

RTE IN INDIA: PROBLEMS AND SUGGESTIONS IN REFERENCE TO FREE AND COMPULSORY EDUCATION ACT 2009

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“The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”

Justice P.N. Bhagwati¹

Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. The education which empowers the future generation should always be the main concern for any nation. Education is the most important thing in man life, it makes sense, it effect on mind, it change the character. Right to education is an inherent right, which deals with the right to know and right to change their life and life style.

Emile Durkheim defined education as, the action exercised by the older generations upon those who are not ready for the social life. Its object is to awaken and develop in the child those physical, intellectual and moral states which are required of him / her both by his society as a whole and by the milieu for which he is specially destined.² The right to education has been universally recognized since the Universal Declaration of Human Rights, 1948 and has since been enshrined in various international conventions, national constitutions and development plans.

Article 26 of the Universal Declaration of Human Rights lays down that:

*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.*³

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¹ Laxmikant Pandey v. Union of India AIR1984 SC 469

² Emile Durkheim, Education et. Sociologie (1992) T.B. Bottomore, Society (1986) p. 262

³ UDHR was adopted and proclaimed by General Assembly Resolution 217 (III) of 10 December 1948

Apart from UDHR, right to education is affirmed, protected and promoted in numerous international human rights treaties, such as the following:

- Convention against Discrimination in Education (1960)⁴
- International Covenant on Economic, Social and Cultural Rights (1966) - Article 13⁵
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981) –Article 10⁶
- The United Nations Convention on the Rights of the Child (1989) – Article 28⁷ & 29⁸.

The right to education has therefore long been recognized by these international treaties as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. With respect to applicability of these treaties in India, it is worthwhile to mention that India is a State party to the ICESCR, the CERD Convention, the CEDAW Convention and the Convention on the Rights of the Child.

RIGHT TO EDUCATION IN INDIA: A HISTORY

The Right to Education legislation has a long and chequered history, having been subjected to numerous rounds of heated debate and philosophical and semantic alterations. The right to

⁴ Convention against Discrimination in Education is a multilateral treaty adopted by UNESCO on 14 December 1960 in Paris and came into effect on 22 May 1962, which aims to combat discrimination and racial segregation in the field of education.

⁵ Article 13: *“the states parties to the present covenant recognize the right of everyone to education. The states parties to the covenant recognize that primary education shall be compulsory and available free to all. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.”*

⁶ Article 10: *“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women.”*

⁷ Article 28: States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all;

⁸ Article 29 (1): States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

education was initially not included as a fundamental right in the constitution and was included as directive principles⁹ under article 45, which required the state to endeavour to provide, within a period of 10 years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of 14 years.

The Supreme Court has implied the 'right to education' as a fundamental right from Article 21. The word 'life' has been held to include 'education' because education promotes good and dignified life. In the case of *Mohini Jain v. State of Karnataka*¹⁰, Supreme Court accepted that the constitution does not expressly guarantee the right to education, as such, as a fundamental right. But reading it with Article 21 along with the directive principles contained in Article 38, 39(a), 41 and 45, the court opined that "*it becomes clear that the framers of the constitution made it obligatory for the state to provide education for its citizens.*" The court argued that, 'life' in article 21 means right to live with human dignity. 'Right to life' is the compendious expression for all those rights which are basic to dignified enjoyment of life. Thus, ruled the court, "the right to education flows directly from the right to life," and that the 'right to education' being concomitant to the fundamental rights, "the state is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens."

Subsequently, in *Unni Krishna v. State of Andhra Pradesh*¹¹, the Apex court was asked to examine the correctness of the decision given by the court in Mohini Jain case. The five judge bench by 3-2 majority partly agreed with the Mohini Jain Decision and held that right to education is a fundamental right under Article 21 of the constitution as 'it directly flows' from right to life. But as regards its content the court partly overruled the Mohini Jain's case, and held that the right to free education is available only to children until they complete the age of 14 years, but after the obligation of the state to provide education is subject to the limits of its economic capacity and development. The obligation created by Article 41, 45 and 46 can be discharged by State either establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. Thus, the Supreme Court by rightly and harmoniously construing the provision of Part III (fundamental rights) and Part IV

⁹ Articles 36 to 51 contain the Directive Principles of State Policy; these principles obligate the state to take positive action in certain directions in order to promote welfare of the people

¹⁰ AIR 1992 SC1858

¹¹ AIR 1993 SC 2178, 2231

(directive principles of state policy) of the Constitution have made right to education a basic fundamental right.

