

TOWARDS AN ENLIGHTENED INDIA: RIGHT TO EDUCATION

- Juhi Singh*

*If we continue to leave vast sections of the people of the world outside the orbit of education, we make the world not only less just, but also less secure.*¹

INTRODUCTION

Education is essential for the proper development of an individual. Education alone is the beacon of hope for an emancipated world where people can hold their head high and live with dignity. Education includes both formal and informal modes of teaching. Informal education begins at home and is the first stepping stone of a child to face the world whereas formal education of a child more or less is the responsibility of the State. The early years of schooling from pre-primary right up to the end of the primary cycle are the most important phase of a child's development, where the foundations for life-long learning are built. It is at this stage that we need highly competent and sensitive teachers, who can stimulate creativity and nurture and build innate intellectual abilities. Various international documents focus on the need for primary education.

The United Nations in its Universal Declaration of Human Rights 1948 recognized right to education as a basic human right. Article 26 of this declaration states:

- i. Everyone has the right to education. Education shall be made generally available and higher education shall be equally accessible to all on the basis of merits,
- ii. Education shall be directed to the full development of the human personality.²

Declaration of Rights of child, adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959 declares "*The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will*

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¹ Amartya Sen, Speech in the Commonwealth Education Conference, Edinburgh as published in the Guardian, October 28, 2003

² Universal Declaration of Human Rights, Available at <http://www.jus.uio.no/lm/un.universal.declaration.of.human.rights.1948/26.html> [Retrieved at 23:03, Nov. 18, 2014]

promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.”³ According to UNESCO comment on universal education in all its forms and at all levels shall exhibit the following interrelated and essential features:

1. Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party.
2. Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party.

Accessibility has three overlapping dimensions:

- a) Non-discrimination a) Physical Accessibility iii) Economic Accessibility
3. Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.
4. Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.⁴

Another convention which espoused right to education of a child was Convention on Rights of the Child (20 November 1989). Article 28(1) states that “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 make primary education compulsory and available free to all.” And Article 28(3) states that “States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and

³ Available at <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp> [Retrieved 18th November 2014]

⁴ Right to Education Scope and implementation (General comment on Article 13 of International Covenant on Economic, Social and Cultural Rights) <http://www.unesdoc.unesco.org/images/0013/001331/133113e.pdf> [Retrieved on 1st October 2014]

facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”⁵

The parents who do not care for the education of their children are their worst enemies. On growing up such children feel isolated from the society, just like a crane in a flock of swans

- Chanakya

HISTORY OF EDUCATION IN MODERN INDIA

At the beginning of nineteenth century the British administration first began to organize a modern system of education for India and this modern education system started with the Charter Act of 1813 under which parliament directed East India Company to accept the responsibility for the education of Indian people. But nothing was decided and in 1835 Lord Macaulay presented a lengthy minute to the Governor General which shaped the Indian Education System on British lines. In 1854 Wood's Despatch which was given by Charles Wood who realized the need of educating the masses. The Despatch admitted that the education of the masses had been totally neglected. Wood's Despatch on Education recognized the responsibility of government for elementary education in the native tongue. In 1882 Hunter Commission was appointed. The Commission examined the condition of education in each province and promoted the role of government responsibility for education. It also suggested that each state should be left free to adopt any system which was suitable according to their local conditions. The commission supported the indigenous system of education followed by the Despatch's (1854) principles. Several schools were opened in the villages and local government took the responsibility of primary education. Afterward in 1944, Central Advisory Board of Education submitted a comprehensive Report on Post-War Education Development known as the Sargent report. The Sargent report was the first Commission that made some attempt to solve the educational problems of the country in relation to its needs. It emphasized to introduce compulsory and free education for boys and girls within the age of 6 and 11 years.

