

Original Paper

Education Acts and Regulations for School Education of Nepal: An Analysis from Governance Perspective

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Abstract

This essay was prepared to critically analyze the existing laws related to school education from the perspective of educational governance. The essay reflects that the education acts and regulations are responsive to reflect educational governance but that is not reflected as per the educational structure although they were amended after the federal structure. On the other hand, it is being very delay to bring the new Education Act and Regulations responding to the Constitution of Nepal because Nepal is practicing federal structure from last six years. Therefore, the article revealed the need for a new education law as mandated by the constitution and the federal system promoting educational governance.

Keywords

governance, Education Act, transparency, decentralization

1. Background

The school education system has been restructured with basic education consisting of grades 1-8 with the age 5-12 years and secondary education consisting of grades 9-12 with age 13-16 years (CEHRD, 2018; *Education Act, 1971; The Act Relating to Compulsory and Free Education, 2018*). There are 35,674 schools in Nepal. Among them, 27,812 are community schools, 6,732 are institutional schools and 1,130 are religious schools (CEHRD, 2021; MoEST, 2019).

In Nepal, there are three types of schools. They are community schools, institutional schools and religious schools. The community schools are those schools that have obtained approval or permission and receiving regular grant from Government of Nepal. On the other hand, the institutional schools are those schools that have obtained approval or permission for operation on condition that they are not receiving regular grants from Government of Nepal. On the other hand, the religious schools are the

traditional schools teaching religious practices but have been provided with financial and other support from the government once and when they mainstream into the formal education system by following the pedagogical rules and regulations set by the government (CEHRD, 2021; *Education Act*, 1971).

CEHRD (2021) describes four types of community schools. They are:

- Community aided schools: Provision of at least one approved position of teacher by level, full salary and other expenses paid by the government.
- Community managed schools: Provision of teachers' salaries and other expenses fully paid by the government, but the school's management responsibilities go to communities.
- Teacher aided or partially aided community schools: Provision of no approved teacher quota but at least one *rahat* (*Note 1*) teacher position with salaries fully paid by the government.
- Unaided community schools: There will be no approved and *rahat* teacher position, which receive limited financial support from the government.

Similarly, there are three types of institutional schools. Those formed through private trusts, through public trusts and running under the Company Act. Their teachers and non-teaching staff are privately funded and almost all expenses form the different fees i.e. tuition fee, textbooks and others students bear by the parents (CEHRD, 2021).

2. Laws for School Education

To functionalize the school education the government has developed and endorsed different laws like Education Acts and Regulations. In Nepal, there are no separate acts and regulations according to the types of the schools. The acts and regulations are common for all the types of schools, i.e. community, institutional and religious schools. The existing acts and regulations for school education in Nepal which are being practiced are:

- Education Act, 1971 (9th amendment, 2017)
- Act Relating to Free and Compulsory Basic Education, 2018
- Education Rules, 2002 (9th amendment, 2021)

The date of authentication and publication of Education Act was on 9th August 1971 (24th Bhadra 2028 BS). It has 9th amendment on 23rd October 2017 with the revision of objective to improve school management to develop quality education (*Education Act*, 1971). Similarly, the Act Relating to Compulsory and Free Education was published in the Nepal Gazette on 18th September 2018 with the objectives to ensure easy and equal access and continuity of all to education, and to make education universal, useful for life, competitive and qualitative (*The Act Relating to Compulsory and Free Education*, 2018). Likewise, the publication of Education Rule, 2002 in the Nepal Gazette was on 30th May 2002 with the ninth amendment on 15th February 2021 (*Education Rules*, 2002).

Analysis of Education Acts and Regulations from the Governance Perspectives

The analysis of the school related education acts and regulations have been described based on the component of governance as per the following:

Rule of Law

The acts and regulations should be developed to ensure the fundamental rights provisioned in the constitution. To ensure rights relating to education as provisioned in article 31, the Act Relating to Compulsory and Free Education, 2018 was enacted (Jha, 2019). The act has the provision of equal opportunity to quality education. Similarly, it has ensured the right to acquire education in the mother tongue; right to become literate; right to get education by means of special education; and right to get quality education from the qualified teacher. The progressive mechanism the act is to ensure free education up to secondary level. More ever, it has the compulsion provision of getting the education up to basic level by 1st Baisakh 2085 BS (13th April 2028). Otherwise, the citizens will not be qualified to receive the government support (Pokharel, n.d.).

In this way, the Education Act (1971) and Education Rules (2002) have also provisioned the language in mother tongue and receiving education through the non-formal education for ensuring the rule of law.

