

TOWARDS A JUST EDUCATION SYSTEM IN INDIA: 'RIGHT TO EDUCATION' AND BEYOND

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Education, for its intrinsic worth and powerful instrumental value, finds a pivotal place in policy thinking as well as in public sphere at large. The ambitious goal of education for all has been reiterated time and again since India's Independence, culminating in the landmark legislation of 'Right to Education Act' that empowers all children to demand eight years of schooling. For the meaningful use of this law, lack of infrastructure and human resources are fore-grounded as major problems deserving urgent attention. However, the popular image of 'Right to Education' is not the same as the fuzziest image produced within its more careful social and philosophical analysis. While treating 'Right to Education' as a problematic and calling for a creative dialogue between political and educational philosophy, the present paper intends to be explorative in nature and provocative in purpose. Invoking the quantity vs. quality debate, it calls for a perspective of social justice which can sublimate our spontaneous and candid concerns for realization of justice in education through redressing prevailing injustice in the system rather than simply visualising how a just system of education should look like.

INTRODUCTION

No wonder, ever since its constitutional recognition as a fundamental right, 'Right to Education (RTE)' in India, has spurred significant rhetoric as well as cynicism around it. Some view this as a laudable act of legislation while others find laughable the delayed timing of this legislation in a country like India. Yet, few others lament despite the RTE Act, Indian education system continues to be deeply unjust. What remains unclear, however, is the extent to which the current premises of RTE discourse are receptive to the philosophical ideals entailed by 'Right to Education' itself.

The political and educational ideals enshrined by RTE cannot simply be brushed aside as a mere theoretical concern. To quote Sandel (1984:81) "...philosophy often seems to reside at a distance from the world". Extending his observation one can argue principles are one thing, politics and educational practices are another, and even our best efforts to 'live up' to our political and educational ideals are always found somewhere between the theory and practice. If Political philosophy and educational philosophy are 'unrealizable' in one sense, they are 'unavoidable' in another.

For all our uncertainties about ultimate questions of political philosophy and education philosophy –of justice and value, the nature of the good life and good education - the one thing we know is that we live some answer all the time. It is our

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duty to explore the answer we live now. So we should pose ourselves the questions - what is the political philosophy or/and the education philosophy implicit in our practices and institutions? How do tensions in the philosophy find expression in our present condition? How ideas can influence our institutions?

Answer to these key questions can be sought through the prism of 'Right to Education' which for our purpose is a problematic; problematic as Philip Abrams (1982) defines - 'rudimentary organization of a field of phenomenon which yields problems for investigation'. In our preliminary probe into the nuances of 'Right to Education' from the vantage point of both political philosophy and education philosophy, the virtue of social justice emerges as an imperative to be nurtured both in educational thought and praxis. A framework of social-justice is found more helpful than a rights-based approach for addressing the pathos we witness in our education structure. Recovering our indigenous philosophies of education and building a creative dialogue with political philosophy might be of great help for our contextualized understanding of the problem and for identifying the injustices of our educational practices to be redressed.

An exercise of viewing 'Right to Education' in its institutional and philosophical ramifications as opposed to the mere legality of the Act RTE promises to render vital linkages between 'political philosophy' and 'Philosophy of Education' to learn from each other and in turn, influence our spontaneous concern for education in its varied forms.

Before getting into the issue of 'Right to Education', an attempt, however, needs to be made to explain the benign image of education and the fixity or the naturalization of education discourses around this image.

BENIGN IMAGE OF EDUCATION

A benign image of education appears to pervade across space and time. The intimate relationship between education and life (encompassing individual, social and other facets of it) is as old as human civilisation. The centrality of education in bringing about economic and social change is commonplace in development discourse across global, national and local level. Education, for its intrinsic worth and powerful instrumental value, is being regarded as one of the strongest pillar for future development in policy thinking as well as in public sphere at large. Nonetheless, education assuming the form and proportions of a large organised sector in society is not a recent phenomenon. It has reasonably a long history across the globe. The constitutional commitment as well as the moral responsibility of the state to ensure education to all members of society is a common feature among all the nation-states, let alone India. Moreover, the concern for education has received a global dimension to it. Education no longer is a local/national issue alone, but a global one. Education is being identified as a key in the global paradigm of development. Education for all is the slogan of UN, World Bank as indeed of various nation states.

‘Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit’ - reads the Article 26 (1) of Universal Declaration of Human Rights (United Nations 2012).

UNESCO report (1996) states “Education throughout life is based on four pillars: learning to know, learning to do, learning to live together and learning to be.”

The broad agreement, enshrined in the Millennium Development Goals, is that primary education should be universal.

Given this background, it is hardly surprising that, *Sarva Sikshya Abhiyan* has been the flagship programme by the government of India and education for children aged 6-14 has become a fundamental right. One may suppose, ‘Right to Education’ is not something radical or unique in India.

ISSUES AND CHALLENGES OF EDUCATION IN INDIA

Now, one can see how this benign image of education has come to play itself out in India. One can easily notice the proliferation of a vast body of promotional literature in the guise of reports and analysis. It has been rooted in our popular belief that any educational programme is good for us. It has almost become our habit to do empty speech making or text writing based on few numbers to convey our performance in education instead of assessing the success or failure in achieving desired learning outcomes as per the presumed aim of education and also probing the reason for it.

One notices a kind of fixity in the way we are measuring the performance of education sector. For example, the Annual Status of Education Report (ASER)² regularly prepared by Pratham, an NGO, would at best inform us the physical infrastructure issues, declining attendance and reading ability of rural children, or else, will highlight many other numbers suggesting the progress for education in rural areas. Two aspects are discernible here namely – ‘numeracy and literacy’. It can also be noticed that even though the issue of quality in education is emphasized, it’s limited to infrastructure, qualification of teacher and reading ability of children.

