

LEGISLATION COMMENTARY ON RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 (ACT NO. 35 OF 2009)

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ABSTRACT

Education is the building block of society. It is the only way to ascertain all the other rights. A country's overall development is brought about by skillful human resources which can be achieved through education. The Universal Declaration of Human Rights provides for right to education as a basic human right. The Indian Constitution framers had incorporated under the Article 45 of Directive Principles of State Policy education of Children below the age of six. The subsequent passing of various International Convention by UNESCO emphasized the right to free elementary education of children. India being a developing country with unskilled human resource, realized the importance of free and compulsory elementary education for the children, amended the Constitution and imbued Right to Education under Article 21A of the Constitution as a fundamental right and subsequently passed the Right to Education Act, 2009 which came into force on 1st April, 2010. Before the Act was passed, in 2001, the literacy rate was 64.83% and after it being passed it is 77.70%, in 2021. A significant increase has happened in the literacy rate, most remarkable being the admission of girl child in the schools, with female literacy rate being 70.38%, in 2021 as compared to 54.16%, in 2001. Despite all the positives, quality education plus qualified teachers remains in paper and pen only. Strict enforcement of the act remains in dire straits. Welfare schemes have been enacted to push the literacy rate up the scale so that more numbers of pupil go to school and add up to

the nation building process and make India a developed country rather than a developing one.

KEYWORDS : Education, Fundamental Rights, Literacy, Constitution, Nation Building.

I. Introduction

The growth of a nation can be achieved through skilled human resource which requires education. Thus, education is quintessential for the growth, progress and development of a nation. UNESCO's 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Right and Fundamental Freedom states that Education is "the entire process of social life by means of which individual and social groups develop consciousness within and benefit of, the national and international communities, the whole of their personal capabilities, attitudes, amplitudes and knowledge."³¹ Education is essential not only for the nation but also for the individuals who get to know their rights and duties. It is crucial for the dignity of all the individuals. It helps to hold on to the culture, the shared value and thus the unity of the group and continue with the generation. Educated individuals would help in good governance, promote unity, holistic development, address problems efficiently, ensure sustainability, rich cultural life and help build a national identity. As per 2011 report, India has a literacy rate of

³¹ Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 1974, <https://www.unesco.org/en/legal-affairs/recommendation-concerning-education-international-understanding-co-operation-and-peace-and-education>.

74.04% out of which, for male it is 82.14% and for females it is 65.45%.³²

II. Historical Perspective

Soon after the Second World War, Universal Declaration of Human Rights was adopted wherein under Article 26 it states "Everyone has the right to education."³³ It even elucidates that elementary education shall be compulsory and free and higher education shall be on the basis of merit. The need for education was felt in the International Community, thus again in 1960 UNESCO Convention against Discrimination in Education was drawn up which retaliates that education is not a privilege but a basic human right.³⁴ It highlights State's responsibility to provide free and compulsory education and ban any sort of discrimination and promote equality in this field. Subsequently again in 1966 International Convention on Economic, Social, Cultural Right³⁵ was adopted also, the UN Convention on the Right of Child³⁶ which was signed on 1989 reaffirms about "free, compulsory primary education for all."

India is a signatory to all these Conventions. Moreover, the framer of our Constitution had incorporated the need of compulsory education which is clearly reflected through Article 45 of our constitution. Consequently, in 2002, the 86th Amendment Act was passed through the Parliament which tried to implement the Article 45³⁷ of the Constitution by making Right to Education a fundamental right by integrating Article 21A³⁸ into the Constitution and Article 51A(k)³⁹. After ratifying the International Convention on Economic, Social and Cultural

Rights on 9th July 1993 and UN Convention on the Right of Children on 11th December, 1992, India realized the importance of compulsory education and need of the hour to improve the literacy rate and revamp the education system. As a result, the Right to Education Act, 2009, was enacted by the Parliament keeping in mind Article 21A of the Constitution and the said Article and the Act was put into operation on 1st April 2010.

III. Analysis of Provisions

The thirty eight sections act, clearly states its objective in its opening statement by mention. "An act to provide free and compulsory education to all children of the age six to fourteen." The preamble itself explains that the foremost aim of the act is to provide free, compulsory elementary education to all children without any discrimination. The interpretation Section 2, mentions that the scheme shall be made operational to all schools irrespective of them being given aid by the government or not which is expressed stated under Section 2(n) of the act. Education that of class one to eight shall be provided as per section 2(f). Child refers to any male or female child of 6-14 years of age. Even children belonging to schedule caste, schedule tribe, backward class and even economically weaker section has been included in the interpretation section.