Educational planning by Indians was different from British's policies and planning both in ways and means.⁶ This means that education offered to Indians by the British was primarily to create a

⁵ Convention on Rights of Child, Available on: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [Retrieved on 7th October 2014]

class of babus in India which would provide for a more efficient functioning of the Crown. For Indian educationists the goal was to enlighten the minds of the subjugated class to rise up to the challenge of colonial power. In this direction Gopal Krishan Gokhale took first step in 1910 by moving a resolution in the Imperial Legislative council on 19 March 1910. It stated, "That this Council recommends that a beginning should be made in the direction of making elementary education free and compulsory throughout the country, and that a mixed commission of officials and non-officials be appointed at an early date to frame definite proposals." The Elementary Education Bill also known as Gokhale's Bill suggested that free and compulsory education for children between the ages of 6 and 10. Gokhale believed that an illiterate and ignorant nation can never make any solid progress and must fall back in the race of life. The Bill therefore suggested free and compulsory education; the expenditure was to be shared between the local bodies and the Government. Gokhale's Bill also established compulsory elementary education as a state responsibility. The Bill included provision for banning the child labour of boys. The Bill was rejected but these efforts led the British government to review the whole field of education and government increased the amount to be spent on elementary education.

Mahatma Gandhi was also against the system of education propagated by the British and he wrote a series of articles in the *Harijan* about his idea on educational reconstruction in India, suggesting a scheme of universal compulsory education for all children in the age group of 6-13 through the medium of mother tongue which would be self-supporting, leading to all-round development of the pupils. Afterwards in October 1937, an all India National Educational Conference was summoned at Wardha presided by Mahatma Gandhi and adopted the following four resolutions:

- That in the opinion of this conference free and compulsory education is provided for seven years on the nationwide scale,
- That the medium of instruction be the mother tongue,
- That the process of education throughout this period should centre round some form of manual productive work, and that all other abilities to be developed or training to be given should, as far as possible, be integrally related to the central handicraft chosen with due regard to the environment of the child,
- That the conference expects that this system of education will gradually be able to cover the remuneration of teachers.

⁶ Ghosh S. C., History of Education in Modern India 1757 to 1998. Published by Sangam Books Ltd; 2nd edition (December 9, 2002)

The conference then appointed a committee with Dr. Zakir Hussain as its chairman. The committee submitted its report on December 2, 1937 and the scheme of education suggested by it is popularly known as the “Wardha Scheme”. The Indian National Congress which met at Haripura in February 1938 under the president ship of Subhash Chandra Bose accepted Gandhi’s scheme and it was immediately implemented in the seven provinces with congress ministries. Keeping in view the importance of education for the tasks of national reconstruction and strengthening of democracy some educational provisions were made in the Indian Constitution and also various commissions and committees were appointed from time to time for the universalisation of elementary education.

NATIONAL POLICIES ON EDUCATION

The first National Policy on Education came out in 1968 which envisioned “*a radical reconstruction of education on the broad lines recommended by the education commission which is essential for economic and cultural development of the country.*”⁷ The focus among the principles formulated in the policy was on; Free and Compulsory Education for all children up to the age of 14 years. The National Policy on Higher Education (1986)⁸ translated the vision of Radhakrishnan Commission and Kothari Commission for higher education, which includes Greater Access, Equal Access or Equity, Quality and Excellence, Relevance and Value Based Education. The goals were greater Access requires an enhancement in the education institutional capacity to provide opportunities to all who deserve and desire higher education. Equity involves fair access to the poor and the socially disadvantaged groups. Quality and Excellence involve provision of education by accepted standard so that students receive available knowledge of the highest standard and help them to enhance their human resource capabilities. Relevance involves promotion of education so as to develop human resources keeping pace with the changing economic, social and cultural development of the country.

⁷ National Policy on Education, 1968; Available at http://mhrd.gov.in/sites/upload_files/mhrd/files/NPE-1968.pdf [Retrieved on 18th November 2014]

⁸ National Policy on Education, 1986(modified in 1992). Available at http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/NPE86-mod92.pdf [Retrieved on 18th November 2014]

Again the 165th Report of Law Commission, 1998 called for legislation of a central Act for providing free and compulsory education without waiting for any amendment in the Constitution of India.