Lets pose a preliminary definition of education to assess the (in)adequacy of quantitative data propagated as evidence of progress in education. In its broadest sense, for example, education can be defined as “the human practice that prepares people for life through helping them to acquire those attributes (knowledge, understanding, skills and values etc) that they need”. And education is a ‘purposive activity’ that necessarily has aims even though they are not articulated explicitly. (Winch 2010: 22).

However, we seem to have naturalized a tendency to cofound education with a narrow sense of literacy. Literacy, in its broader sense, no doubt, is an ‘essential

tool of self-defense, participation, and empowerment' in a modern society (Dreze and Sen, 2002). But is education all about literacy (reading and writing ability) only? Secondly, can the number of schools, the number of enrolled children, the number of teachers, mere school attendance rates inform us about the standard and effectiveness of education? The answer can be easily anticipated in negative.

On the other hand, there is a consensus that despite encouraging leaps in literacy and school attendance towards universal elementary education over recent years, education of a decent quality for all is a challenging goal. There is also a growing acknowledgement that the 'new expansionism' propounded by the neo-liberal discourse gives rise to concerns about 'hierarchies of access', with the poor and disadvantaged being frequently left with the lower quality options in primary schooling.

No doubt, the languages of quantity, quality and equality are very much there in our education discourse. One might even hold that these three concepts still constitute an 'elusive triangle' for explaining "the contrary pulls working on educational policy in the shape of demands and resistance." (Naik 1975: 4) However, the issue of quality and equality in education are probably more elusive and misplaced than ever before.

It is observed; the issues of quality and equality have come to be treated in such a fragmented manner in our education discourse that the discussion of one often tends to obscure the other. While discussing issues of quality, the questions of socio-cultural equality often tend to be bracketed off. Conversely, the issue of (in)equality is assumed to be settled through an overwhelming focus on the language of access, inclusion and rights without elaborating the implications for quality. (Pappu & Vasanta, 2010)

Moreover, at a time when quality talks with regard to education have proliferated significantly, one finds ample reasons to resist the very modalities of inscription of the term quality on fundamental grounds. The meanings attached to the term quality in context of education are actually found to have locus not in education itself but in things either related or external to education. The quality talks are hardly seen to be engaged with any fundamental sense of quality in education that would involve the conception of education and its aims. (Kumar, 2010 and Sarangapani, 2010). This is probably because we lack a coherent perception of education. It is rightly pointed out that given a situation of 'vacuousness' pertaining to diverse perceptions about the aim of education, it is hardly surprising that the popular mode of understanding quality has been in terms of 'input' or 'out put', which risks short circuiting the worth of traditional categories such as aims, standards, curriculum and pedagogy etc. in the pursuit of quality in education. (Winch, 2010).

The dominant socio-economic ideology of our time such as global capitalism, knowledge society, and neo-liberalism are also alleged to have affected our frequent

use of the term quality and equality despite their thin characterization. This is evident from our of association of quality with an array of factors lying away from the very concept of education such as the idea of competitive edge in global economy, the preference for a differentiated product of (English) education by private institutions and the vision that ICT will ensure quality to universal access of education. On the other hand, although a concern for quality is invoked as a moral imperative of equality, the language of 'universal access' and 'inclusion' in mechanical sense essentially distorts and dilutes the concern for equality. 'Universality' cannot be translated as 'uniformity'. Nor 'access' or 'inclusion' can provide for quality given a background of socio-cultural inequality (Kumar, 2010).

It should also be noted that there is a widespread feeling (even within government quarters) that the education system in India is plagued by the issue of rigidity and redundancy. "A policy of piecemeal and gradual expansionism seems to have governed the development of elementary education in India" where "the state's action has conveniently become limited to a mechanical fixation of targets towards attainment of universalisation". (Velaskar 2010:70). It is becoming clear that the policy implications for education can't be fully obtained only by locating it as a 'sector' within the state's model of development planning or as a service/provision to be accessible to all in the global discourse of development.

One can't afford to rely on an 'institution provisioning approach alone for bringing reform in education. Education has to be seen as a human practice as well as a social process. The National Curricular Framework 2005 for example has pointed several deeper issues in Indian education system namely - (a) learning has become an isolated activity, which does not encourage children to link knowledge with their lives in any organic or vital way; (b) schools promote a regime of thought that discourages creative thinking and insights; (c) what is presented and transmitted in the name of learning in schools bypasses vital dimensions of the human capacity to create new knowledge; (d) the "future" of the child has taken centre stage to the near exclusion of the child's "present", which is detrimental to the well-being of the child as well as the society and the nation. It ultimately suggests, for fulfilling the aim(s) and for achieving the desired quality and equality in education, fundamental education reforms in curricular content, pedagogic process and most importantly in teacher training process are needed.

In the light of above mentioned issues, one can assess the prospects of RTE in facilitating a productive convergence between the values of 'aim', 'quality', 'equality' and 'right' in education.

RIGHT TO EDUCATION IN INDIA

In India, the ambitious goal of education for all children has been reiterated time and again since Independence. This has culminated in the landmark legislation of the 'Right of Children to Free and compulsory Education (RTE) Act, 2009' that

empowers all children to demand eight years of schooling. The title of the RTE Act incorporates the words 'free and compulsory'. '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.

The RTE Act is a detailed and comprehensive piece of legislation which includes provisions related to schools, teachers, curriculum, evaluation, access and specific division of duties and responsibilities of different stakeholders. The Act also lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours etc. The Act sets out in great detail the requirements and paraphernalia, the roles of the Central and State Governments etc. in establishing, running and monitoring such schools. On the basis of this Act, the government has framed subordinate legislation called model rules as guidelines to states for the implementation of the Act.

