

WIDENING THE CONTOURS OF RIGHT TO EDUCATION

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“Education is the most powerful we can use to change the world”

- Nelson Mandela

INTRODUCTION

Education is important in life because it gives people the skills and tools they need to navigate the world. Without education, people would not be able to read, write, calculate or even communicate. In wider sense education may describe “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist.”¹

There are varied opinions on some sections of the Act from different perspectives. The study includes some views and counters those on some aspects of the Act. For instance, inclusion of a schedule to set up norms and standards has by and large been welcomed, although there is a strong opinion that it does not address quality issues adequately. On the contrary, some groups feel that it is not friendly toward small organizations that are making an attempt to reach out to disadvantaged groups, but are not adequately resourced to meet the norms and standards laid down in the Act.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT 2009 FEATURES

- The RTE Act 2009 envisages quality and compulsory education to every child in the age group of 6-14 years in neighbourhood school till the completion of elementary education.

¹ Beiter, Klaus Dieter (2005). The protection of Right to Education by International Law. The Hague: Martinus Nijhoff. P. 19.

- No child is liable to pay any kind of fee or charges or expenses which may prevent the child from pursuing and completing elementary education.
- The Act also makes provisions for a non- admitted child to be admitted to an appropriate class. Action on the part of the government and local authority to establish a school within the limits of the neighbourhood.
- Commencement of this Act: also to ensure and monitor admission, attendance and completion of elementary education by every child. With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre-school education for such children.
- The Act also provides for adequate number of qualified and trained teachers.
- All the schools to ensure proper infrastructure.
- Maintenance of teacher-student ratio as per prescribed norms, provision of necessary
- Facilities in the schools, student friendly education etc.
- With an aim to promote inclusive growth, the Act also provides for 25% reservation for children belonging to marginalized sections of society.
- There are also provisions in the Act like prohibiting corporal punishment, detention and expulsion till the completion of elementary education.
- The Act provides for the development of curriculum in consonance with the values enshrined in the Constitution and for all round development of the children.

CONCEPT OF RIGHT TO EDUCATION

Rights are legal, social or ethical principles of freedom or entitlement. Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Right to Education ensures access to quality schools and to an education that is directed towards the full development of the human personality.

CONSTITUTIONAL PROVISIONS AND LEGISLATIVE ENACTMENTS

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 envisaged in Part III in such a manner as the state may, by law, determine.

'The Right of Children to Free and Compulsory Education Act' or RTE Act, is an Act of Parliament of India enacted on August 04, 2009 which describes the modalities of the importance of free and compulsory education for children between 6 and 14 years in India under the lights of Article 21-A of the Indian Constitution.

The inalienable right of every child to a quality education acknowledged in 1948 in the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly on 10 December 1948.

IMPLEMENTATION AND IMPLICATIONS OF RTE

ICDS Integrated Child Development Scheme is expected to deliver education along with other services but this aspect was never stressed. Under the pressure to meet the national and international commitments, the progress towards universalisation of elementary education is being viewed unduly in terms of meeting quantitative targets. The plain reality of Indian education is that even after 60 years, there are major problems that have failed to meet the purpose. A closer look at the implication of right to education Act highlights the major weaknesses in the landmark law.

The implications came but were unable to put all the children in school; it took birth with certain shortcomings. The Act is excessively input-focused rather than outcomes-oriented. Even though better school facilities, books, uniforms and better qualified teachers are important, their significance in the Act has been overestimated in the light of inefficient, corrupt and unaccountable institutions of education provision.

COMPLICATIONS TO RTE

- A lack of financial resources coupled with the escalating cost of education.
- A high rate of population growth in relation to the available limited resources
- Deteriorating and inadequate physical facilities for education, such as an inadequate number of school buildings, essential scholastic and other educational materials.
- An inadequate supply of trained teachers,
- High drop-out rates in primary schools
- Poverty compelling many parents to put all focuses on meeting basic survival priorities.
- Unattractive terms of service for teachers.
- With Child Labor in prevalence, there will always be children out of schools.

In addition to this, the problem that arises is the age continues to be a limiting factor. Moreover, the parameter to define literacy² in India is not adequate to turn an individual into a valuable member of the society. Another limitation in the law is continuation of the traditional stress on inputs without adequate attention to outcomes.

Overcoming major obstacles:

1. Poverty

Poverty is the most pervasive factor preventing children from going to school. Poor families are less able to afford school fees, uniforms and textbooks for all of their children. A child in school cannot work to help support the family, and they have less time to help with household chores like fetching water.

2. Lack of Infrastructure and facilities

Within schools, the lack of accessibility and the poor infrastructure have resulted in basic facilities such as toilets and water being unable to all children. Some fail to provide clean drinking water or adequate fire safety. It has been noted that in many cases, disabled children

² As defined in Census operation.

especially girl children do not go to school since they are unable to use the toilet facilities. Schools also do not have good quality accessible educational material for the children to learn and the teachers to use.

3. Early Marriage

Early marriage has been linked with low educational attainment. While it is not clear if child marriage causes school dropout or vice versa, it is clear that child marriage often means the end to a girls' formal education. When a girl drops out of school she is denied her right to an education and the ability to develop the skills and knowledge needed to live a healthy, fulfilling life and one where she can earn an income and contribute to her family and community. Girls tend to drop out of school in the preparatory time before marriage or shortly afterwards. Once a girl is out of school, she is more vulnerable to child marriage and early pregnancy. Returning to school can be difficult too. Married girls who would like to continue schooling may be both practically and legally excluded from doing so.