Transparency

To promote transparency among the stakeholders, *The Education Act* (1971) has provisioned of audit of income and expenditure of the board and committees like National Examination Board (NEB), School Management Committee (SMC), etc., formed under this Act. Similarly, the Education Rules (2002) has provisioned the mechanism of developing budget, operation of school fund, maintaining income and expenditure of school and causing annual financial audit by each school. Likewise, the Education Rules (2002) has provisioned for the annual social audit of the schools. For this, it has provisioned a committee to conduct the social audit on time. In this way, the *Act Relating to Free and Compulsory Basic Education* (2018) has provisioned to discuss the education performance of the schools in the local government executive.

Responsiveness

To make the education authorities responsible for the school education, there are provisions in both Acts 1971 and 2018. *The Education Act* (1971) has provisioned the National Examination Board (NEB) for conducting, coordination and managing the School Education Examination (SEE). The conduction of the examination of grade 10 and the end of secondary level is under the authority of NEB (*Education Act, 1971*). Similarly, the Education Act (1971) has provisioned of National Education Commission to provide suggestion and recommendation on education related policy to the government.

The Education Act (1971) has enlisted the behaviours and actions by which the teacher shall be removed from their post to make the teachers responsive to their duty. On the other hand, the *Act Relating to Compulsory and Free Education* (2018) has provisioned of alternative education to make the citizen educated up to basic education and provisioned the free education up to secondary level.

Equality and Inclusiveness

Both Acts and the Education Rule for school education have given emphasis on especial and inclusive education. Similarly, they have provisioned free education to the children with disability. Additionally,

Education Act, 1971 and the Act Relating to Compulsory and Free Education, 2018 have provisioned education in braille to blind and education in sign language to the deaf children.

There is provision of operating mobile schools in the mountain region in Education Act, 1971 which is elaborated more in Education Rules, 2002 more its execution. To promote inclusiveness in the School Management Committee (SMC), there is provision of at least two female members selected from parents and at least one female nominated by the concern SMC. In this way, there must be at least 50% members of SMC must be from the parents of Children with Disability (CWD) of special education schools. For promoting inclusiveness in SMC, there is provision of at least one member representing from people with disability (*Education Act, 1971*).

For promoting female teachers in the schools, Education Rules (2002) has provisioned the following:

- Provision of female teachers in primary level. There will be at least one female teacher if there are three teachers in the school. Similarly, there will be at least two female teachers if there are seven teachers in the school. Additionally, there is provision of appointing female teacher if the position is vacant (Section, 91).
- Provision of additional maximum 20 marks to the female candidate of Head Teacher in teaching experiences (Schedule 13).
- If female, Dalit and PWD receive the equal number, the priority to female, Dalit and PWD respectively while selecting the head teacher (Schedule 13)
- Provision of 60 days maternity leave to female teachers (Section, 106.1D)

Effectiveness and Efficiency

To promote effectiveness and efficiency in teaching learning and improve school education system, the acts and regulations have provisioned national to local level structures like Education Review Office (ERO), District Education Office (DEO), District Education Committee (DEC), Teacher Service Commission, etc but some of them are dissolved and not in existence in the federal system. The role of Teacher Service Commission is to appoint the teachers and schools' staff and recommendation for the promotion. To promote effectiveness and efficiency in selecting the teachers, there is provision of process of advertisement, written exam, interview and practical exam to follow appointing the teachers and staff (NAREC-Nepal, 2008; *Education Act, 1971*; Shrestha, 2008). To recruit the qualified teachers, there is provision of teaching license, and nobody can be the applicant without the teaching license. Likely, to promote school readiness and quality in education, the Education Act has provisioned some grants to the Early Childhood Education and Development (ECED) centres. To cooperate the SMC and for maintaining quality education in schools, there is provision of Parent Teacher Association (PTA) (*Education Act, 1971*).

In this way, the Education Rules has also provisioned some clauses for promoting effectiveness and efficiency. There are the checklists / minimum standards related to infrastructure to be met establishing schools. There is provision of extracurricular activities for the children and code of conduct for the teacher and students are set. Similarly, the role of headteacher is provisioned as administrative chief.

Likely, to ensure the protective environment at the schools, there is provision of complaint response mechanism to be ensured by the schools (*Education Rules, 2002*).

Accountability

When we talk about accountability, it comes to our mind that someone has been assigned a specific responsibility to perform a certain task in one's profession (Thapa, n.d.). The Education Act, 1971 has provisioned the SMC for both communities as well and institutional schools. Similarly, the education Act and the Education Rules have envisioned the functions, rights, and duties of SMC of both types of schools. Making the local government accountable, both acts have provisioned the compulsory education up to basic education and free education up to secondary level.

In this way, making the local government and the schools accountable, the Act Relating to Compulsory Basic Education, 2018 has provisioned to ensure all children get admission at schools; no children will be expelled; all the people should be qualified up to basic level by 14th April 2028; provision of free textbook; free day meal; monthly scholarship to the students of prescribed groups; make arrangement of free health services in the schools, etc. The Act has provision of the liability of state to provide education with the role of federal and state level to provide every citizen with education up to the basic level.