The Act basically entails that everything must be done to encourage people to exercise this fundamental right. However, the political rhetoric around this act of legislation is not too hard to notice. The passage of this act witnessed epoch making phrases for example- 'Historical legislation', 'Now Education a Fundamental Right' 'A Historical Day', 'India's new tryst with destiny' and so on. Along with the resurrected hope and expectation, the Act has, nevertheless garnered significant pragmatic concern both in the state and civil society. The Planning Commission, for example, has identified the lack of infrastructure and human resources are as the twin problems that need to be solved for the meaningful use of this law. There is a consensus about the need of more funds for the effective implementation of the Act.

On the other hand, the RTE Act has been criticised by a diverse array of voices. Firstly, there is an argument that RTE is not any noble vision; it's already enshrined in the constitution. One can evoke the preamble and several Articles of Indian constitution (Article 45, 39 (f), 21, 14, 15 (1)) along with the precedents like Unnikrishnan Judgment by Supreme Court (1993) to argue this point. Secondly, it's argued that the agenda of Universalisation of Elementary Education (UEE) entailed in RTE Act is a violation of the Constitutional principles of fundamental rights, equality and justice since it is embedded the framework of a multi-layered school system which is delinked from the agenda of provisioning education of equal quality to all. (Sadgopal 2010). There is also resentment that the definition of children under the RTE Act is narrow. As per the international covenants like the Convention on the Rights of the Child to which India is a signatory, children should have been defined as all human beings below the age of 18 years. Another

strand of cynicism around the Act is evident from several voices over the issue of lack of clarity in the details of the Act. It is argued, although the RTE Act is projected as an encompassing framework to free, compulsory and quality education for all children, the Act is excessively input-focused rather than outcomes-oriented. Many doubts are raised such as how the whole process will be monitored? What type of external vigilance/social audit would be allowed/encouraged on the process? From a different angle, it has been argued that since the Act obliges private schools to match government school salaries and amenities, it necessarily results in closing down all private unrecognized low fee charging schools. This will pose a threat to the poor who have switched to low fee charging private school because of the poor quality of free public schools. 'Private schools are illegally providing some sort of education, which the RTE Act is incapable of doing legally' (Aiyar, 2012).

These issues apart, one can reasonably endorse RTE as a landmark development in India's attempts to universalize elementary education. But one can't lose sight of the inherent contradictions that the Act might reveal. For example, 'Right to Education' is no doubt a good idea, but the actual Act might provide no such right at all since it has no penalties or sanctions whatsoever for state governments that fail to provide schooling. It has no penalties for schools and teachers that do not teach (Aiyar 2012). Most importantly, the legal and policy sophistications of RTE, in contrast to the way they appear, in deeper analysis, can hardly be seen of any use without explicating the assumed pedagogical and curricular vision. The Act only reveals not settles the inherent tension between our authoritarian traditions of education system on one hand and the progressive values in pedagogical and curricular recommendations on the other. (Dhankar, 2012).

On the whole, we find the RTE discourse ambiguous. It is not only tied up with competing political visions, but also subjected to ideological tenacity in our time. On one pole, there is a suspicion of neo-liberal agenda within RTE Act along with the socialist demand that the state should do more and more for ensuring education of equal quality for all through a thoroughly public supported Common School System. On the other extreme, there is the allegation that the standard of education in state schools is embarrassing and the RTE is anti poor as it threatens the socially sanctioned market mechanism for elementary education of the poor children especially in rural areas.

No doubt, 'Right to Education' as a landmark legislation provides an important legal framework for the social provision of education. But the concept 'Right to Education' cannot be confined to legal aspects of claim, access, enrolment, completion or infrastructure of schools. The Right to Education discourse needs to be enriched with a broader yet fundamental understanding of 'Right to Education'.

The present paper asks the question – is 'Right to Education' properly situated in the discourse surfaced around it? Though the Act has become a law, there are many aspects which still need to be worked out. For the effective implementation

of the Act towards realizing the political ideal of 'Right to Education' in true spirit, we contend- our approach should be guided by a sense of cerebral realism instead of overt romanticism or cynicism. Thinking must be oriented towards the essence of right to education rather than the legality and technicalities of the RTE 'Act' alone. However, in order to steer clear of the emotive content and the ambivalent nature of the RTE discourse, we need, at first place, an understanding of 'what is 'right'?' 'Right' generally refers to an entitlement to act or be treated in a particular way. But it is merely a workable definition. It is less than clear what the term 'rights' refers to and how it should be used. For instance, a great variety of 'right' can be constructed or asserted both on legal and moral ground. That some individual or a group has a right might mean different incidents: For example, the privilege, claim, power or the immunity (known as Hohfeldian incidents). Moreover, in its recent normative political conception 'right' could refer to both entitlement of non-interference (negative rights which refers to 'freedom from') as well that of welfare assistance (positive rights / 'freedom to'). It is also less than clear if right is something to be given or to be taken or both of them or simply to be asserted. What it means to say that somebody has a right? It's only a valid claim or just a condition/state where somebody is at liberty to do something? On what basis can somebody be said to enjoy it? What rights do for those who hold them? All these appear as pertinent questions to be answered for an adequate understanding of 'right'.

WHAT IS 'RIGHT'?

