

CRITICAL ANALYSIS OF RIGHT TO COMPULSORY EDUCATION: A BOON OR A BURDEN

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ABSTRACT

The importance of education cannot be denied for the overall development of a human being as it is only the education that makes a difference between animal and humans. Education is the key to inculcating knowledge, skill and confidence in one's personality. It tends to bring a positive attitude in a psyche and nature of a person. Education helps the person stand out in every field. It enhances the skills of individuals so that they can have a better say in job sector. The paper focuses on making education compulsory through the Right of Children to Free and Compulsory Education Act (hereinafter referred as RTE Act), 2009. It is a legislation enacted by the Parliament on 4 August 2009 which makes education compulsory for the children between the ages of 6 to 14 years under Article 21A of the Constitution. India is now one of the 135 countries of the world that have made education as a fundamental right. The paper commences with the meaning of education, further explaining it in the context of compulsory education in various countries. Backboned by the Universal Declaration of Human Rights and International Conventions for considering right to education as a human right, the Constitution of India embedded provisions for incorporating education as an enabling fundamental right. The paper goes all round deep into the pros and cons of making education mandatory putting forward it as a roadmap towards a progressed Nation or a Burden on the State's resources.

Keywords: Education, Knowledge, Skill.

MEANING OF EDUCATION

Education is the most basic talk of the town these days all over the globe. One of the primary objectives of the States is to increase the standard of education in their respective States. An endeavor is made to achieve cent percent literacy to make a nation prosperous in its true sense. The importance of education can be felt from the following quote:

“The educated differ from the uneducated as much as the living differs from the dead.”

- Aristotle

So is the gravity of education that it has been debated all over the world to make education compulsory for all the people

Etymologically, the word Education is derived from a Latin word “education” which means rearing or bringing up. Education is the process of learning, acquiring new knowledge, habits, and skills. Education is considered one of the powerful measures to curb poverty and increase the standard of status of living and to progress in a way to being the most developed State.

COMPULSORY EDUCATION

Education has been made compulsory in almost 135 countries all over the world. What does compulsory education really mean? It refers to a period of education that is required to be observed by all up to a certain age. Compulsory Education refers to a period of education that is required of all people and is imposed by government.¹ It is a time period that all children upto a prescribed age are expected to attend schooling. Many nations have progressed in this area. India, being one of them, has made education compulsory for all the children below 14 years of age through The Right of Children to Free and Compulsory Education Act².

¹ Available at https://en.wikipedia.org/wiki/Compulsory_education (July 31, 2018, 7:20 A.M).

² Act No 35 of 2009.

INTERNATIONAL SCENARIO

USA

Education in USA is provided by private and public schools. By state law, education is compulsory over an age range starting between five and eight and ending somewhere between ages sixteen and eighteen, depending on the state. In most schools, compulsory education is divided into three levels: elementary school, middle or junior high school, and high school. Children are usually divided by age groups into grades, ranging from kindergarten (5–6 year olds) and first grade for the youngest children, up to twelfth grade (17–18 years old) as the final year of high school³. U.S. education law has developed under both the federal system and the state systems. The U.S. Constitution does not explicitly enumerate a positive fundamental right to education. However, it has long been debated whether the U.S. Constitution implicitly enumerates a positive fundamental right to education.⁴ Therefore, the Supreme Court and federal and state legislatures have been the catalysts through which the right to education has been developed.⁴

CHINA

Education in China is a state-run system of public education run by the Ministry of Education. All citizens must attend school for at least nine years, known as the nine-year compulsory education, which is funded by the government.

Compulsory education includes six years of primary education, starting at age six or seven, and three years of junior secondary education (junior middle school) for ages 12 to 15. Some provinces may have five years of primary school but four years for junior middle school. After junior middle school, there are three years of senior middle school, which then completes the secondary education. The Ministry of Education reported a 99 percent attendance rate for primary school and an 80 percent rate for both primary and middle schools. In 1985, the

³ Available at https://en.wikipedia.org/wiki/Education_in_the_United_States (July 31, 2008, 7.30 A.M).

⁴ Krysten Urchick, *U.S. Education Law: Is the Right to Education in the U.S. in compliance with International Human Rights Standards?* (July 31, 2018, 7:37 A.M), <http://www.law.msu.edu/king/2007/Urchick.pdf>.

government abolished tax-funded higher education, requiring university applicants to compete for scholarships based on academic ability⁵.

With regard to the age when compulsory education ends, China has a system of nine years' compulsory education which, according to the Education Act, may not begin before the age of 6. In actual practice, owing to differences in regional conditions, the age at which children begin their education varies nationwide, and the age at which they finish it varies accordingly, usually between 15 and 17. By law, the youngest age at which a worker may be hired is 16, and the great majority of children in China have finished their compulsory education by that age. Article 19 [Education], Article 24 [Socialist Education] and Article 46 [Education] promotes education⁶.