Section 3 of the act, provides for free and compulsory education to every child within 6-14 years of age till completion of elementary education. It expressly states that no child shall be liable to pay any fees or charges which might impede him from pursuing education and if any school contravene this section, it shall be punishable under Section 13(2)(a) of the act. This would deter any school from charging capitation fees. Moreover, children from weaker sections of the society, or especially abled children shall also be provided with free elementary education by virtue of Section 3. Even if a child who is above six years of age but hasn't been enrolled in any

³² Know India, Literacy, <https://knowindia.india.gov.in/profile/literacy.php#:~:text=The%20results%20of%202011%20census,males%20and%2065.46%20for%20females>.

³³ Article 26, Universal Declaration of Human Rights 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³⁴ Article 4, United Nations Convention against Discrimination in Education, 1960, <https://www.unesco.org/en/right-education/convention-against-discrimination>.

³⁵ Article 13, International Covenant on Economic, Social and Cultural Rights, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

³⁶ Article 28, United Nations Convention on the Rights of Child, 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

³⁷ Article 45, The Constitution of India 1950.

³⁸ Article 21A, The Constitution of India 1950.

³⁹ Article 51A(k), The Constitution of India 1950.

elementary school, then he/shall be admitted to such class as per his/her age and shall be provided with special training as provided under Section 4 of the act. Even if the child has completed fourteen years but lacking behind in elementary education, he/she shall still be entitled to free education till he/she completes elementary education.

The government, local authorities and parents have been imposed upon certain duties by virtue of this act. Sections 6-11 deal with such duties and responsibilities. To put the act in force, there should be such schools where education shall be provided for free. Thus, by virtue of section 8, the appropriate government and local authorities shall establish schools where it is not established, within a period of 3 years. The Central government have been enjoined the responsibility to provide funds, formulate curriculum, provide training for teachers, and provide technical support to State government to enforce the act. The appropriate government and the local authorities shall ensure that quality education is provided, curriculum is completed, admit students, provide training to teachers etc. The parents have been responsibility to admit their wards to school. By virtue of section 11, government shall provide pre-school education.

The school and the teachers have also been endowed with certain duties by virtue of Chapter IV, sections 12-28 of the act. 25% seats should be reserved for economically weaker sections in all private schools. The Section 14 specifically mentions that no child shall be denied admission due to lack of age proof. And birth certificate shall be basis for determining the age. The school cannot expel a child before completion of the elementary education and no physical punishment can be given to them. Anyone contravening such, disciplinary action would be taken. To prevent misuse of the act, the act states that a certificate of recognition has to be taken to run such a school. To provide with quality education, there shall be fixed

student-teacher ratio and teachers need to have adequate professional qualification to teach else they would lose their jobs plus school infrastructure needs to be updated every 3 years else their recognition would be canceled.

Chapter V containing Section 29 and 30 states about curriculum which should help in the all-round development of the child, physically, mentally and help them to discover full potential. Moreover, no child can be forced to sit for board exam until they complete elementary education.

To enforce the act and monitor that a child's right in education is not abridged or deprived of, a National Commission of Child's Right would be setup whose aim would be to see that whether any child is being deprived of their right to not and take steps to enforce them as per section 31. Redressal grievance mechanism has been provided under Section 32. Even National Advisory Council and State Advisory Council would be formed to advise the respective governments regarding implementation of the provisions of the act by virtue of Sections 33 and 34. Whereas Section 35-38 are miscellaneous provisions which states that the government can make rules to implement the act and issue directions.

IV. Constitutional Validity

The constitutional validity of Right to Education Act was first challenged in the case of Rajasthan Private Schools Association⁴⁰. In this case the Act was declared constitutional by the three judges' bench. But the decision of the Court was further challenged in the case of Pramati Educational Trust⁴¹. The case was regarding the scope of RTE with regards to minority institution however the Court reaffirmed the Society judgement and excluded the private or unsupported minority institutions from the extent of this Act. The enactment of RTE was initiated by a historic judgment made in

⁴⁰ *Society for Unaided Private Schools of Rajasthan v. Union of India & Another*, 2012 6 SCC.

⁴¹ *Pramati Educational and Cultural Trust v. Union of India*, (2014) 8 SCC 1.

the case of Mohini Jain⁴². Famously known as the capitation fee case, the court held that right to free and compulsory education is an important aspect of a dignified life. The right to life under Article 21 cannot be given its full meaning unless right to education is integrated in it. It further held that charging capitation fees is violation of such rights as it restricts the person's access to education. Rather is the state duty to ensure that private institutions do not make it a product of sale.

But the verdict of Mohini Jain was further analyzed in the case of Unnikrishnan⁴³. The court although upheld that right to education is a part of fundamental right under Article 21 it also dissented with the judgment with regards to age limit. The court held that the state liability to provide free education is up to 14 years and after it is subject to economic capacity of the government. Thus, it established a balance between fundamental rights and DPSP and that the objectives of Part III and Part IV should be in synchronization with each other. In the Environmental and Consumer Protection Foundation⁴⁴ case the Indian Supreme Court ruled that, the federal, state, and municipal governments must ensure that all public and private schools have the suitable infrastructure, under the Right of Children to Free and Compulsory Education Act of 2009 and the Indian Constitution.