Right is a buzzword now. Right to Education, Right to Work, Right to Information, Right to Food, Human Rights, Animal Rights and the list goes on. Whereas, 'right' actually is quite an old word having varied connotations- divine right, legal right, and moral right in its long conceptual history (Heywood 2004:184-191) The heightened popularity of the word 'right' in our time can mainly be attributed to three broad reasons, first, the enormity of the political value that the concept continues to substantiate; right as a means of defending the individual or group from state coercion or social exploitation. In other words , the proliferation of rights discourse can be attributed to the enlargement of the space of rights; the salience of belief that the idea of 'rights' can become what it was always intended to be- namely, a shield for the weak against the abuse of political power. Secondly, 'Right', as a theoretical knowledge, is being used to impose demand upon the state to extend its social and welfare responsibility by guaranteeing certain support or services. Third, 'Right', as a legal framework, is being used by the state itself as a convenient means of translating its particular political/welfare commitments into principled obligations.

In fact, the concept of Right was foundational to liberal vision. It was 'derived entirely from the concept of freedom in the external relationships of human beings'

(Kant 1793: 73). The liberal ethic asserts the primacy of right. 'A just society seeks not to promote any particular ends, but enables its citizens to pursue their own end, consistent with a similar liberty for all' (Sandel 1984: 82). It follows—right as moral category is given prior to the good and independent of it, because it is a necessary prerequisite for freedom. Another aspect of the liberal notion of right was that it treated individual as the bearer of right. And that the individual is an autonomous agent was based on an atomistic conception of individual.

Although the language or the doctrine of rights owes its origin and institutional expression to liberal philosophy, it has come to be adopted by most of political traditions, thinkers and activists. The political discourse is littered with assertions of rights of varied nature.

As we have seen, the traditional liberal notion of rights was essentially that of negative rights which mark out a realm of unconstrained action for individuals. These rights basically refer to traditional civil liberties such as freedom of speech, freedom of movement etc. or in other words the rights those are enjoyed in the freedom from the encroachment by others. However, during the twentieth century, another range of rights came to be added to these traditional liberal ones, which mark an acknowledgement of government's growing responsibility for economic and social life. These are welfare rights, social and economic rights, they are 'positive' in the sense that they demand not forbearance but active government intervention. The UN Universal Declaration of Human Rights for example articulated 'Right to work', 'Right to Education' as positive rights.

As another development, while liberals treat rights as strictly individual entitlement, others have developed the idea of group and collective rights. The articulation and demand for various forms of minority rights, child rights, women rights, subaltern rights, cultural rights etc. are examples of this development.

Moreover, a distinction between legal and moral rights is also noteworthy. Some rights are laid down in law or in a system of formal rules and so are enforceable; others, however, exist only as moral or philosophical claims. Legal rights are enshrined in law and are therefore enforceable through the courts. Whereas a different range of rights may have no legal substance but only exists as moral claims. Moral rights are more commonly 'idea' rights, which bestow upon a person a benefit that they need or deserve. For example, the extra-legal basis of 'rights' can be traced back to John Locke's notion of natural rights in the seventeenth century that identified right to 'life, liberty and property' as natural rights. Such rights were described as 'natural' in that they were thought to be God-given and therefore to be part of the very core of human nature. Natural rights did not exist simply as moral claims but were, rather, considered to reflect the 'most fundamental inner human drives' that ought to be protected. By the twentieth century, natural rights theories, with the expansion of their scope, were reborn in the form of 'human' rights to which people are entitled by virtue of being human.

Further, the justification behind 'rights' can be categorized in terms of three broad approaches to rights- 1. Status-based approach where the emphasis is first on 'right holder' than on 'right' (human beings have attributes that make it fitting to ascribe certain rights to them which must not be violated by others) 2. Instrumental approach which starts with the desired consequences (like optimal distribution of interests or maximization of equality) and works backward to see which rights-ascriptions will produce those consequences. 3. Contractual Rights which define principles to be chosen by agents while agreeing to the basic terms of social relations (the principles are based on the close connection between 'rights' and what the agents have strong reasons to want) (Wenar, 2005).

STRENGTHS AND LIMITATIONS OF RIGHTS BASED APPROACH TO EDUCATION

Certainly our search for the meaning of 'right' is not exhaustive, but a brief overview of its conceptual history clearly suggests two things in particular- a; Right retains its conceptual worth both as a political ideal and political tool. b; many things can be a right, and conversely, a right can be more than one thing which we prefer to call 'enlargement of the space of right'.

One may also find a hint that the expansion of the space of rights, in one important sense, has led to the restriction of the meaning and value of 'right'. The restriction is plausible especially given the condition, wherein the question of 'right to have right' has become a pertinent question. The proliferation of rights discourse is mainly because of the 'prior justification' that right carries for itself than the actual practice of any 'right' as such, and that, there is deference between the enunciation and the practice of rights. One may even suppose what Wendy Brown (1994) has observed that the fundamental paradox of rights is the paradox between the universal idiom and local effects or what Marx would say rights depoliticize themselves and construct an illusory politics of equality, liberty and community. Marxists apart, there are foundational criticisms against the concept right as well from Utilitarians and communitarians.

We find illuminating especially the criticisms by Sandel (1984) advanced against the culture and practice of rights.

"Notwithstanding the extension of the franchise and the expansion on individual rights and entitlements in recent decades, there is a widespread sense that, individually and collectively, our control over the forces that govern our lives is receding rather than increasing. As rights and entitlements expand, politics is therefore displaced from smaller forms of association.... Power shifts away from democratic institutions toward institutions designed to be insulated from democratic pressures, and hence better equipped to dispense and defend individual rights. As bearers of rights, where rights are trumps, we think of ourselves as freely choosing, individual selves, unbound by obligations antecedents to rights. And yet, as citizens

of the procedural republic that secures these rights, we find ourselves implicated willy-nilly in a formidable array of dependencies and expectations we did not choose and increasingly reject.”(Sandel, 1984:94).