CONSTITUTIONAL PROVISIONS

Article 45 states that, *“The state shall endeavour to provide for free and compulsory education for all children until they complete the age of 14 years.”* The Article 45 has been interpreted to include:

- Early childhood care, balanced nutrition, health support and pre-primary education for children below six years of age.
- Elementary education of 8 years (class 1-8) for 6-14 age group children.

Article 45 of the Constitution at the beginning i.e. in the year 1949 revealed that the provision of universalisation of primary education in India was to be fulfilled by 1960. Even in the year 2014 it remains to be achieved.

Apart from Article 45 of our constitution other provisions related to education are:

Article 39(f): That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 gives out Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Although the above Directive Principles cannot be strictly enforced as in the case of fundamental rights, nevertheless these directive principles obligated the States to enact law to achieve the above directives.

The Constitution in Article 51A (k) casts a duty on every parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

A landmark development in the matter of right to primary and secondary education is the passing and incorporation of the Constitution (Eighty-sixth Amendment) Act 2002⁹. It inserted Article 21A that states, “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by the law, determine.” Further it substituted Article 45: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”. A new fundamental duties was added in Art.51-A, so that it shall be the duty of every citizen of India “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 six and fourteen years”. The interactions of provisions in Arts.19(1)(g), 26(1), 29(1) and 30(1) vis-a-vis Art.21A would mean that State has power and duty to ensure right to education under Art.21A by imposing reasonable obligation upon private educational institutions to realize the objective of compulsory education for all.

IMPETUS IMPARTED BY THE JUDICIARY

Indian judiciary has played a proactive role in bringing about a real and effective implementation of the promise of our Constitution makers.

In *Mohini Jain v. State of Karnataka and ors*¹⁰, a bench comprising Justice Kuldeep Singh held, “It is primarily the education which brings-forth the dignity of a man.... An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him... The ‘right to education’, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens.... Every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.... ‘Right to life’ is the compendious expression for all those rights which the Court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly

⁹ The Constitution (Eighty-Sixth Amendment) Act, 2002, Available at <http://indiacode.nic.in/coiweb/amend/amend86.htm> [Retrieved on 18th November 2014]

¹⁰ 1992 AIR SC 1858

from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.”

*Unni Krishnan, J.P. and Ors. v. State Of Andhra Pradesh And Ors*¹¹, the Supreme reiterated the Mohini Jain judgment, “We hold that every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right....The right to education has been treated as one of transcendental importance in the life of an individual has recognised not only in this country since thousands of years, but all over the world.”

In the case of *M.C. Mehta v. State of Tamil Nadu & Ors*¹², the Supreme Court stated that Article 45 had acquired the status of a fundamental right following the Constitutional Bench's decision in *Unni Krishnan*. In addition, the Court said that, in order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution: “the provisions of Part III and Part IV are supplementary and complementary to each other”. The Court rejected that the rights reflected in the provisions of Part III are superior to the moral claims and aspirations reflected in the provisions of Part IV. It was observed by the Court that the problem would be taken care of to some extent by insisting on compulsory education. If there is at all a blueprint for tackling the problem of child labour, it is education. Further the Supreme Court in this case observed that, to develop the full potential of the children they should be prohibited to do hazardous work and education should be made available to them. In this regard the Court held that, the government should formulate programme offering job oriented education so that they may get education and the timings be so adjusted so that their employment is should not be affected.

