



RIGHT TO EDUCATION

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“THE QUALITY OF EDUCATION DETERMINES THE QUALITY OF LIFE IN NATION “

The education is the most important technology for the advancement of the human being. It improves the individual identity for the future. Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. It plays a very vital role in each of the life. It is considered that man without education is no more than the animal. The education emancipates the human being. If we look at the reasons responsible for demarcating the boundaries between developed and under-developed nations, education emerges as the single most vital factor spinning the wheel of progress in the developed nations. It has been established that an educated citizen not only improve the economic and social status of the nation but political scenario also. it is the process of continuous development of the individual. the term education has been explained very nicely in the case *BROWN V. BOARD OF EDUCATION* ¹ “It is the foundation of good citizenship”.

In earlier time the people of country are very backward. as they were not able to understand what is good for them. The term backward means that lack of adequate opportunity to individual or group of people especially in economic life and in matters of

health, housing and education. It is measured in terms of low level of income, no proper living standard. To overcome with all this problem the government of India has inserted Article 21-A in the India constitution provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law. the education is basically the human right. This right should be provided to every citizenship as there should be no discrimination it should be legally provided to all. The individual should know about their right so that if there is any violation they can raise their voice.

Indian civilization recognises education as one of the pious obligation of the human society . To establish and administer educational institution is considered a religious and charitable object . education in India has never been a commodity for sale . Looking at the economic condition , even after six decade of achieving of achieving independence , thirty percent of population is living below the poverty line and the bulk of the remaining population is struggling for existence under poverty conditions. The fundamental right cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity ²

Free and compulsory education to all children of the age of six to fourteen years has to be provided by the state so that the right to education included in art .21(A) could become a reality . The right

¹347 U.S. 483 (1954)

² Miss Mohini Jain v. State of Karnataka and others AIR 1993 SC 2178



determined in light of Art 41, 45, 46 also means free education up to 14 years of age to every child³. After 14 years of age limits of economic capacity of state circumscribe the right. The citizens have a fundamental right to education.

The right to education further means that a citizen has a right to call upon the state to provide educational facilities to him economic within the limit of its economic capacity and development. The state has a duty to impart education and particularly the primary education. A three judge bench of supreme court held that Art -21A would cover primary as well as secondary education and the petitioner could claim benefit of art III OF THE constitution.

The right to education further means that a citizen has a right to call upon the state to provide educational facilities to him within the limits of its economic capacity and development. The state has a duty to impart education and particularly education having regard to the fact that the same is the fundamental right within the meaning of art 21 A as the govt. has neither resources nor ability to provide for the same, it appears that the legislature has permitted the societies to institute educational. The education under the India constitution comes under the concurrent list, both center and state can legislate on the issue. Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been

admitted by his or her parents to a school which is not supported by the appropriate Government, 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.

History of the act

Article 21A of the Constitution - Constitution (Eighty - Sixth Amendment) Act, 2002.

December 2002

86th Amendment Act (2002) via Article 21A (Part III) seeks to make free and compulsory education a Fundamental Right for all children in the age group 6-14 years.

June 2005

The CABE (Central Advisory Board of Education) committee drafted the 'Right to Education' Bill and submitted to the Ministry of HRD. MHRD sent it to NAC where Mrs. Sonia Gandhi is the Chairperson. NAC sent the Bill to PM for his observation.

14th July 2006

The finance committee and planning commission rejected the Bill citing the lack of funds and a Model bill was sent to states for making the necessary arrangements. (Post-86th amendment, States had already cited lack of funds at the State level). Right of Children to Free and Compulsory Education Bill, 2008, passed in both Houses of Parliament in 2009. The law received President's assent in August 2009. Article 21-A and the RTE Act come into effect. In 2009, the Right of Children to Free and Compulsory Education (RTE) Act was

³ Unni krishan , J.P and others v. State of A.P and others , AIR 1993 SC 2178



passed as enabling legislation to implement the recently added fundamental right. Both the constitutional amendment and the Act came into force on April 1, 2010. The Act requires that every child between the ages of six and fourteen years, including disadvantaged and low-income children, “have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. The Act also has provisions for non admitted children to be admitted to an age-appropriate class, and “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. Moreover, under section 12(c) of the Act unaided private schools are required to reserve 25% of their seats for children belonging to scheduled castes, scheduled tribes, and low-income or other disadvantaged or weaker groups (and provide free and compulsory elementary education for them).