One may also argue that a right carries an ‘unavoidable indeterminacy’ that leaves much of its scope and mode of application open to administrative and judicial discretion.

Despite all these critical observations, probably it wouldn’t be an overstatement to say that ‘Rights’ seem to have taken life on its own and are already deep rooted enough to remain forever in the development discourse at large. But one has to bear in mind that the grand declarations formulated in terms of ‘rights’ should not be led to give the false impression that ‘rights’ essentially is a thing to be declared. Nor can ‘Rights’ essentially be seen as an outcome target for wherein somebody has to achieve the rights for others. For example- ‘Achieving the right to education for all’ is the much asserted phrase in major UN, World Bank as well as National documents to underscore the prime challenge of education. But what does it mean to achieve right to education for all? ‘Availability, Accessibility, Acceptability and Adaptability’ in education are construed as four major features those mark the achievement of right to education. One can argue, ‘Rights’, by their very nature, rather entail a normative force for obtaining a condition where all achieve/enjoy the right to education on their own not somebody else achieving it for them.

Any rights-based discourse is certainly appealing and it is probably more so in case of education. It’s not surprising that Education is asserted as “a human right and an indispensable means of realizing other human rights” (UNESCO, 2010). It cannot be denied that rights discourse has important strategic value for education, but at the same time it is also necessary to recognize that this discourse could shot circuit different possibilities that may prove even more enabling in the long run (Pappu and Vasanta, 2010).

First of all, the grand claims or declarations related to ‘rights’ often sounds overtly rhetorical. Some governments of developing countries have legally granted every child a right to education, but still millions of the children in their countries have no education at all, or might be officially enrolled but are not present in schools, or are present in schools where there are no teachers. In other words, the rights based approach might sustain its ground in discourse without precisely specifying who carries which duty to make sure that that these rights are effectively granted and attained. By now we have a long history of such declarations and other statements of good intentions that have not led to the promised outcomes, and many people have become quite skeptical about such grand statements. One can argue in this connection that rights discourse might just help widen the gap between normative assertions and social reality without bridging it.

Secondly, rights discourse is usually limited by its focus on the issue of access and inequality and it perceives ‘right’ as an empowerment tool. If the intrinsic aim

of education in society is to expand people's capabilities, including the capability of educating and getting educated, rights are only one possible instrument for reaching that goal. No doubt, the 'right to education' is a right that governments owe to their citizens. But, otherwise, individual persons, families and communities surely owe their children access to good education, even when they are not bound by any legal duty to provide any such education. Rather solely rights based discourse and the ready availability of rights language might come in the way of this obligation of family and community. Rights assertions popularly reveal conclusive reasons which tend to move the moral focus toward persons as right holders, instead of toward persons as bearer of responsibility.

Thirdly, and most importantly, rights based approach to education might risk limiting our understanding of the 'right to education' itself. For example, 'right to education' warrants inherent concerns such as right to quality, right to equality which tend to remain obscured or diluted in rights based discourse. Achieving mere enrolment ratio or only ensuring schooling facility for children, not withstanding poor quality of learning and teaching, might be taken for granted to show that the children are already in possession of right to education and are enjoying it. Related to this, another implication of rights-based conceptualization of educational policies is that it is virtually exclusively government-focused, and once the government agrees that every child has the right to be educated, it might see its task as being precisely executing this agreement in principle not responding in spirit to what 'right to education' entails for a particular child, what is his/her learning needs, expectations and what is his/her right to knowledge construction. A right to education might mean only 'access to school' and nothing more. But then, what is it's worth given the fact that the cultural norms already influence school enrolment (Barooha & Iyer, 2005) and even in many communities, there is no tradition of sending children to school. (Wazir, 2002).

One might reasonably argue that 'Right to education' needs to be rescued from a rights based discourse on education which speaks less about the meaning of 'right to education; than about the grounds for justifying 'right to education'. 'Right to education' is important not because of the importance we attach to education or 'right' but because what 'right' and education are and what 'right to education' can be.

Notwithstanding the foundational criticisms advanced against the language of rights by several traditions of philosophy as mentioned earlier, one doesn't really have to take necessarily a stance either in favour of or against the language of 'right' to question, reflect and guide the deployment of a particular 'right'. We contend, 'rights' should to be taken seriously. They are being talked about the way they do, only for what they are. The essence of 'right' is potent. Rights have such a special normative force that allows them to be seen as 'trumps'. Scholars like Dworokin tend to argue – 'Rights give reasons to treat their holders in certain ways

or permit their holders to act in certain ways, even if some special aim would be served by doing otherwise". This is evident from what we have referred the 'expansion of the space of right' and the tacit agreement among both supporters and skeptics of 'right' that the violation of rights is bloody bad. But the challenge is to recover the meaning of 'right' from the discursive ground and *telos* that we assume for their justification. Right in essence is not something to be achieved or given but to be conquered. We assert, the meaning of 'right' is not foreclosed. The perspective should be all about what a particular right can or cannot make a difference to us in terms of our action.

If the language of right is already given, all one needs to emphasize is the strategic use of the language of 'right' so that it effectively serves its worth as a political tool as much as a Political ideal. 'Right to education', in our view, can be seen both as a positive right, which bestow upon a person/child the education that he or she needs or deserves, and a negative right by which, an individual or a group are free to pursue education of their choice or will. In similar vein, one may suggest the language of right in the context of education be used mainly for two important purposes – 1. For protecting education rights from their violation 2. For demanding what one needs/deserves from education by asserting/using 'right' as a political tool?

But, the enunciation and articulation of 'right' as per the above suggestion are not as easy as they appear. Our perception of 'right' with regard to education is perhaps not yet clear. But one thing we are sure, 'Right to Education' has enormous potential to offer or exert on the 'process' and 'agency' of education in a society inspired by liberal and democratic ethos.