Justice Bhandari in *Ashoka Kumar Thakur v. Union of India*¹³ said “It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are

¹¹ 1993 AIR SC 2178

¹² (1996) 6 SCC 756

¹³ (2008) 6 SCC 1

effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education." It was further held, "It has also been highlighted that the shift of emphasis from primary and basic education to higher education is against the constitutional mandate making education compulsory in terms of Article 21-A of the Constitution."¹⁴

Due to the thrust given by the NPE 1986/92 to the of Universal Elementary Education and the 86th amendment to the Constitution Sarva Shiksha Abhiyaan was implemented as a Centrally Sponsored Scheme in partnership with State Governments for universalising elementary education across the country in the year 2000. 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 opening of new schools and alternate schooling facilities, construction of schools and additional classrooms, toilets and drinking water, provisioning for teachers, periodic teacher training and academic resource support, text books and support for learning achievement.¹⁵

What does the term Universalisation of Education imply? Universalisation as a concept means inclusion and equity but these concepts are multilayered, i.e. all children, irrespective of their age, gender, region, religion, caste and class etc are able to access education (complete access to school) of a formal type as against a part-time, short-term or non formal education; all children receive an equitable, uniform and good quality education.¹⁶ This further brings to attention the problems of child labour, school drop outs, poverty, unwillingness of parents to send their children to school and other social factors.

India was coerced into making Right to Education a legal right due to the objectives of United Nations Millennium Development Goals wherein Goal 2 calls for completion of full course of primary education by all children. Also part of UN's plan to cut poverty by half by the end of 2015, education plays a vital role. Educating children helps reduce poverty and

¹⁴ Supra Note 8

¹⁵ *Sarva Shiksha Abhiyan, framework for implementation.* Available at http://mhrd.gov.in/sites/upload_files/mhrd/files/SSA%20Frame%20work.pdf [Retrieved on 18th November 2014]

¹⁶ Nawani Disha, *Inclusion, Equity and Elementary Education*, Yogna issue September 2013

promote gender equality hence Right to Education is closely entwined with Goal 3, which is gender parity.

SALIENT FEATURES OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

To further spearhead the goal of universal education the government brought out Right of Children to Free and Compulsory Education Act, 2009. The salient features of the Right of Children for Free and Compulsory Education act are:

- Free and compulsory education to all children of India in the six to 14 age group;
- No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
- A child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.
- Proof of age for admission: For the purposes of admission to elementary education. The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof.
- A child who completes elementary education shall be awarded a certificate;
- Calls for a fixed student-teacher ratio,
- Provides for 25% reservation for economically disadvantaged communities in admission to Class One in all private schools;
- Mandates improvement in quality of education;
- School teachers will need adequate professional degree within five years or else will lose job;

- School infrastructure (where there is problem) to be improved in three years, else recognition will be cancelled;
- Financial burden will be shared between state and central government concurrently.

DRAWBACKS OF THE ACT

The Act has been criticised for being hastily drafted. The Government was in a rush to formulate the legislation without giving proper thought to the implementation mechanism. Various groups and NGOs active in the education sector which have contributed to the growth of education in our country were not properly consulted. The focus of the act is primarily on the inclusion by numbers. Here comes the quality versus quantity debate where in the government is blamed for depending far too much on the enrolment figures. Enrolment is a very unreliable basis for assessing the degree of access to school education. Enrolment figures are generally rigged and exaggerated for various administrative and political purposes.

Moreover, in order to assess the progress in expanding school education, it is important to take into account the figures for attendance and also for drop-out from among those who are enrolled. Another aspect is the quality aspect of education. The most effective and important means of ensuring quality is to establish minimum norms and standards relating to all relevant aspects of school education, and ensure that they are applied uniformly to all schools. No doubt, some norms have been laid down in the Schedule attached to the Right to Free and Compulsory Education Act. But they are utterly inadequate. There is no mention in the Schedule of a number of some extremely important norms such as-distance of the school from the habitation of the child, sitting area in square meters per child, number of children per school, number of classes per school, furniture in the class and office rooms, teaching aides, computers, equipment in a laboratory, the qualification and training of teachers, scales of their pay, allowances and other conditions of service, including scope for promotion etc. Some norms are mentioned in the Act only as items, and they are qualified by the phrase as the 'government may determine'. This means that these norms will not be justiciable and may never be established. This further entails that despite being given a certificate of completion of elementary education the Act fails to guarantee that a child has acquired competencies deriving from said education process. No standards are set for learning outcomes. It is a case

of guaranteeing graduation but not education. Failure of the child to attest to acquisition of competencies is also not flagged for remedial action and systemic enhancements.¹⁷