V. Amendments

The Right of Children to Free and Compulsory Education Act 2009 was amended by Right of Children to Free and Compulsory Education Amendment Act 2012. The amendment was passed due to the implication that RTE was applicable to aided minority institutions from the 2012 judgment in the Rajasthan case.

- Under this amendment the scope of the Act was extended to Children with Disabilities. It further provided for

home-based education with severe disabilities.

- It was further stated that minority educational institutions will function in advisory capacity and that it does not apply to religious educational institutions.

Again, the Right of Children to Free and Compulsory Education Act 2009 was amended by Right of Children to Free and Compulsory Education Amendment Act 2019. The amendment contained provisions like:

- This amendment did away with the no detention policy at the elementary level. The original Act provided that no child can be detained unless he completes his primary education i.e., up to class 8. But subsequent to this amendment the law was changed and it was left upon the states to decide whether to continue this policy. It prescribed that the state must conduct an annual examination after class 5 and class 8 to assess the child progress. The child who fails the examination will be given proper instruction and a chance appear in reexamination after 2 months of declaration of result and if he fails in that too then he may be detained.
- The change made by Act was to extend the last date for teachers to acquire the prescribed minimum qualifications for the purpose of the appointment. It mandated that unqualified and untrained elementary teachers to complete their training and required that all teachers at the elementary level have a certain minimum standard of qualification. It would ensure the quality of education received by the children.

⁴² *Miss Mohini Jain v. State of Karnataka & Others*, 1992 AIR 1858.

⁴³ *Unni Krishnan, J.P. & Others. v. State of Andhra Pradesh & Others*, 1993 AIR 217.

⁴⁴ *Environmental and Consumer Protection Foundation v. Delhi Administration & Others*, 2012 INSC 584.

VI. Criticisms

Though the law has been successful in certain aspects it has some drawbacks as well.

- The law focuses on providing just free education and not quality education to as many children as possible. Its drafting was done hastily without giving much thought to the education of children below six years as they are exempted from the law.
- The success of the RTE is quite often compared to the previous schemes such as Sarva Shiksha Abhiyan. It is also challenged on the grounds that the provisions and schemes under this Act provide space for corruption and inefficiency.
- The law also did not take into consideration the exceptional conditions of orphans as to be a beneficiary one must present many documents such as birth certificates, and BPL certificates at the time of admission.
- Implementation in private schools was another hurdle as these institutions are the preferred choice of education and seats under RTE are limited. So, the much needy people who are economically backward face challenge to provide their children quality education.

VII. Suggestions

For proper implementation and effective application of schemes and policies the following suggestions need to be adopted.

- The scope of the legislation should be increased from the set age group of 6 to 14 years as education begins way before and ends long after just primary education. It should be extended to secondary education and vocational courses as professionally primary education is not sufficient and this kind of literacy will not contribute to the human capital formation of the country.
- Stakeholders are role model for implementation of this scheme. State

and central governments, parents, teachers, administrators, school owners must be severely punished for negligence of the law.

- Contribution and coordination from both central and state and local authorities is important. Steps must be taken to ensure that the record of a newborn baby is sent to the neighborhood school and from there the school authorities will take up the task of enrolling as time comes.
- Parents have the key role in the education of a child and hence they must be made aware about RTE as well as the importance of education. They should also be counselled for the education of girl child as their enrollment is equally important in the society.
- Moreover, there is a biased preference of private schools over government or aided schools due to quality of education. All the government employees; whether working under state or center or person working under center or state-funded agency, must mandatorily send their children in these institutes for their promotion.

VIII. Conclusion

It is commendable that the parliament of India through an 86th constitutional amendment made the right to education as a fundamental right under Article 21-A. The RTE Act has caused increase in enrolment in the upper primary level (Class 6-8). Nationally, between 2009 – 2016, the number of students in the upper primary level increased by 19.4 percent. In rural India, only 3.3 percent of children in the 6-14 years of age were out of school in 2016.⁴⁵ However, shortage of teachers, alarming pupil-teacher ratio, other official duties assigned to teachers, business in training programs, duties in block level office, making Aadhar cards and voter ID Cards etc, no training of regular teachers in education of children with disabilities and non-

⁴⁵ Sanchayan Bhattacharjee, Ten Years of RTE Act: Revisiting Achievements and Examining Gaps, https://www.orfonline.org/wp-content/uploads/2019/08/ORF_IssueBrief_304_RTE-Act.pdf.

availability of special teacher support on daily basis still remain the main concern in the implementation of RTE. In spite of its lacunae, the RTE Act remains one of the most important reforms in India's school education.

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