Then, how does one go about it? Before coming into the grip of any idea of protection or potential of 'right' in education, one does have to encounter several questions yet to be answered. What is new about Right to education? Was not it existent before? Is education a right at all, only when there is a legal provision for its protection from violation? Should not 'Right to Education' otherwise be protected in the absence of legal shielding? Suppose education, in a primary sense, a moral right independent of any idea of its legal protection, then how do we come to know whose right is what, let alone its violation? What constitutes the moral basis? For a legal right, in principle, the state is seen as the corresponding duty-bearer. But if 'Right to Education' ought to be seen as a moral/human right, then logically the whole society including government, teachers, family and community is expected to be its duty bearer.

But then, how can we ensure the protection of 'Right to Education'? Can this protection be reasonably anticipated or even wished away relying on the strength of an epochal legislation coupled with the comprehensiveness of a policy frame work packaged around 'Right to Education'? Can we equate a child's poor schooling with the protection of his/her right to education? Can children have a right to

education that does not involve joyful learning? How do we know if somebody is really enjoying a 'Right to Education'? What difference 'right to education' can or should make to our action in the structure and process of education? These questions ultimately lead us to the primary subject of justice that can offer us necessary guiding principles. Moreover, while dealing with 'Right to Education' particularly for children, we have to bear in mind that children hardly articulate their rights in education. Therefore, a framework of justice is more needed to enable them conquer their rights to education that they need, deserve or choose.

IMPERATIVE OF SOCIAL JUSTICE

If 'right' means entitlement, we need a normative framework of justice to derive what is just entitlement. In the absence of a guiding framework of justice, we might secure the right to education for all the children along with an unjust education system that breeds injustice further. 'Right to education' without justice may cease to be right to education in actuality, or in other words RTE might negate its own purpose. Without a commitment to justice how can education have a shield against what Althusser would apprehend 'Ideological apparatus' or what Choamsky would apprehend 'indoctrination' or what Heidegger probably would apprehend the threat of 'enframing' by education? It implies 'Right to Education', presupposes the ideal of justice for its true 'existence'.

The literal meaning of the latin term *justicia* from which 'justice' is derived primarily refers to the idea of joining or fitting or the idea of bond or tie between human beings. However, its actual meaning has been further extended to mean the idea of joining or fitting between value and value and thus a general synthesis or reconciliation of values. It basically refers to an ethical code of conduct. However, Justice as a concept does not undermine or pre-empt rights. Rather, one can see justice offers a normative framework for the appreciation and just accommodation of rights.

Plato understood justice as a virtue to be cultivated by both the individual and 'writ large' by the state. Justice as meant by Plato referred to the overarching role of reason both in perceiving what is just and allowing to act justly rather than give in to contrary impulses or desire.

Similarly, Aristotle held a rationalistic account of justice, but emphasized on the need to promote and respect just social arrangements. According to him, situations and communities are just, when individuals get their due according to their merit (desert based conception of justice). In fact, Aristotle is seen to view justice as both an evaluative as well as performative ideal grounded in social relations (unlike in idealistic abstraction like plato does). Justice is seen as a virtue that ought to be cultivated both by individuals and the society as whole.

In its modern usage, the idea of 'justice' seems to have garnered varied connotation. (individual, legal, social, political, moral and many more). But one

can't ignore what John Rawls, arguably the greatest political philosopher of twentieth century, presents us as quite an encompassing idea of Justice grounded on a credibly coherent body of theoretical knowledge. Criticisms apart, Rawls is regarded to have offered a robust vision of social justice which basically entails 'acting on a sense of justice' for its social application.

Utilitarian theory asserts that the social order in which the largest number of people can have the highest satisfaction of their utility is just. Rawls's theory, however has offered, an alternative to utilitarianism.

His is seen a distributive schema of justice since it entails distribution of 'benefits' and 'burdens' of social relationships among all members as per what each of them is 'due', often seen as his or her 'just desserts'. Rawls equates the very idea of justice with 'fairness' which demands the act of setting up a system of laws to be justified and established by the society itself.

According to him, 'Justice is the first virtue of social institutions, as truth is of system of thought'. 'Justice is more than just another value'. 'It provides the framework that regulates the play of competing values and ends'; it must therefore have a sanction independent of those ends'.

The rules of justice are those that would be agreed to in a hypothetical setting. Rawls places men behind the 'veil of ignorance' in a hypothetical original position where individuals are deprived of the basic knowledge of their wants, interests, skills, abilities and of the things that generate conflicts in actual societies. But they will have what Rawls calls 'a sense of justice'.

In his attempt to offer a neutral framework of justice, Rawls (2001) specified two principles of justice for the distribution of "social primary goods", which include material goods but also goods such as self-respect, access to employment, educational and decision-making opportunities etc.

To define the just distribution of these goods, Rawls' (2001:42) first principle of justice declares that each person has the same, constant right to a "fully adequate scheme of equal basic liberties". The second principle of justice, which must not violate the first, claims that social and economic inequalities are just only when offices and positions are "open to all under conditions of fair equality of opportunity" and when they are "to the greatest benefit of the least-advantaged members of society" (Rawls, 2001: 43).

His theory grants equal basic liberties for all. Inequalities should be attached to offices open to all. They should benefit the disadvantaged section the most.

But communitarians would challenge the procedural fairness as envisaged in Rawls' theory of justice' on the ground that it's based on the assumption of 'unencumbered self' which dilutes the concern for substantive justice. Kymlicka (2001) would seek to incorporate cultural issues into a distributive framework by claiming that an "intact cultural structure" is a primary good.