With a view to enhancing enrolment, retention and attendance and simultaneously improving nutritional levels among children, the Govt. of India has been making adequate provision in the budget for the National Programme of Mid-Day Meal (MDM) in Schools, popularly known as the MDM Scheme. The scheme has had a beneficial impact on school participation in terms of getting more children enrolled and encouraging regular pupil attendance. It acts as a regular source of 'supplementary nutrition' for children as well and can help spread egalitarian values. The MDM Scheme presently covers all children studying in Classes I-VIII of government, government-aided and local body schools; National Child Labour Project schools; and Education Guarantee Scheme and Alternative and Innovative Education centres, including madrassas and makhtabs supported under the Sarva Shiksha Abhiyan. As per the Ministry of Human Resource Development, 84.1 million primary children and 3.36 million upper-primary children, i.e., a total of 117.7 million children were estimated to have benefitted from the MDM Scheme during 2009-10. During 2010-11, 113.6 million children i.e., 79.7 million children in primary and 33.9 million children in upper primary - are expected to be covered in 1.2 million institutions.¹⁸

Similar is the case with other government schemes. Take for example, Uttar Pradesh Government's 'Laptop Distribution Scheme.' Every few days it is reported that a large number of laptops are lying undistributed. Thus, the need is to implement these ambitious policies properly so that they reach the target group.

A report on the status of implementation of the Act was released by the Ministry of Human Resource Development on the one year anniversary of the Act. The report admits that 8.1 million children in the age group six-fourteen remain out of school and there's a shortage of 508,000 teachers country-wide. A shadow report by the RTE Forum representing the leading

¹⁷ Ghosh Jayanta, *Right to Education Act, 2009: Issues and Challenges*, Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231197 [Retrieved on 14th September 2014]

¹⁸ Chanchal Chand Sarkar; *Right of children to free and compulsory education Act 2009 and Its Implementation*, Available at: http://www.idfc.com/pdf/report/2012/chapter_3.pdf [Retrieved on 26th September 2014]

education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule.¹⁹

Another critical aspect is that the state shall provide 'free' education. Normally, 'free' is interpreted as non- payment of fees by the parents of the child. But numerous studies have concluded that the fee constitutes only one of the components of educational expenditure. And since the landless, poor and socially deprived cannot meet the other expenses, this result in the non-participation of their children in education. These other expenses differ from place to place, though uniforms, copies and books and so on are perhaps common.²⁰ Various campaigns are organised by the government for making the parents aware of the benefits of education to children but still problems of school drop outs and non inclusion remain due to our social structure, child labour and various other factors.

As with all government schemes scarcity of funds mars the intention of the Act. India's National Education Policy lays down the goal of setting aside at least six per cent of the GDP for expenditure on education. This target, originally recommended by the Kothari Commission, has also found place in the manifestos of almost all major political parties. But the maximum share of the GDP devoted to education in India has been close to four per cent and on most occasions it has been around three per cent. The Ministry for Human Resource Development of the previous government conceded that the resources gap is huge, particularly when we consider the fact that in many advanced and several more developed among developing countries, the expenditure on education is 10 per cent or above of the GDP. It was expressed that the view that only the private sector can fill in the gap. Therefore, a plea was made for public-private partnership in education.²¹

Currently the Act legalises operating of four categories of schools in India- government schools, aided private schools, special category schools and non-aided private schools. The need for the hour is a common school system. The act states that "*it will be the responsibility of the state to provide free and compulsory education in a neighbourhood school*". There is

¹⁹ Peeyush Kumar Garg ;Fundamental Right of Children to Free and Compulsory Education - Its Implementation and Future Strategies, Available at http://ijbar.in/PDF/Vol2/Issue1/IJBAR_Vol2_Issue1_Article2.pdf [Retrieved on 1st October 2014]