JAPAN

After primary school most children in Japan attend State public junior high schools. Many of these are non-selective comprehensive schools, this means that any pupil can attend. It is co-educational and a small number of students attend private schools. These private schools are not funded by the state but obtain most of their finances from tuition fees paid by parents. The students in Japan have to go to another support school after school. This type of school guides the student's learning and teaches them skills. If a student has an entrance examination for an elite school or university, they have to study for that exam at that school Article 26, para 2 of the Constitution provides for compulsory education free of charge, the Government interprets the provision narrowly as prohibiting collection of tuition fees. It considers the free provision of textbooks merely as a legislative option. As a result, the parents have to bear a burden of educational expenses including fees to teaching materials, school meals and other necessities such as designated school and training uniforms. Article 20, 23, 26,14,10,11 and 12 cover all the aspects of education, equality, religion and moral education etc.⁷

⁵ https://en.wikipedia.org/wiki/Education_in_China (July 31, 2018, 7:47 A.M).

⁶ Shelly Bhatnagar & Dr. Satish Gill , *Right to Education: Comparative Analysis of different countries*, 2, QJ, 30(2014).

⁷ Shelly Bhatnagar & Dr. Satish Gill , *Right to Education: Comparative Analysis of different countries*, 2, QJ, 31(2014).

GERMANY

The responsibility for the German education system lies primarily with the States while the federal government plays only a minor role. Optional Kindergarten (nursery school) education is provided for all children between two and six years of age, after which school attendance is compulsory. The system varies throughout Germany because each state decides its own educational policies. Most children, however, first attend Grundschule from the age of six to ten. The freedom of teaching shall not release any person from allegiance to the constitution. Parents and guardians shall have the right to decide whether children shall receive religious instruction. Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction. Children must by law receive education between the ages of 5 (4 in Northern Ireland) and 16. Article 3,5,6,7,9,19, 91b 116 relates to education⁸.

INDIA

Education in India is provided by the public sector as well as the private sector, with control and funding coming from three levels: central, state, and local. The Indian government lays emphasis on primary education up to the age of fourteen years, referred to as elementary education in India. Education has also been made free for children for 6 to 14 years of age or up to class VIII under the Right of Children to Free and Compulsory Education Act 2009. The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Indian legislation enacted by the Parliament of India on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21a of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government⁹.

⁸ *Ibid.*

⁹ Shelly Bhatnagar & Dr. Satish Gill, *Right to Education: Comparative Analysis of different countries*, 2, QJ, 30(2014).

INTERNATIONAL CONVENTIONS

The right to education came up for the very first time in Article 26 of the Universal Declaration of Human Rights¹⁰. Article 26 Part 1 states 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.”

The International Covenant on Economic, Social and Cultural Rights (1966) contains two articles to the right to education—Articles 13 and 14.

The UNESCO Convention against Discrimination in Education (1960)¹¹ was the first international treaty to be adopted concerning education as such. The Convention is the first legally binding instrument which provides for standards and a quality of education. Article 4 of the UNESCO Convention foresees: The States Parties to this Convention undertake ...:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education [...]; The Convention also separately determines that rights of national minorities should be given insistent attention as those groups are one of the most vulnerable.

¹⁰ Universal Declaration of Human Rights (adopted 10 December, 1948). GA res. 217A (III), UN Doc A/810 at 71 (1948)

¹¹ UNESCO Convention against Discrimination in Education (adopted 14 December 1960, entered into force 22 May 1962). 429 UNTS 93.

CONSTITUTIONAL PROVISIONS

Right to Education was not initially inbuilt in the Constitution as of right under the Fundamental Rights¹² but it was enshrined in the Directive Principles of State Policy¹³ under Article 45 specifically “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.” Though the Directive Principles of State Policy are not enforceable by any court, yet there are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making law¹⁴.

In the words of Justice Bhagwati, “It is not possible to fit Fundamental Rights and Directive Principles in two distinct and strictly defined categories, but it may be stated broadly that Fundamental Rights represent civil and political rights while Directive Principles embody social and economic rights. Both are clearly part of the board spectrum of human rights”¹⁵

Directive Principles of State Policy are not considered in any way inferior to the Fundamental Rights, rather a harmonious balance should be maintained between them. In recent decades, the status of Directive Principles has been raised to that of Fundamental Rights. This can be illustrated through the case of *Randhir Singh v. Union of India*¹⁶ where equal pay for equal work has been treated as fundamental rights.

Through 86th Constitutional Amendment, 2002 Article 21A was inserted after Article 21, which states that “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 law, determine”.

A new clause (k) was also inserted in Part IVA Article 51A-“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.”

¹² INDIA CONST. PART III.

¹³ INDIA CONST. PART IV.

¹⁴ INDIA CONST. art 37.

¹⁵ *Minerava Mills v. Union of India* AIR 1980 SC 1789.

¹⁶ AIR 1982.

Article 45 was substituted and amended to state that –“The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.

DEVELOPMENT OF RTE

The task of providing education to all children in this age group gained momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, has made strenuous efforts to fulfil this mandate and, though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled.

86th Amendment Act seeks to make education free and compulsory to all children between the age of 6 and 14 years via Article 21A. A first draft of the legislation envisaged in the above Article, viz., Free and Compulsory Education for Children Bill, 2003, was prepared and posted on this website in October, 2003, inviting comments and suggestions from the public at large¹⁷.