There is also a counter view that it is not procedural distribution of primary goods as such that lead to social justice, an individual requires recognition by another subject to 'flourish as a human being'. In his theory of recognition, Honneth (2003:134) locates "the core of all experiences of injustice is in the withdrawal of social recognition, in the phenomena of humiliation and disrespect".

The emerging wisdom suggests the best way to bridge cultural and economic spheres is not to collapse status and class issues into a unitary model but rather to "assume both the standpoint of distribution and the standpoint of recognition, without reducing either one of these perspectives to the other" (Fraser 2003:63). Fraser endorses a "parity of participation, "rendered by an alteration of institutions and social practices that accord individuals "the economic resources and the social standing needed to participate on a par with others" (Fraser 2003:229).

In this paper, however, we resist presenting a unified conceptualization of social justice with the hope that our analysis will provoke more questions and stimulate new discussions about what various perspectives on social justice might mean for education.

Amartya Sen's thought on justice is found especially useful when it comes to the concern for our unjust educational structure and practices. According to Amartya Sen, more than a matter of intellectual discourse, the idea of justice plays a real role in how—and how well—people live. In contrast to distinguished theories of justice including that of Rawls which are concerned with identifying perfectly just social arrangements and defining the nature of the perfectly just society, the approach Sen favors, on the other hand, focuses on the comparative judgments of what is "more" or "less" just.

Sen argues any theory of social ethics, and particularly any theory of justice, has to choose an "informational basis" for assessing justice and injustice. He highlights the limitations of the 'informational basis' provided by opulence-based approach' in welfare economics and Rawlsian 'primary goods based approach'. He argues like incomes, primary goods are assets and resources that are "external" to the person; they do not capture what a person can do with the assets and resources he or she has. For him, the assessment of distributive justice requires us to take note of the individual's real opportunity to pursue his or her objectives and the actual capabilities of persons must, directly or indirectly, be brought into the accounting of individual disadvantages and predicaments.

The capability approach was advanced by Sen, as a broad normative framework for assessing our wellbeing and evaluating our social arrangements and policies. Capabilities are viewed as the various 'functionings' that a person can attain – where 'functionings' are the constitutive elements of living that is, doing and being. Examples of 'functionings' are being healthy, being educated, holding a job, being part of a nurturing family, having deep friendships, etc. 'Functionings' are thus

outcomes or achievements, whereas capabilities are the real opportunities to achieve valuable states of being and doing.

So far, we are talking about the justice/injustice in the provision or system of education. Capability approach has no doubt emerged as the most preferred framework for realizing justice or redressing injustice. How to operationalize this approach, however, remains a challenge.

Our rationalistic, technocratic policies might be based on just principles, but yet the “relational, responsive, and concrete” aspects of microlevel social relations need to be focused in particular. We tend to neglect everyday microlevel social processes that have not yet been publicly articulated but still contribute to “social misery and moral injustice” (Honneth 2003:113-115). One can advance examples at different levels in favour of this argument. For example, despite the policies of positive discrimination for girls, dalit and tribal childrens, inspired by the principle of equality, in the provision of education, one cannot rule out the possibility of unjust discriminatory practices (along the lines of gender, caste and class) at grass-roots level social relations among children and among children and teachers. Another example of this hidden issue could be, even though the educational policies are based on a generalized notion of fairness with regard to child centric education, relative autonomy of children and their joy full learning, there are instances of children being punished and humiliated for their relative failure in rote memorization. There are even anecdotal instances of teachers using blatant abusive languages (slangs) in the class rooms.

Lynch and Baker (2005:132-133) argue, “[E]qual respect and recognition is not just about the liberal idea that every individual is entitled to equal rights and the privileges of citizenship in the country in which they live ... It is also about appreciating or accepting differences rather than merely tolerating them”.

One may suggest that the alleged mismatch or the gaps between normative (just) principles and actual social practices is inevitable, but yet we have ample compelling reasons to demand for their convergence. Therefore one may emphasise, at first place, the need to understand the nature of gap we experience between the principles (of social justice) and practices. If it is agreed that, despite the articulation of just principles, there are taken for- granted wrongs occurring within educational contexts at different levels including that of individual identity development, social interactions among individual and groups of students, and interpersonal relationships between teachers and students etc, then one can intuitively advance three key theoretical propositions for explaining the very gap in question. - (a) The lack of individuals’ virtue of justice which in Rawls’ view would suggest the lack of compliance to just principles of society. (b) The just principles assumed during policy formulations lack justifiable epistemic clarity. (c) the apparently just principles are arbitrarily formulated or imposed unlike the way Rawls hypothesizes them to have (be) ensued from democratic deliberation(s) by informed agents under

perfect conditions of 'original position' and 'veil of ignorance'. These three propositions not only help us identify the coexisting problems but also hint at solutions to be pursued simultaneously.

IMPLICATIONS FOR PHILOSOPHY OF EDUCATION?

Our analysis so far indicates that the pursuit of justice is not essentially something to be done once and for all; rather it ought to be a persistent affair. Secondly, we contend, we not only need justice in the system or the social provision of education; as a social process, education has also a critical role to play in the pursuit justice in the society. Education not only provides the "social preconditions of individual autonomy" but also the psychic and social realities in which democratic relations take root. Justice as a virtue is not essentially a thing to be merely incorporated or enshrined in the principles shaping policy decisions and designs for education. Rather it is a virtue that ought to be performed in the provision as well as in the process of education.

It is the task of philosophy of education to contribute in shaping the just principles while providing justifiable epistemic clarity on one hand and to contribute to a reinvented human consciousness that domesticates the principles of 'right' and 'justice' in the context of education.

But it is not an easy task, one has to address the tensions entailed by three propositions we have identified above.