²⁰ Ibid

²¹ Nandekar Ujwal P, *Right to Education and the Right of Children to Free and Compulsory Education Act, 2009*

no provision to create an equitable infrastructure to provide an equitable education. This act will not be able to meet its obligations unless a common school system encompassing all types of schools is envisaged with effective monitoring mechanisms to ensure quality of education. The State Boards could be fitted into this frame.²²

Further criticism is that, various private and minority groups raise a hue and cry over infringement of their rights. It was argued that rights given to Minorities under Articles 29 and 30 were being curtailed by RTE. This was clarified by the Supreme Court in *Society of Un-aided Private Schools of Rajasthan v. Union of India & Anr.*²³ The Court held that “to put an obligation on the unaided non-minority school to admit 25% children Section 12(1)(c) cannot be termed as an unreasonable restriction and such a law cannot be said to transgress any constitutional limitation.” Further held that “the expansive provisions of the 2009 Act are intended not only to guarantee the right to free and compulsory education to children, but to set up an intrinsic regime of providing right to education to all children by providing the required infrastructure and compliance of norms and standards.”

“The right to education envisages a reciprocal agreement between the State and the parents and it places an affirmative burden on all stakeholders in our civil society. Earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14.”²⁴

In *Pramati Educational and cultural Trust & Ors v. Union of India & Ors* (May 6, 2014)²⁵ the question was the constitutional validity of clause (5) of Article 15 and of Article 21A as regards private aided educational institutions to be decided by Constitution Bench. The court reiterated the underlying constitutionality of the statute, it went a step further from the Society case in excluding minority administered institutions, both aided and unaided, from the operation of the RTE Act. This judgment has been hugely criticised on various grounds. The Court has on a strained and entirely unreasonable reading of clause (1) of Article 30, placed all minority schools in a regulation-free zone. Article 30 (1) recognises the

²² *Ibid*

²³ *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 102

²⁴ *Ibid*

²⁵ Case referred from Indian Kanoon, Available at <http://indiankanoon.org/doc/117223361/> [Retrieved on 18th November 2014]

fundamental right of all minorities to establish and administer educational institutions of their choice. The implication of the judgment is that minority schools will continue to be permitted to charge any amount of fees, prescribe any admission criteria, and discriminate against any class of citizens without being answerable in any court of law to the government or to aggrieved parents. This is because the provisions of the Act which provide for these restraints will have no applicability to minority schools.²⁶

Following the judgment of the court in *Pramati*, a two judge bench of the Supreme Court on 9 May in a contempt petition initiated by J.K. Raju against the state of Andhra Pradesh, asked the government to ensure the availability of drinking water facilities, separate toilets for boys and girls, and separate facilities for teaching and non-teaching staff. Significantly, the court cited *Pramati* as it reiterated that these directions would be applicable to both minority and non-minority institutions. The two judge bench chose the idiom of “basic human rights that enhance the atmosphere where the education is imparted” while justifying the need for these directions.²⁷

In W.P. (C) No. 8533 of 2010 [*Social Jurist, A Civil Rights Group v. Govt. of NCT of Delhi & Anr.*] & W.P. (C) NO. 263 of 2011 [*Delhi Commission for Protection of Child Rights v. Union of India and Ors.*]²⁸ the Delhi High Court held that, “a duty is cast upon the appropriate Government and local authority to establish schools within such area or limits of its neighbourhood irrespective of being pre- schools or elementary schools, a further duty is cast upon the appropriate Government to provide free and compulsory education to every child of the age of six to fourteen years only. In *stricto sensu*, the Act is applicable only to elementary education from Class I to VIII to the children of the age of six years to fourteen years.” As far as the private unaided schools referred in Section 2(n)(iv) of the said Act are concerned, the provisions of the Act, except the admission to the extent of 25% of the strength of the class, to the children belonging to the weaker sections and disadvantaged group, do not apply to the admissions made to the pre-elementary (pre- school and pre-

²⁶ Kumar Alok Prasanna; *Right to Education neither free nor compulsory*, The Hindu on May 9, 2014.

