



## Problems of right of children to free and compulsory education in India: A critical study

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### Abstract

Education develops human personality and the sense of its dignity. The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. "the ultimate aim of education in ancient India was not knowledge, as preparation for life in this world or life beyond, but for complete realization of the self, because education is not preparation for life but education is life in itself " RTE Act 2009 is very important for the promotion and protection of Right to education in India, because today education and Right to Education is the Need of the Hour.

**Keyword:** compulsory, education, problems, human, constitution, protection

### 1. Introduction

Education develops human personality and the sense of its dignity and strengths the respect for human rights and fundamental freedom, Education enables all persons to participate effectively in free society, promotes understanding, tolerance and friendship among all persons – therefore education is a tool to maintain peace, unity and integrity of the Nation <sup>[1]</sup>. Since Independence the concern for the development & improvement of education had been at the top of Indian's development agenda, Several Commissions were appointed by the Indian Government from time to time, to make policies and programmes required to increase the access and participation in education and to improve the quality education. In that RTE Act 2009 is very important for the promotion and protection of Right to education in India, because today education and Right to Education is the Need of the Hour.

### 2. Education Is A Human Right: International perspectives

The UNESCO definition of 1974 states: The word "education" implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities. At the beginning of the process of forming international law in this area terms such as "elementary", "primary", "fundamental" or "basic" were often used interchangeably. This has continued since 1948. The "World Declaration on Education for All", adopted at Jomtien in 1990, states: The main delivery system for basic education of children...is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied... important component of basic education <sup>[2]</sup>. While primary education is not synonymous with basic

education, there is a close connection between the two. As UNICEF has stated: Primary education is the most important component of basic education <sup>[3]</sup>. By virtue of article 13 (2) (d), individuals who have not received or completed the whole period of primary education have a right to fundamental education, or basic education as defined in the World Declaration on Education for All.

### 3. The 1960 UNESCO Convention against Discrimination in Education Defines Education

Article 1(2) as: "all types and levels of education, (including) access to education, the standard and quality of education, and the conditions under which it is given."

#### The 4 A's have been further elaborated as follows:

- a. **Availability:** Funded by governments, education is universal, free and compulsory. There should be proper infrastructure and facilities in place with adequate books and materials for students. Buildings should meet both safety and sanitation standards, such as having clean drinking water. Active recruitment, proper training and appropriate retention methods should ensure that enough qualified staff is available at each school.
- b. **Accessibility:** All children should have equal access to school services regardless of gender, race, religion, ethnicity or socio-economic status. Efforts should be made to ensure the inclusion of marginalized groups including children of refugees, the homeless or those with disabilities in short there should be universal access to education i.e. access to all. There should be no forms of segregation or denial of access to any students. This includes ensuring that proper laws are in place against any child labour or exploitation to prevent children from obtaining primary or secondary education. Schools must

be within a reasonable distance for children within the community, otherwise transportation should be provided to students, particularly those that might live in rural areas, to ensure ways to school are safe and convenient. Education should be affordable to all, with textbooks, supplies and uniforms provided to students at no additional costs.

- c. Acceptability:** The quality of education provided should be free of discrimination, relevant and culturally appropriate for all students. Students should not be expected to conform to any specific religious or ideological views. Methods of teaching should be objective and unbiased and material available should reflect a wide array of ideas and beliefs. Health and safety should be emphasized within schools including the elimination of any forms of corporal punishment. Professionalism of staff and teachers should be maintained.
- d. Adaptability:** Educational programs should be flexible and able to adjust according to societal changes and the needs of the community. Observance of religious or cultural holidays should be respected by schools in order to accommodate students.

#### 4. Right of children to free and compulsory education:

In 2001 – Constitution (93rd Amendment) Bill. The 83<sup>rd</sup> Bill was modified and reintroduced as Constitutional (93<sup>rd</sup> Amendment) Bill 2001 in the Parliament with the following provisions: After Article 21 of the Constitution, the following article shall be inserted namely:

“21 (A)- *The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may by law determine.*”

For Article 45 of the Constitution the following shall be substituted, namely:

“45. *The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.*”

In Article 51-A of the Constitution, after clause (j) the following clause shall be added, namely “(k) *who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of 6 and 14 years.*”

Bill was passed unanimously in Lok Sabha November 27, 2001 and in Rajya Sabha on May 14, 2002. 2001 – Sarva Shiksha Abhiyan – A Unique Programme for Universalisation of School Education. All children in school by 2003. All children complete five years of primary schooling by 2007. And in 2009- Right of children to free and compulsory education Act 2009 passed.

