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Do our children have the right to education?

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Does the Constitution of Bangladesh recognise education as a right? The plain answer is no. It mentions the provision of universal education as a directive principle of state policy in the often cited Article 17. In its three clauses, Article 17 calls for a) establishing uniform, mass-oriented universal education, free and compulsory, as determined by law, b) relating education to needs of society and producing trained and motivated citizens to meet the needs, and c) removing illiteracy within such time as determined by law.

So what is missing? A roundtable was hosted on the subject by the Parliamentary Caucus on Child Rights and Save the Children on January 12. The background note argued that Article 17 is a statement of principle, an expression of aspiration, and not a constitutional pledge.

Does this matter? It matters because a directive principle cannot be used as a basis for challenging government or anyone else's action or inaction in a court of law. A provision for citizen's right can be. A right incorporated in the Constitution is 'justiciable,' to use a legal jargon.

Barrister Amirul Islam, one of the framers of the Bangladesh Constitution, said at the roundtable that the call for a guarantee of a constitutional right to education was misguided. He argued that it is already there in the directive principles. In his view, we should concentrate on what is said in Clause (b) to meet the needs and create trained and motivated citizens.

In making his point, Islam ignores, or is unaware of, what has been found necessary by many countries in the world, including our neighbours – India, Nepal, Pakistan, Maldives and Sri Lanka. They have inserted specific provisions in the national Constitution about the state's obligation to fulfill children's right to education. These measures have helped to galvanise public opinion, to hold the state responsible for neglect and failure, and have prodded authorities to action with legal sanctions when necessary.

India's 86th constitutional amendment adopted in 2002 prepared the ground for the Right to Education (RTE) Law enacted in 2009. The Act is seen as a compromise that was reached after a long debate in political and academic circles – with opinions divided between shades of how much more should the law embrace. There was no opposition to the idea of a right to education guarantee.

A law, even a constitutional provision, does not necessarily solve complex and intractable social, economic and political problems. It can and does provide a legal umbrella, specifies responsibilities for action, establishes the ground for seeking legal remedies for neglect and inaction, and creates opportunities for legal activism by civil society. This is what can be seen in India and elsewhere.

RTE Act led to provision for a hot mid-day meal in schools for over 150 million children in India under a rule by the Supreme Court. The rule was issued when some states and schools were looking for ways to avoid full implementation of the law. RTE requires profit-making, private schools to reserve 25 percent of their new admission for under-privileged children in the school's neighbourhood. The law establishes standards for school facilities, teachers and learning materials for all schools, and mechanisms for enforcing the standards. Oversight and reporting mechanisms for how RTE is being achieved are in place in each state.

Have the problems of providing quality basic education for all children in an equitable way been solved in India as a result of the constitutional pledge and RTE Act? The answer is no. These steps have signaled the national resolve and priority and have prompted a higher level of effort and greater progress than it would have been possible otherwise.

Other prominent speakers at the roundtable – the Deputy Speaker of the Parliament, Advocate Fazle Rabbi; MostafizurRahman, Minister of Primary and Mass Education; and Dr. Enamur Rahman, Chair of the Parliamentary Caucus on Child Rights, and several MPs present – found an argument to their liking from Barrister Islam.

They went on to express their doubt about the need for some modifications of the Constitution to back up the fundamental principle with a specific recognition of the right to education. This could be done by adding an article on children's right to education in the section on various rights-related articles of the Constitution. This is what has been done in other countries.

Deputy Speaker Rabbi even argued that the 15th amendment of the Constitution adopted in 2011, which prohibited any amendment contrary to the fundamental character of the Constitution, prevented any amendment on RTE. He appears to be giving too broad an interpretation of the 15th amendment. An addition to insert children's right to education could hardly be regarded a change of the fundamental character of the Constitution; it would only reinforce a fundamental principle already in the Constitution.

Speakers noted that the Compulsory Primary Education Act, in the book since 1990, was not well-formulated and did not protect children's right to education. In any case, National Education Policy 2010 foresaw universal primary education up to class eight. In fact, universal and compulsory education needs to be extended further to include secondary education in an aspiring middle income country. This is one of the targets of Sustainable Development Goals for 2030 (SDG2030) endorsed by global leaders at the UN in September 2015.

Speakers at the roundtable mentioned the draft comprehensive education law in preparation, which would reflect the major objectives of the education policy. “The Cabinet found

shortcomings in the draft and it has been sent back for remedying the weaknesses,” said Mr. Mostafizur Rahman, Minister of Primary and Mass Education.

It was suggested by speakers that the deficiencies in the 1990 Compulsory Primary Education Act could be corrected and incorporated in the new comprehensive education law, turning it into a Right to Education law. This would only reflect the government's stated development priority and earn for itself public acclaim for its commitment.

The commitment of course has to be backed up by budget provisions and other steps to improve governance, management, and quality of instruction to fulfill children's right to education.

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