²⁷ Contempt Petition number (No.532 of 2013) as referred in Gaurav Mukherjee, *Exorcising the Ghosts of Judgments Past: The Case Against Excluding Minority Institutions From the RTE Act*. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524922 [Retrieved on 17th November 2014]

²⁸ Case referred from <http://lobis.nic.in/dhc/DMU/judgement/19-02-2013/DMU19022013CW85332010.pdf> [Retrieved on 18th November 2014]

primary) classes of such schools. Consequently, Section 13 of the Act which prohibits collection of capitation fee and adoption of any screening procedure also does not apply to the admissions made to the remaining 75% of the pre-elementary classes of unaided private schools.” Further, the Delhi High Court went on to hold that, “Unlike other fundamental rights, the Right to Education places a burden not only on the State but also on the parent or guardian of every child and on the child itself. Education occupies an important and sacred place in our constitution and culture. It is a tool for betterment of our civil institution, protection of our civil liberties and path to an informed and questioning citizenry.”

“Though Right to Education Act is not applicable to nursery schools, in our opinion there cannot be any difference yardstick to be adopted for education to children up to the age of 14 years irrespective of the fact that it applies to only elementary education. It is the right time for the Government to consider the applicability of Right to Education Act to the nursery classes as well, as in many of the States admissions are made right from the nursery classes and the children so admitted are automatically allowed to continue from Class-I. In that sense, the provisions of Section 13 would be rendered meaningless insofar as it prohibits screening procedure at the time of selection. Importance of education is per se applicable to every child right from admission to nursery classes till it completes the eighth standard. It is common knowledge that though there is obligation on the State to provide free and compulsory education to children and the corresponding responsibility of the institution to afford the same, educational institution cannot be allowed to run as “Teaching Shops” as the same would be detrimental to equal opportunity to children. This reality must not be ignored by the State while considering the observations made in this judgment. Hence, we only observe that to avail the benefit of the Right to Education Act to a child seeking for nursery school as well, necessary amendment should be considered by the State. We hope and trust that the Government may take the above observation in the right spirit and act accordingly.” Thus the judiciary has time and again reminded the government to bring about appropriate changes in the Act to make its working more efficient.

The Act attracted a significant amount of criticism for another reason which is the exclusion of early childhood care and education (for children younger than six years) from the ambit of the justiciable right. It is important to appreciate that this was clearly no oversight on the part of Parliament. The amendment of Article 45 demonstrates that the intent of Parliament was to shift the goalposts with respect to justiciability, in that the right to primary education

becomes an absolute right, while the State still retains flexibility in relation to the mandate of providing early childhood care and education.²⁹

Another aspect is the medium of instruction. The Act in itself is unclear as which medium of instruction is to be followed. The HRD ministry clarified vide a letter that as far as possible the medium of instruction has to be in the mother tongue of the child.³⁰

Augmenting this is our social attitude towards education. Arguments against the desirability of providing education for poor children are vociferously made. It is argued that for some sections of society, classroom teaching is irrelevant and children are better off working and learning skills outside the classroom. All these arguments also find a place in the policy documents of the government and are especially prominent in the logic of the Child Labour (Prohibition and Regulation) Act of 1986, which condones child labour in the so called 'non-hazardous' sector on the grounds that poor children face the harsh reality of having to provide for their families and therefore need to work. This Act has therefore excluded child labour in the farm sector from the purview of the law. In this way it has targeted only some working children and forgotten many others, sending a clear message that it is acceptable for children in India to be out of school and in work. Even after the enactment of the 86th Amendment to the Constitution of India in 2003, making education a Fundamental Right, there has been no attempt to review or revise the Child Labour Act in order to make it conform to the text of the amendment. The Act does not state categorically that children must not work and that they must be in full time formal day schools. There is neither a "societal consensus" in favour of children's right to education nor is there any whole-hearted attempt to have a legal framework to make education compulsory for every child.³¹