Cause and background of RTE Act 2009

over past few years, opinion or approach to education underwent change because of Universal Declaration of Human Rights. It announces ‘Everyone has right to education’, wherein elementary and fundamental education shall be ‘free’ and compulsory’. World Conference on Education for all implemented ‘Every person – child, youth and adult – shall be able to profit from educational opportunity designed to meet their basic learning needs’. Twin notion of ‘elementary and fundamental education’ are surpassed by notion of ‘basic education’. At the same time a swing in

emphasis from ‘education’ to ‘learning’ exemplifies people vis-à-vis society demands education to be ‘free’ and ‘compulsory’ (‘educational opportunity to meet basic learning needs of people’). At a widely held discourse, learning begins at birth. Early childhood care and initial education are conveyed through involvement of community, family or institutional programme. Commencement of basic education of children outside family usually starts with primary school. Therefore a primary education must be universal and fundamental safeguarding basic learning is essential for children and further taking into account socio-cultural specificity of community. Likewise supplementary substitute programme may help children, who have restricted or no access to formal schooling to meet their basic learning need; provided they share parallel learning process applied to a school that is adequately supported.

On conflicting basic learning needs of youth and adult are diverse and may be met through a diversity of delivery system. Literacy programmes are crucial because literacy is a essential skill in itself and foundation of other life skills. Literacy in mother-tongue supports identity and legacy of community and its people. Other needs of learning and education may be helped by skill drill, apprenticeship, formal and non-formal education programmes in health, nutrition, population, agricultural technique, environment, science, technology, family life including productiveness awareness and other societal issues. Accordingly accessible instrument and channel of information, communication and social action could be used to help transfer indispensable



knowledge to educate people on social issues. In addition to traditional methods, library, television, radio and other audio-visual methods can be organised to meet their simple educational need of people. All these components should constitute an combined system – complementary, mutually reinforcing and of comparable standard, and they should donate to creating and developing possibility for lifelong learning¹

World Declaration on Education for All, Article 5, New York, Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for World Conference on Education for All, 1990}. Scope of ‘basic education’ has been extensively understood across community and society to comprise, among other things, ‘early childhood care and initial education’, i.e. activity intended to meet ‘basic learning need’ of children before they reach school-going age. In this context prevalent concern exists among nations across globes to remove mock barrier within basic education, particularly for addition of children with special educational need in consistent schools

This act provides the free and compulsory education. The term compulsory education means that it is an obligation of the appropriate government to provide the free elementary education. According to Article 51 K of the Indian constitution it say’s that it the fundamental duty of the parents to provide free and compulsory education to the children between the age of six to fourteen years . There are many leading cases related to the right to education *Mohini Jain v. State of Karnataka*, a 1989

Supreme Court of India case, occurred when the [Government of Karnataka](#) issued a notification that permitted the private medical colleges in the State of [Karnataka](#) to charge exorbitant [tuition fees](#) from the students admitted other than the ‘Government seat quota’. Miss Mohini Jain, a medical aspirant student filed a petition in Supreme Court challenging this notification. The [Supreme Court of India](#) observed that mention of ‘life and personal liberty’ in Article 21 of the Constitution^[1] automatically implies some other rights, those are necessary for the full development of the personality, though they are not enumerated in Part III of the Constitution. [Education](#) is one such factor responsible for overall development of an individual and therefore, right to education is integrated in Article 21 of the Constitution.

A landmark 2012 decision by the Supreme Court of India upheld the constitutionality of the Act, including section 12(c), but held that the RTE Act could not require private, minority schools to fulfill the 25% quota, as this would violate the right of minority groups to establish private schools under article 30 of the Indian Constitution. In defining the scope of article 21-A the Court held that it provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. Thus, under the said Article, the obligation is on the State to provide free and compulsory education to all children of specified age. However, under the said Article, the manner in which the said obligation will be discharged by the State has been left to the State to determine by



law. Thus, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government aided schools or through unaided private schools. The Court also held that unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent/guardian of every child. According to Article 51 K of the Indian constitution it says that it is the fundamental duty of the parents to provide free and compulsory education to the children between the age of six to fourteen years]. The Constitution directs both burdens to achieve one end: the compulsory education of children free from the barriers of cost, parental obstruction or State inaction.