At one level, it has to provide for socializing the virtue of justice through individuals. In other words, it has to provide for the moral/cognitive development of children/individuals that involves a concern for justice and right based on universal principles. Morality cannot be plausibly confined to intimate relations based on 'natural motives' such as love, caring, sympathy and benevolence etc. Natural motives need to transcend intimate personal relationships. (Slote, 2011)

If Justice as the individual virtue is a matter of accepting and complying with independently defended moral/political principles, it is the task of philosophy of education to explicate the epistemic assumptions behind independently defended moral/political principles. For example it has to answer the questions- what is the aim of education? Whether children should be seen as individuals/citizens/workers or as national resources? What is the role and nature of autonomy of teacher?

Thirdly, philosophy of education has to respond to the imperative of democratic ethos in articulating what is justice. That justice as an individual virtue should be derived from social justice can be challenged. One may pose why not the former provides the basis for thinking about social justice? A Public conception of justice necessarily based on a notion of public reason which is an important aspect of democracy. It is important to bear in mind however that one notion of reason can't be just assumed to be omnipresent in everybody's thinking. As Amartya sen points

out- “What matters most is the examination of what reasoning would demand for the pursuit of justice – allowing for the possibility that there may exist several different reasonable positions”. (Sen 2010: xix)

CONCLUDING REMARKS

Our policies, discourse and practices of education appear to be more concerned about the access and coverage of education as if education is an external good that must trickle down, than about the nature, purpose and process of education. ‘Access to school’ cannot be equated with ‘Right to Education’. The implementation of RTE Act will certainly help in bringing more children into school, more number of teachers and better school infrastructure. But simultaneously we need a coherent philosophy of ‘right to education’ driven by the normative force of ‘justice’ to seize the temperament ensued by ‘RTE’ discourse as well as to orient our efforts for effectively realizing the ideal entailed by RTE.

Ideals like ‘Right’, ‘capability’ and ‘Justice’ in education can be better pursued with the aid of philosophy of education. As we have learnt a framework for social justice in education would demand more than mere concern for mere quantity and literacy. Rather than seeing right to education as a mere entry ticket to the institutional provision of education, it brings to light the pertinent issues of method, content, quality and relevance in the process of education.

A framework of Justice for education entails broadening the scope of rights and duties as well as grounding them in the context of education. It will involve, right to quality/equality, duty of teachers, duty of parents, right of teachers to contribute to curriculum and above all the right of education community as a whole to their relative autonomy from the state, society and market.

A proper understanding of prevailing social injustices in education policies and practices in India and our efforts for their redress would inevitably warrant us a reinvented human consciousness that philosophy of Education can provide for by revitalizing our understanding of ‘right’ and ‘justice’ in education in a meaningful way. This can be a robust enterprise in itself involving myriad perspectives and thinkers. At a time when ‘philosophy of Education’, especially in India, is not adequately evolved to deal with the very issue, one can propose to derive our notion of ‘rights’ and ‘justice’ in relation to education from traditional educational philosophies as a first step in this direction.

Taking cue from Amartya Sen’s philosophy of social justice, we must emphasize more on the realisation of justice in education through redressing prevailing injustice in the system and practice of education rather than simply visualising how a just system of education should look like. However, redress of injustice, in turn, presupposes a core yet dynamic conception of ‘Right’. It basically demands two ways of relating these two concepts- Demand for rights in pursuit of justice, and performance of justice by protecting rights.

As Sen puts it, 'If one is in a plausible position to do something effective in preventing the violation of such a right, then one does have an obligation to consider doing just that' (2004: 340–1). If it is agreed that the right to education is not only a legal but also a moral right, then everyone who is in a position to help realize this right should see it as her moral obligation to contribute.

The government alone is not enough for realising justice in education. All that is needed is not identifying the primary subject of justice and securing it by purely structural means, but an ethos which informs choice within just rules.

'Obstetric conception of political practices' (Sensat, 2003) for bringing reform in education sector, is of week help for achieving desired outcomes in education. Obstetric conception refers to the belief that mechanical application of right and equality will give birth to equality and justice in the society. In other words, it refers to the tendency to think that solutions are there to be had and one does not have to encounter hard choices which responsible politics demands.

For example, participation of beneficiaries in the monitoring of public services is increasingly seen as a key to improving their efficiency. Accordingly, in India, the current government flagship program on universal primary education organizes both locally elected leaders and parents of children enrolled in public schools into committees and give these groups powers over resource allocation, and monitoring and management of school performance. However, in a baseline survey it has been found that people are not aware of the existence of these committees and their potential for improving education (Banerjee, Banerji, Duflo, Glennerster & Khemani, 2009).

Putting just principles in their place in the structure or institutional provision for education apart, there is a strong need for the organic evolution of responsible agency for addressing the political demands of justice in education. The most important node of this agency, no doubt, is the teachers, because of their direct contact with the children and the strategic importance of their role of educating. The teachers, at first place, should have a cognitive bearing of their role expectation and a commitment to perform justice through their duty of teaching. It is the task of 'philosophy of education' to resurrect a common thinking among elites, policy planners, teachers, teachers' trainers as well as among the community at large about the core purpose of education and the role expectations of teachers.

The approach to be used must therefore be fresh, open-minded and sensitive. Preconceived notions and rigid equations that presume that there is only one correct solution to the problem of education can sabotage the whole purpose. 'Philosophy of Education' might be pursued to help prevail the thinking that what matters is not the amount of resources spent on education but how is it spent. The challenge is to spend the resources in a manner that not only produces tangible and measurable outcomes but also help redress the injustices in the process of education.

Note

2. The ASER from 2005 onwards are available online by ASER Centre, the research and assessment arm of Pratham at <http://www.asercentre.org/>

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