Further criticism relates to government inaction regarding the laxity in fixing various norms and standards for elementary education in government schools. Despite the mushrooming of

²⁹ Chowdhury Rishad, *The road less travelled* Available at: <http://www.commonlii.org/in/journals/INJILaw/2010/2.html> [Retrieved on 18th November 2014]

³⁰ Right to Education reality, but yet unrealistic, Vivek S Raj in Understanding Contemporary issues in India; 7th edition, 2013-14

³¹ Shantha Sinha, Emphasising Universal Principles towards Deepening of Democracy, Actualising Children's Right to Education, Available at http://www.eledu.net/rrcusrn_data/Emphasising%20Universal%20Principles%20towards%20Deepening%20of%20Democracy.pdf [Retrieved on 18th November 2014]

private schools, at present the vast majority of about 67% of students attend government schools. To get recognition, private schools are required to fulfil norms and standards. However, government schools continue to have abysmal infrastructure and teacher-student ratio. Ironically, government school teachers are paid more than private school teachers while the quality of teaching is worse. There is no doubt that the situation with regard to government schools needs to be remedied.³²

CONCLUSION

The 2009 Act has been in fact enacted in light of Article 21-A. It has been enacted primarily to remove all barriers, including financial barriers, which impede access to education. The intention of the Act is so far clear but the mechanism of implementation is largely opaque and raises confusion. A tight bound act with firm punitive action for violation would go a long way to achieve the dream of an educated and an enlightened India. The rise in crimes committed due to ignorance or instigation can be brought down if the citizens are educated and know their rights and obligations. The Government has to come up with a policy which goes hand in hand with the commitment it shows towards education in India. The Act has to recognize that there is no place for the private sector, that the role of the non-government organizations can at best be peripheral, that any effort to dilute the fundamental duty of the state in this task would go against letter and spirit of the Constitution of India, and that there the state has no choice but to provide good quality education to all. In the long run, one would expect the free and compulsory education system to evolve into a common school system, essentially a public school system, covering school education upto Class XII and 18 years of age. We need to invest more on the most disadvantaged and deprived and ensure that they access the best quality education. The government has to make resources available and we have to create a strong and autonomous quality assurance mechanism, whereby all schools-private or government-are made accountable to ensuring children learn and are provided a nurturing environment for development. It is the fundamental responsibility of a democratic government to make laws to provide favourable atmosphere to the poor sections to make them par with the other sections of the society. Another possible area of improvement is making of stronger School Management committees as provided under the

³² Shukla Rakesh, RTE as a social experiment towards equality, Available at: <http://infochangeindia.org/education/analysis/rte-as-a-social-experiment-towards-equality.html> [Retrieved on 22nd October 2014]

Act which will devote time and efforts for the better running of the school. Further the schools should be given some autonomy in devising the salaries of teachers. A common salary for all school teachers of the country is not a prudent option. Adding to this strict disciplinary action should be taken for being absent. Moreover, the method for calculation of per-child reimbursement expenditure will yield an inadequate resource flow to private schools. It will be tantamount to a tax on private schools. Private schools will end up charging more to the 75% of students - who are paying tuitions - to make space for the 25% of students they are forced to take. This will drive up tuition fees for private schools while government schools continue to be taxpayer funded and essentially free. A graded system for reimbursement would work better, where schools are grouped -- based on infrastructure, academic outcomes and other quality indicators -- into different categories, which would then determine their reimbursement. Lastly an awareness drive with more thrust must be launched to create grass root pressure. It must be strongly imprinted in the minds of the people that without proper education their children cannot have a fulfilling and dignified existence.

The plain reality of Indian education is that even after 65 years; there are major problems in terms of daunting numbers of out-of- school children, high dropout rates, poor infrastructure facilities, unmanageable pupil-teacher ratios, high degree of qualitative differentiation in the education received by various socio-economic strata of society, and above all, deplorably low learning outcomes of children. The RTE Act is bereft of the long term vision required for development of education and we as conscious citizens should send our proposals for improvement to the Act.