4. Locality

Majority of India still lives in villages and so the topic of rural education in India is of utmost importance. There is a difference between city and village student not in terms of brain or development but their initial environment, skills, learning ability, availability of infrastructure, and access to different facilities. All of these must be considered while making the curricula which should not be different but how it is going to be taught would make the difference. Moreover, every village is not provided with school which means that students have to go to another village to get education. Owing to this parents usually do not send their daughters to school, leading to a failure in achieving rural education in India.

GOVERNMENTAL SCHEMES AND POLICY

1. **Sarva Shiksha Abhiyan (SSA)** is Government of India's flagship programme for achievement of Universalization of Elementary Education (UEE) in a time bound manner, as mandated by 86th amendment to the Constitution of India making free and

compulsory Education to the Children of 6-14 years age group, a Fundamental Right.³ Provisions of Right to Education Act are being implemented through SSA. Accordingly, norms have been revised / modified to align them with the requirement of RTE Act, 2009. Central Government has approved an outlay of `2,31,233 crore for implementation of the combined RTE-SSA programme for the five year period of 2010-11 to 2014-15. The annual requirement of funds for the combined RTE-SSA programme will be approximately in the range of `40,000 to `49,000 crore both for the Central and State Governments.

2. **Anganwadi**, the word means "courtyard shelter" in Indian languages. They were started by the Indian government in 1975 as part of the Integrated Child Development Services program to combat child hunger and malnutrition.
3. **Mid Day Meal** in schools has had a long history in India with a view to enhancing enrolment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to Primary Education (**NP-NSPE**) was launched as a Centrally Sponsored Scheme on **15th August 1995**⁴
4. **Kasturba Gandhi Balika Vidyalaya**⁵ KGBVs are residential upper primary schools for girls from SC, ST, OBC and Muslim communities. KGBVs are set up in areas of scattered habitations where schools are at great distances and are a challenge to the security of girls. This often compels girls to discontinue their education. KGBV addresses this through setting up residential schools, in the block itself.
5. **Strengthening of Teachers' Training Institutions** The Right of Children to Free and Compulsory Education (RTE) Act, 2009 poses major challenges for improving the quality of teachers and for expanding institutional capacity in States to prepare professionally trained persons for becoming school teachers. Government has initiated

³ Available at <http://ssa.nic.in/>

⁴ Available at <http://mdm.nic.in/>

⁵ Available at <http://www.educationportal.mp.gov.in/kgbv/>

steps to revise the existing Centrally Sponsored Scheme of Restructuring and Reorganisation of Teacher Education. This Scheme was initiated in 1987 pursuant to the formulation of the National Policy on Education, 1986 which emphasized the significance and need for a decentralised system for the professional preparation of teachers, and it was in this context that District Institutes of Teacher Education (DIETs), Colleges of Teacher Education (CTEs) and Institutes of Advanced Study in Education (IASEs) were established.

- 6. Pre-metric Scholarship Scheme** Pre-metric is the Scholarship for students from Minorities Communities. The Scholarship at Pre-metric level will encourage parents from minority communities to send their school going children to school, lighten their financial burden on school education and sustain their efforts to support their children to complete school education. The scheme will form the foundation for their educational attainment and provide a level playing field in the competitive employment arena. Empowerment through education, which is one of the objectives of this scheme, has the potential to lead to upliftment of the socio economic conditions of the minority communities

JUDICIAL PRONOUNCEMENTS

- **J. P. Unnikrishnan v. the State of Andhra Pradesh case⁶**

The Supreme Court, in its judgment in the J. P. Unnikrishnan v. the State of Andhra Pradesh case (A.I.R. 1993 SC 2178), has held that children under the age of 14 have the fundamental right to free education. In giving such an interpretation of the Constitution. The implication of the apex court's verdict in the Unnikrishnan case was that in the event of the state failing in its duty to provide the necessary infrastructure for primary education, there is ground for legal remedy. Such remedy can be sought under Article 32 or Article 226 (writ jurisdiction) by which the courts are vested with the power to direct the executive to do or to refrain

⁶ <https://indiankanoon.org/doc/1775396/>

from doing something. Such a remedy is not possible with the provisions of the Directive Principles.

- **Olga Tellis v. Bombay Municipal Corporation case⁷**

The apex court has only followed the same principles laid down by Justice Y. V. Chandrachud in 1986 in that the Right to Life was not restricted to animal existence and that it had to be a life with human dignity. And by this judgment, it became imperative for the Government to effect an amendment to the Constitution to provide for free and compulsory education to all those under the age of 14 as a clause within Article 21. It also meant that the Government could not, at least after 1993, have taken cover under the "belief" that eradicating illiteracy was only a provision under the Directive Principles of State Policy (Article 45 of the Constitution).

- **Mohini Jain v. State of Karnataka and Ors⁸**

A 1989 Supreme Court of India case, where the apex Court raised an important question that 'whether right to education is guaranteed to the Indian citizen under the Constitution of India?' A two-member bench consisting Justice Kuldeep Singh and Justice R. M. Sahai gave the judgment of the case on 30 July 1992 (1992 AIR 1858).[2] For the first time in the post independent India, right to education of the Indian citizens and the State obligation to secure the right came under scrutiny at the premises of the apex court. It is important to note that this was the time when neo-liberal economic policy were knocking at the door of India.

CONCLUSION

Today, we may not be in a crisis situation but we are not far down the road. It is said that the destiny of the country is being shaped in the classrooms but the current system of education has failed to serve the purpose. The outdated education model desperately calls for a change. The students are really "struggling" or to be more précised "coping". The prevalent laws, schemes and programs have failed to secure the true meaning of Right to Education. Something must be done to make the Right to Education a reality and not a mere distant dream.

⁷ Available at <https://indiankanoon.org/doc/709776/>

⁸ Available at <https://indiankanoon.org/doc/40715/>