The Government of India by Constitutional (86th Amendment) Act, 2002 had added a new Article 21-A which provides that, “the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine.”¹². It also amended Article 45 which provides that The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years¹³ ; and also introduced a fundamental duty in Article 51-A for parent or guardian to provide opportunities for education to his child between the age of 6-14 years¹⁴.

Seven years after an amendment was made in the constitution, the dream of Free and Compulsory education for all children became a reality in August 2009, when the Parliament passed the Act. The Right of Children to free and Compulsory Education passed by the Indian Parliament on 4th August 2009. This Act is a milestone which provides for institutional instructions so that education as a fundamental right spreads to all children between the age group of 6-14 years. The Act intends to provide full time elementary education to every child in a formal school, which satisfies certain essential norms and standards. Private education institutions have to reserve 25% of their seats starting from Class I. Strict criteria for the qualification of teachers is also one of the important provisions. There is a requirement of a teacher student ratio of 1:30 at each of these schools that ought to be met within a given time frame. The school needs to have certain minimum facilities like adequate teachers, playground and infrastructure etc. The Government will evolve some mechanism to help marginalized schools comply with the provisions of the Act. Moreover, the concept of neighbourhood schools that has been devised. This would imply that the state government and local authorities will establish primary schools within walking distance of one kilometer of the neighbourhood. In case of children for class VI to VIII, the school should be within a walking distance of three kilometers of the neighbourhood. Moreover, unaided and private schools shall ensure that children from weaker sections and disadvantaged groups shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different.

¹² Ins by the Constitution (Eighty-sixth Amendment) Act, 2002, s.9 (w.e.f. 01.04.2010)

¹³ Id.

¹⁴ Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 4 (w.e.f. 01.04.2010)

PROBLEMS ASSOCIATED WITH THE IMPLEMENTATION OF RTE ACT

Under the section 12(1)(c) of right of children to free and compulsory education Act, there is a legal obligation on all private unaided schools to reserve 25% of their seats for children from economic weaker section{EWS} and disadvantaged groups{DG}. True intention of this provision, is to ensure that state as well as other component of the society would share joint liability to ensure the realization of free and compulsory education till elementary level. Supreme Court of India also held in *Society for Unaided Private Schools V Union of India* that the authority of the state to fulfil its obligations under the right to education can be extended to private, non-state actors.

To meet this requirement of reservation, some private schools apparently take in children from disadvantaged sections until class VIII but remove them from the rolls at a later stage. An educationist explained what happens after they are removed from elite schools: “such children come from weaker background and their parents are unable to send them to good schools. The children are unable to adjust themselves in badly run government schools. So, such children end up in cheaper private or unregistered schools.” Only 18 per cent of the schools in Delhi have reported admitting 25 per cent children from disadvantaged backgrounds in their institutions.¹⁵

The teachers are the kingpin of entire education system and it is this factor on which lies the onerous responsibility of ensuring the effective implementation of RTE Act and given today's complex environment, the diversity and complexity of backgrounds from which students enter in the schools today, this responsibility increases in magnitude¹⁶. Teachers are now a days are overburdened with non-teaching activities like making of Aadhar cards and voter IDs, mid-day meal schemes, block level duties etc. this must be avoided as it hampers the education in single teacher schools where only one teacher is there for one subject.

On august 20, 2008, the Delhi High Court ordered that teachers should not be deployed for election duty on teaching days and during teaching hours. It also said that disabled and female teachers should have the option of declining such duties. But according to Dabas, the order is violated routinely¹⁷.

¹⁵ Divya Trivedi, *Capital Concerns*, The Frontline (2016)

¹⁶ Padma Sarangapani, *Teachers First*, The Frontline (2011)

¹⁷ *Supra* note 15

According to academicians, while educational institutions have mushroomed across the country, not enough quality education is being imparted. Besides, they said, those who excel in academics are mostly not taking an interest in teaching as a profession and that's needs to change¹⁸. The International Centre for Peace and Development in its report stated that early childhood education in India was subject to two stream, but contrary deficiencies. "On the one hand, millions of young children in lower income groups, especially rural and girl children, comprising nearly 40% of first grade entrant's never complete primary school. Even among those who do, poorly qualified teachers, very high student-teacher ratios, inadequate teaching materials and outmoded teaching methods result in a low quality of education that often imparts little or no real learning. It is not uncommon for students completing six years of primary schooling in village public schools to lack even rudimentary reading and writing skills."¹⁹

It's not only classrooms and teachers our government schools in the country lack, they lack basic infrastructure too. The DISE report finds that 30% to 40% of even the available classrooms is in need of serious repair work. Computers donated to government schools by IT companies as part of their CSR programme, often sit unused in the principal's room, because there are no teachers to teach the students how to use them²⁰. Facilities are inadequate in primary schools in many ways, including high teacher-pupil ratio resulting in crowded classrooms, lacking in adequate sanitary facilities for boys and girls and lacking of pure drinking water for hygiene. Separate sanitation facility for girls is the one of the main problems because of which girl students are not carrying education and results in drop outs.