Subsequently, taking into account the suggestions received on this draft, a revised draft of the Bill entitled Free and Compulsory Education Bill, 2004¹⁸. The CBE (Central Advisory Board of Education) committee drafted the „Right to Education“ Bill and submitted to the Ministry of Human Resources and Development (MHRD). MHRD sent it to NAC (National Advisory Council). NAC sent the Bill to Prime Minister for his observation. The finance committee and planning commission rejected the bill citing the lack of funds and a model bill was sent to states for the making necessary arrangements. (Post-86th amendment, states had already cited lack of funds at State level) July 19, 2006 Campaign against Child Labor (CACL), National Alliance to Fundamental Right to Education (NAFRE), CBE invited Indian Literacy Project (ILP) and other organizations for a Planning meeting to discuss the impact of the Parliament action, initiate advocacy actions and set directions on what needs to be done at the district and village levels.¹⁹

¹⁷ Uma, *Right to Education (RTE): A Critical Appraisal*, 6, JHSS 5, 55-60(2013).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

The bill was approved by the cabinet on July 2, 2009. Rajya Sabha passed the bill on July 20, 2009 and the Lok Sabha on August 4, 2009. It received Presidential assent on September 3, 2009 as the Right of Children to Free and Compulsory Education Act.

SALIENT FEATURES OF THE ACT

- The Act defines child as a male or female child of the age of 6 to 14 years.
- The Act defines elementary education as the education from first to eighth class.
- The RTE Act provides for the right of children to free and compulsory education till completion of elementary education in a neighbourhood school. 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.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- 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
- It lays down the norms and standards relating inter alia to pupil teacher ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- 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.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
- It prohibits:

- i. physical punishment and mental harassment;
 - ii. screening procedures for admission of children;
 - iii. capitation fee;
 - iv. private tuition by teachers and
 - v. Running of schools without recognition.
- 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 centered learning²⁰.

COMPULSORY EDUCATION- A BOON

Seeing into the merits of compulsory education, we can account for innumerable incidences from the history which focused to promoting education due to its irreplaceable value. As a result we can say that since education was given prime importance even in the past, then why not making it compulsory? Compulsory education aims at providing equal opportunity of education to all children. Even the children whose parents cannot afford to provide them education, they can have access to basic education through making it compulsory. It will even make develop good manners and enable them to live an active adult life in a free society. It will make them responsible and disciplined to contribute to their all-round development.

Promoting compulsory education augments the literacy rate in a nation. It will lead to a foundation of a better developed State. Education provides a background for a bright future of the nation. It gives a powerful and skilled workforce, which in turn improve the economy of the country. The world would be a better place to live if all are educated. It is rightly said that future of a country depends on the young shoulders of the coming generations. So, they need to train in such a way to come to the expectations. This could be made by compulsory education.

²⁰ The Right of Children to Free and Compulsory Education, 2009, No. 35, Acts of Parliament, 2009(India).

Child labour is also put to an end by compulsory education since all the children would be engaged in studies, there would be no room left for the child labour. Also, the socially and economically backward groups are benefitted as they are included in the mainstream with other children to have equal access to education.

Compulsory education can work in a way to alleviate the society by curbing poverty. Psychologically weakness is detected in children who are not educated. A sort of dull mind among them is improved through education directing their full personality development.

CRITICAL APPRAISAL: A ROADMAP TOWARDS BURDEN ON STATE

Moving towards the demerits of the compulsory education, we can say that it develops a world of more competition and struggle. Even today the rate of unemployment is at its highest peak, what would be the situation if all are educated? It will surely create troublesome position for the youth to get employment. More the education, more the struggle. Another disadvantage that flows from compulsory education is the difficulty in the establishment of schools and colleges for all the children. A lot of fund is required to provide a proper infrastructure of educational institutes.

Can we stress on making education compulsory in the developing and underdeveloped countries where people are suffering from hunger? Can education be given a priority in the where people are dying of starvation? The answer is obviously no. Life comes first. Though education improves the standard of living, yet food is the basic need of the society. Education should be provided but keeping in mind the funds of the State to help people die of starvation.

CONCLUSION

To sum up, the value of education can never be ignored. Though the resources of the State would be overburdened through compulsory education, yet it is the need of the hour to have educated society which can compete with the other nations. Giving due consideration to other

factors as the condition of the State, the level of education should be uplifted. It would be appropriate to state the following Sanskrit quotation in this case:

**“Vidya naam narasya roopam-adhikam prachchanna gupta dhanam
Vidya bhogakari yasha suhakari Vidya guruNam guru:
Vidya bandhujano videshagamane Vidya para daivataa
Vidya rajashu Poojita na tu dhanam Vidya vihina pashu.”**

Knowledge is human's extra beauty. It's a hidden treasure. Through knowledge, one can enjoy different happiness. It brings success and also the guru of guru. During foreign visit, knowledge is our kin. Only knowledge is worshiped and not wealth. One who doesn't possess this knowledge is truly an animal.

