

is extremely important when one looks at the situation of domestic servants where it is argued that they have a better standard of living because the children live in houses. But their situation completely violates the right of the child to rest and recreation.

Let me end by raising three issues regarding discussion on public policy:

First, the whole rights argument also brings with it the notion of duty bearers; that there are obligations to all persons in civil society to do something about universal primary education. In so doing, what the government tries to do is abdicate its responsibility. The primary responsibility is that of the State and therefore every effort has to be made to hold the State accountable and not get away by saying that civil society and others are accountable.

Secondly, there is a clause in the ICESCR that talks of the 'progressive realisation' of economic, social and cultural rights. But what does progressive realisation mean in a country like India where we do not have any indicators to track progress; when we have only figures that are put out or there are only enrolment figures which we all know are not reliable, where there is no data on attendance and where there is no data on learning achievements?

Third, and last, there is a more dangerous qualifier to the notion of 'progressive realization, that it will be progressive realisation 'within the maximum extent of available resources'. Now the moment we bring in the money issue, it gives the government a huge leverage to argue that there are no resources available to enforce the right to education. We have to argue consistently that rights exist independently of needs. Policy makers argue that needs will become rights only when they are backed by resources and that to me is a completely unacceptable argument if we are assuming a rights perspective.

Let me stop here and say that there was some talk about lawyers not getting involved in policy making. But in the years to come I see an increasingly important role for lawyers and judges to play in decision making of this kind because the only recourse that many in India have to any kind of policy pressure is through the legislative system. Some of the judgments have been extremely good but some are scary. The government of Maharashtra wanted to ban the third child from having access to free education on the ground that the third child will increase the population in the country. These kinds of policy measures have to be contested and argued against and will have to go before the courts.

---XXX---