Precipitous fall in the ratio of drop outs after the elementary level and result of that an increasing gap from elementary to secondary is matter of great concern. Those who are coming under the DG's are affected very badly, ratio of their drop out are even worse. Primary factors which are very much responsible for the failure to achieve a universalize education system are caste, class, gender etc. Poor and the disadvantaged sections of society are denied from their fundamental right to education.

¹⁸ Mihika Basu, *Even teachers in school aren't educated enough*, Bangalore Mirror (2016).

¹⁹ ICPD national education programme for India

²⁰ Janaki Murali, *Govt. Schools struggle with poor facilities, unskilled teachers and high dropout rates*, Firstpost, (2016)

SUGGESTIONS AND CONCLUSION

Thus, keeping in mind the end goal of RTE, the accompanying strides are out rightly needed:

1. The Right to Education act should not be limited to the age of 14 years it should be up to the secondary level. The government should make some changes like introducing diplomas/degrees with specialization in IT, mobile communication, media, entertainment, telecommunication, automobile, construction.

2. There is a need of integrated system of educational management for the proper implementation of right to education. All stakeholders are needed to move in that direction.

3. Proper measures needed to be taken by states to prohibit and eradicate discrimination, harassment, and victimization of children from marginalised group. Eliminate discrimination in relation to the admission process including denying or limiting the access of disadvantaged group to the benefit of enrolment or other facilities provided by school. Proper protection is providing against the financial extortion or forced expenditure.

4. Parents need to play a significant role to make RTE a main success in India. It can be done only by motivating them through counselling and they must be made aware about the RTE Act through media, pamphlets campaigns, hoardings, rallies etc. only then we can expect that our future generation will be well educated.

5. In the poor families, kids are viewed as assistance, the more the better. They help in family tasks and in the farm, other than acquiring cash from labour occupations. Their commitment is notable for the survival of the family in general. Sending them to schools removes this support from the family. Money related support to guardians for sending children to schools must be provided.

6. Special drive for roadside, domestic children, children in hazardous occupation and those utilized in household and also perilous occupation to schools.

7. Motivate teachers to innovate and create such a culture in the classroom that produce such an environment for children, especially for girls and children from oppressed and disadvantaged society.

8. Schemes like mid-day meal, SSA, RMSA along with world organization UNICEF are playing an important role in increasing the enrolment ratio. By providing initial and basic education to Indian children. However these national and international agencies should aim weaker sections of the society, economically backward, females and highly

populated states of India, these states and these societies should be the top priority to improve efficacy of this act.

9. Utilize PC and satellite innovation to create awareness and intrigue. Make versatile units that make visits to various tutoring centres, especially in remote territories and show important films to both the instructors and the students. This will help support curiosity and excite interest.

10. Provision for severe punishment regarding the abuse of this Act should be made and the responsibilities of state government, central government, parents, teachers, and administrators, Owners of the school, should be fixed.

11. Most importantly local governing bodies should get involved so as to enrol the new born babies and their record should be sent to nearby school. After that school authorities should follow up the child and sent the info for registration and admission to his/her parents without any biasness.

The success of RTE is largely depending on consistent political care. Financial allocation of funds should be adequate in this respect. The youth in India should come forward and spread the utility of education to illiterate parents who are unable to appreciate the significance of education in limiting the social evils. Social differences and monopolization by any group should not be accepted at any cost. Education which is free of cost up to a certain age must be accessible to each and every one. Right to education for all and free education for certain age group of people is a brilliant policy by the government and we appreciate that, as key to a developed nation is that its citizens are literate enough to earn their bread and to contribute in the economy. As a nation, we are still exceptionally a long way from such an objective. The viability and proficiency of our increased expenditure should be genuinely explored. Unless there is a shift in focus and take decision, we will lose a colossal chance to enhance the life odds of an era of kids and youth seriously.