#### 5. Right to Education: National Perspectives

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, 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. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

#### Right to education: Judicial Perspectives

The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in *Mohini Jain vs. State of Karnataka* [4]. In this case the Supreme Court through a division bench comprising of justices Kuldip Singh and R.M Sahai, deciding on the constitutionality of the practice of charging capitation fee held that:

‘The right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’

This rationality of this judgment was further examined by a five judge bench in *J.P. Unnikrishnan vs. State of Andhra Pradesh* [5] where the enforceability and the extent of the right to education was clarified in the following words:

“The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.”

The same has also been reiterated by the Hon’ble Supreme Court in *Bandhua Mukti Morcha, etc. vs. Union of India* [6]. “In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi, right to education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan v. State of Andhra Pradesh*, a constitution Bench had held education up to the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.”

The role of Universal Elementary Education (UEE) [7] for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since the inception of our Republic. With the formulation of NPE, India initiated a wide range of programmes for achieving the goal of UEE through several schematic and programme interventions.

The Sarva Shiksha Abhiyan (SSA) is being implemented as India's main programme for universalizing elementary education. Its overall goals include universal access and retention, bridging of gender and social category gaps in education and enhancement of learning levels of children. SSA provides for a variety of interventions, including inter alia, opening and construction of new schools, additional teachers, regular teacher in-service training, and academic resource support to ensure free textbooks, uniforms and free support for improving learning outcomes.

The Right to Free & Compulsory Education Act 2009 provides a justiciable legal framework that entitles all children between the ages of 6-14 years free and compulsory admission, attendance and completion of elementary education. It provides for children's right to an education of equitable quality, based on principles of equity and non-discrimination. Most importantly, it provides for children's right to an education that is free from fear, stress and anxiety<sup>[8]</sup>.

### Sarva Shiksha Abhiyan

SSA has been operational since 2000-2001 to provide for a variety of interventions for universal access and retention, bridging of gender and social category gaps in elementary education and improving the quality of learning. SSA interventions include inter alia, opening of new schools and alternate schooling facilities, construction of schools and additional classrooms, toilets and drinking water, provisioning for teachers, regular teacher in service training and academic resource support, free textbooks & uniforms and support for improving learning achievement levels / outcome. With the passage of the RTE Act, changes have been incorporated into the SSA approach, strategies and norms. The changes encompass the vision and approach to elementary education, guided by the following principles:

1. Holistic view of education, as interpreted in the National Curriculum Framework 2005, with implications for a systemic revamp of the entire content and process of education with significant implications for curriculum, teacher education, educational planning and management.
2. Equity, to mean not only equal opportunity, but also creation of conditions in which the disadvantaged sections of the society – children of SC, ST, Muslim minority, landless agricultural workers and children with special needs, etc. – can avail of the opportunity.
3. Access, not to be confined to ensuring that a school becomes accessible to all children within specified distance but implies an understanding of the educational needs and predicament of the traditionally excluded categories – the SC, ST and others sections of the most disadvantaged groups, the Muslim minority, girls in general, and children with special needs.
4. Gender concern, implying not only an effort to enable girls to keep pace with boys but to view education in the perspective spelt out in the National Policy on Education 1986 /92; i.e. a decisive intervention to bring about a basic change in the status of women.
5. Centrality of teacher, to motivate them to innovate and create a culture in the classroom, and beyond the classroom, that might produce an inclusive environment for children, especially for girls from oppressed and marginalised backgrounds.
6. Moral compulsion is imposed through the RTE Act on parents, teachers, educational administrators and other stakeholders, rather than shifting emphasis on punitive processes.
7. Convergent and integrated system of educational management is pre-requisite for implementation of the RTE law. All states must move in that direction as speedily as feasible.

### The RTE Act provides for the

1. Right of children to free and compulsory education till

completion of elementary education in a neighbourhood school.

2. It clarifies that '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.
3. It makes provisions for a non-admitted child to be admitted to an age appropriate class.
4. It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
5. It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
6. It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
7. It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
8. It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,
9. It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning<sup>[9]</sup>.

But there are so many problems in implementation of Right to education ACT 2009 in India which need to be studied properly for the benefit of child.

### 6. Problems of school education in India:

The major issues that come across the students day after day are<sup>[10]</sup>:

1. Inadequately maintained buildings,
2. Dilapidated classrooms,
3. Lack of sanitation facilities,
4. Non-availability of drinking water,
5. Libraries and laboratories with no proper maintenance or equipment,
6. Non Availability of qualified teachers
7. High student-teacher ratio
8. Outdated curriculum and teaching methodologies involving only memorizing of the subject without any understanding of the subject.
9. Lack of vocational training and non-availability of such

courses that help the students to get employed on completion of their schooling.

10. Long distances to schools

11. Low enrolment of girls

Abovementioned problems should be solved by providing proper funds and proper plans and Actions for protection and promotion of basic fundamental human Right, Right to education in India.

### **The Right to Education (RTE) Act is still a mirage in a number of cities and towns.**

Though enrollment rates have improved, learning outcomes have not shown much progress. The learning outcomes as per the Annual Status of Education Report (ASER) of 2014 are illustrated below.