Similarly, the Education Rules, 2002 has also some provisions to promote accountability. It has listed out the functions, duties and power of District Education Committee and head teachers. It has provisions to form the Curriculum Development Council and Council for Non-Formal Education including the functions, duties, and power.

Participation

Participation by both men and women and girls and boys is a key foundation of governance. For promoting participation, the Education Act, 1971 is good than the others although it is not enough. The act has provision on selecting the SMC members by the parents. Similarly, the chairperson of SMC is selected by the SMC members selected by the parents. The act has given the opportunity of participation to the teachers to select the teacher representative for the SMC. Additionally, the act has envisioned teacher's participation through the Federation of Teachers. The federation will be formed and activated for the well-being of community schoolteachers.

In this way, the Education Rules, 2002 has tried to promote child participation through the decision-making process in social audit committee. The Education Rules has provisioned a child's participation in the social audit committee. Similarly, there will be the participation of at least a female parent in the social audit committee.

Decentralization

The actual decentralization in education in Nepal was realized with the 7th Amendment of Education Act in 2001 and emergent of Education Regulations in 2002 (Awasthi & Pokhrel, 2010). Education Act has given authority to open and recommend the schools with adding the level as well. Similarly, the act has given authority to open the ECED centres to the local level.

Regarding the examination, the authority goes to schools to administer the exam except grade 8, 10, 11 and 12. The local level has the authority of taking examination of grade 8 and for grade 10, the state government is responsible to take the examination. Additionally, the act has provisioned the Village/Municipal Education Committee for local education planning and implementation. Local level can establish and run Community Learning Centres (CLC) for promoting illiteracy, skill development and life-long learning. The revolutionary work provisioned by the Education Act was the developing the mechanism to handle school management to either local level or the management committee (*Education Act, 1971; Education Rules, 2002*).

3. Discussion

Nepal is practicing federal government system from 2015 promulgating the Constitution of Nepal. Although the shift of responsibility of regulating school education system to the local level, the new government with newer responsibilities is likely to face challenges in getting immediate positive results because of the lack of federal education act (Chikanbanjar, 2019).

The Education Act and the Education Rules are not aligned with the provision of the constitutional rights, and the power of federal, state, and local. There are such provisions in the act and rules which are neither revised nor are in practice now. The District Education Office has been changed with the limited functions to Education Development Coordination Unit (EDCU); provision of District Education Committee is not in practice. Similarly, the Act still says about the Department of Education with the duties and functions where it is restructured changing the name to Center for Education and Human Resource Development (CEHRD) with additional roles. In this way, the Regional Education Directorate was already dissolved but the Education Act still has its provision in the act.

There is no alignment of Education Act, 1971 and the Education Rules, 2002. One of the examples is the level of schools. The SSRP recommended two levels i.e. basic and secondary level which is replicated in the Education Act from its 8th amendment, but the Education Rules mentions four level i.e. primary, lower secondary, secondary, and higher secondary. On the other hand, the local governments have developed, endorsed and being practice their own education act based on the power provided by the Local Government Act, 2018.

Due to the context above, there are confusions and challenges to the real implementers like teachers, SMC, schools and even the local governments. The schools are mostly in the dilemma for practicing either local or federal acts. By the results, there may be some malpractices. The federal government is well familiar with this, but the question can be raised on the accountability and responsibility to minimize these kinds of dilemmas endorsing the new federal act and regulation.

4. Conclusion

There are contradictions between the provisions of Local Government Operation Act, 2018 and the provisions of the Education Act and Rules. Due to this, there are severe problems in Nepal's education

system. To ensure qualitative education, teachers ought to be prepared, supervised, and monitored closely. On the other hand, it should also hold teachers accountable if students are not engaged in lessons or if they do not demonstrate grade-level achievements (Kunwar, 2018). But there is a problem to supervise, monitoring and proving coaching and mentoring support to the teachers due to the lack of the technical persons in the local level.

Although the Act Relating to Compulsory and Free Education, 2018 is as per the new constitution and respecting federal system, it is limited in access and free education only. On the other hand, the local governments have developed and endorsed their own education act and regulations based on the power provided by the Local Government Operation Act. Due to the lack of federal education act and regulations, the acts and regulations developed by the local governments are different from one to other. There may be high chances of inconsistency with the federal act that may be promulgated soon. Therefore, it will be better to promulgate the federal education act and regulations soon for the smooth functional of school education as per the federal government and the power provided by the constitution of Nepal.

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Note

Note 1. A type of teacher which is for the certain period only with full salary but no other facilities