



Right of children to free and compulsory education – An analysis

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Abstract

Education develops human personality and the sense of its dignity. The Constitution 86th 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.

Keywords: Compulsory, education, problems, human, constitution, protection

Introduction

Education develops human personality and the sense of its dignity. It strengthens 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. Since Independence the concern for the development & improvement of education had been at the top of India'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.

Education as 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 and an important component of basic education.

Constitutional perspectives on right to education

The 83rd Constitutional Amendment Bill was modified and reintroduced as Constitutional 93rd Amendment Bill, 2001 in

the Parliament with the following provisions: After Article 21 of the Constitution, the following Article 21A was inserted, 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 was substituted, "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 was 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 to 14 years." Sarva Shiksha Abhiyan – A Unique Programme for Universalisation of School Education was launched. Right of children to free and compulsory education Act, 2009 was framed in view of Article 21A of the Constitution.

National perspectives on right to education

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 1st 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 v. State of Karnataka*. In this case the Supreme Court through a division bench comprising of Justice Kuldip Singh and Justice 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 v. State of Andhra Pradesh* 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 v. Union of India*.

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 39(f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary." The role of Universal Elementary Education (UEE) 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.

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.
10. 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.

Impact of the RTE Act

It 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 2019. 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, 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.

Though there has been an increase in the enrolment 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. 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 enrolment 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". 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.

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 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.

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.

Suggestions

To enhance the effectiveness of RTE, the education system in India is not able to meet the objectives. Various researches have shown that the learning levels of school students are on a decline. The issues of teachers' absenteeism and teachers' vacancies continue to haunt the government schools. Dropout rates are increasing year by year. Approximately 65% of the population of India is less than 35 years of age. This population can be resource of revamp the education sector of our country. Education acts as a great leveller, is the only route sustainable enough to tackle the disparities.

Following suggestions can be made to enhance the effectiveness of RTE

1. Public Private Partnership shall be a successful model on Build-Operate Transfer basis.
2. The provision "no child shall be held back, expelled or required to pass a board examination until completion of elementary education" should be amended in the Right of Children to Free and Compulsory Education Act, 2009 as it will defeat the whole concept of learning.
3. All the stakeholders should play an active role because education of a child is a two- way process and cannot yield desired results if initiatives are one way.
4. The government should allocate increased budget for education.
5. Parent- Teacher interactions should be frequently promoted.
6. The quality of mid-day meal should be constantly scrutinized.
7. Infrastructure like classroom, furniture, toilets and clean drinking water should be tackled on utmost priority basis.
8. Though it is the primary duty of the state to provide education for children but other non-state actors, civil society organizations should extend their support.
9. Class rooms are identified as a learning centres, where the child gains confidence in facing problematic situations, undertaking tasks without any hesitation, interacts freely, meaningfully and joyfully with their classmates, teachers, teaching learning materials and other resources for expanding their knowledge so that essential infrastructure should be provided by the government.

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