#### **7. Learning Outcomes**

1. Close to 74% students in class 5 were not able to do division
2. 75% of all children in Class 3 were not able to read a Class 2 textbook fluently
3. 60% of all children in Class 3 were not able read a Class 1 level textbook
4. 50% of all children in Class 5 were not able to read a Class 2 textbook fluently
5. 25% of Class 8 students are not able to read a Class 2 level textbook
6. Close to 74% of Class 3 children could not do two digit subtractions
7. Students are weak in Mathematics
8. About 19.5% of all children in Class 2 were not able to recognise numbers up to nine

In terms of social infrastructure, there have been significant improvements in the schools, when we compare the social infrastructure indicators in FY2013-14 to FY2009-10. For instance, the percentage of schools equipped with toilet facilities for girls increased from 59 per cent in FY2009-10 to 85 per cent in FY2013-14 <sup>[11]</sup>. However, there is still a long way to go to achieve full compliance. The percentage of primary schools that do not meet the pupil-teacher ratio criteria has also dropped from 46 per cent in FY2009-10 to 33 per cent in FY2013-14 and for upper primary schools, the percentage has dropped from 36 per cent in FY2009-10 to 31 per cent in FY2013-14. Yet, these numbers are still significantly high <sup>[12]</sup>. For children in the age group of six to 13 years, the number of children not enrolled in a school in 2009 was 8 million, a figure that has declined to 6.04 million in 2014. Despite this India has a long way to go to impart quality education to its citizens <sup>[13]</sup>.

**8. The impact of the RTE Act can be understood from the fact** that India was reported to have the largest number of illiterate adults in the world at 37 per cent of the global total in the year 2014. This shows the disparity that still exists with regards to the access to education in the nation, pointing to the fact that the provisions of the Education Act have failed to target those in the society who need it the most. According to UNESCO's 11th Education for All (EFA) Global Monitoring Report 2013-14, the poorest young women in India are projected to achieve universal literacy only by 2080, whereas the richest young women in the nation have already achieved it <sup>[14]</sup>.

Though there has been an increase in the enrollment rates in schools, quality of learning has been diminishing. Various reports and studies reveal that there has been a decline in learning outcomes since the enactment of RTE Act <sup>[15]</sup>. This has also been proved by The Annual Status of Education Report (ASER) 2014 by education non-profit Pratham, which clearly spells out that learning outcomes in reading, writing and arithmetic in state-run schools is poor. At this point, we need to divert our attention from enrollment rates, infrastructure etc. to learning outcomes to ensure the young generation get access to quality education.

"It is clear that children have not benefited equitably from the economic growth and development in India. The lives of underprivileged children in contemporary India are struggles for survival revolving around hunger, ill health, lack of education, protection, shelter, and so on. Children continue to be malnourished; exploited while at work (instead of being in school); trafficked far away from their home, kith, and kin to unknown lands; and subject to abuse, violence, and discrimination concerning gender, caste, community, and class. This is true in spite of schemes and programs designed for their benefit; laws, policies, and charters formulated to provide them access to food, education, and many other entitlements; and their rights being guaranteed by law" <sup>[16]</sup>. So that redefining the scope of RTE Act 2009 is need today, because it is the welfare legislation for the upliftment of children in India and for full development of human personality.

#### **9. Important guidelines for effective implementation of Right to education in India.**

1. Provide 100% funds by the central and state government for education to children and utilize funds for development of children in India.
2. Understand that strengthening children mentally, physically, spiritually, socially and educationally is nothing but the real empowerment of children under the RTE Act 2009.
3. There is no right to education without the proper duty of the government and other stakeholders, So Respect the life and right of children's in India by every means to achieve the goals under the Indian constitution Article 21(A) and RTE Act 2009.
4. There is Corruption and politics in providing and protecting right to education in India and these are the main cause and problems in implementation of RTE Act 2009 in India.
5. Basic value and importance of education should be known to each and every person in society by creating awareness.
6. There is urgent need to redefine policy and plan of action regarding right to education in India for quality and excellence in future generation of India.

#### **10. Conclusion**

According to Dr. B.R. Ambedkar: *"It is the education which is the right weapon to cut the social slavery and it is the education which will enlighten the downtrodden masses to come up and gain social status, economic betterment and political freedom"* India is a country where education is the primary need and want of people, children in India are vulnerable, if they don't get quality education we need to provide with due care, Ministry of Human Resource Development, Govt. of India, drafted & collected Inputs for

national Education policy 2016. It states that "the ultimate aim of education in ancient India was not knowledge, as preparation for life in this world or life beyond, but for complete realization of the self, because education is not preparation for life but education is life in itself " This has to be taken in to consideration while implementation of RTE Act 2009 in India.

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