In Mohini Jain's case, this Court had held, inter alia; that every citizen has a right to education under the Constitution; the State was under an obligation to establish educational institutions to enable the citizens to enjoy the said right; the State may discharge its obligation through State owned or State-recognised educational institutions; that when the State Government granted recognition to the private educational institutions, it created an agency to fulfil its obligation under the Constitution, that charging capitation fee in consideration of admission to educational institutions, was a patent denial of a citizen's right to education under the Constitution and that the State action in permitting capitation fee to be charged by State-recognised educational institutions was wholly arbitrary and, as such, violative of Article 14 of the Constitution; that the capitation fee brought to the fore a clear class bias; and that when

the State Government permitted a private medical college to be set up and recognised its curriculum and degrees, then the said college was performing a function which under the Constitution had been assigned to the State Government and If the State permitted such institution to charge higher fee from the students, such a fee was not tuition fee, but in fact a capitation fee. The aforesaid decision was followed by the Full Bench of the A.P. High Court in **Kranti Parishad v. N.J. Reddy**, [1992] 43 ALT " while allowing the writ petitions filed before it challenging the permission granted by the State Government for the establishment of private medical and Dental Colleges in the State and also the constitutional validity of section 3-A of the Andhra Pradesh Educational Institution (Prohibition of Capitation Fee) Act, 1983. The respondents before the High Court, including the State, filed Special Leave Petitions against the High Court's judgment Besides several writ petitions questioning the correctness of the decision of this Court in Mohini Jain's case also were filed.

In **Bandhua Mukti Morcha v. Union of India**⁵, the Supreme Court held that while exploitation of the child must be gradually banned; other substitutes to the child should be developed including providing education, health care, nutrient food, shelter and other means of livelihood with self respect and dignity of person. The question of right to free and compulsory education was elevated in the case of Mohini Jain⁸, in 1992, popularly known as "capitation fee case". The division bench of

⁴[1992]

⁵ (1997) 10 SCC 549



the Supreme Court held that the 'right to life' is the compendious phrase for all those rights which the Courts must implement as they are indispensable to the dignified enjoyment of life. Court stated: "The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual are not being assured unless it is accompanied by the right to education. The state is under an obligation to make endeavour to provide educational facilities at all levels to its citizens". **T.M.A Pai Foundation v. State of Karnataka** ⁶ held that the state governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state governments and universities can identify educational qualifications for students and make rules and regulations to maintain academic principles. In the case of *Avinash Mehrotra v. Union of India and Others* ⁷, is whether right to education comprises right to study in quality school which does not pose threat to child safety? The court held that Articles 21 and 21-A of the Constitution obliges that India's school children obtain education in safe schools. The court had again stepped into the shoes of legislature by giving the aforementioned directions. The right to education has to move towards growth as merely primary education is made compulsory and free, the secondary education and other higher levels still lag behind. The problem of drop outs even at primary level needs to be solved. It could be considered that the court will always remain the guarantor of fundamental rights such as

right to education and will direct the legislature and the executive when such questions are brought before it.

67 years of independence, the private schools have filled in a gap of merely a little over 10 per cent, so far as the overall number of primary schools are concerned, there can be no guarantee that they will be able to contribute considerably to providing free and compulsory education to children in the age-group 6-14 and to universalising secondary education. At the current rate of their contribution, and if the state does not step in to shelter the gap, we may have to wait till the end of the era for universalising school education in India and even then it may not come about. It may take even longer to universalise secondary education, because the number of supplementary schools to be built and additional teachers to be recruited at this level, is colossal. Besides, school education is a common good the provision of which is the accountability of the state. The provision of free and compulsory education is now a fundamental right accessible to children in the 6-14 age-group. It is obligatory upon the state to ensure this right with instant effect. It is legally and morally indefensible for it to make the fulfilment of this right conditional upon the contribution of the private sector.

DRAWBACK OF THE ACT

his is the biggest drawback which RTE act is facing that it provide free and compulsory education only for students who falls in the category of class I to class VII, what about the students who wishes to appear for higher education. Let's forget about higher education, a child who cannot afford to educate himself he'll be struck till 8th standard and we fail to understand what

⁶ (AIR2003SC355). (1992)1 SCC 558.

⁷ April 13,2009



good he'll be able to do for himself in that case. Also it is an established fact that a child learns more frequently when he is young that is from 3-4 years of age, now if RTE does not extend its boundaries to pre-primary level which is nursery (LKG, UKG) then there is a serious problem in this act .

CONCLUSION

Therefore, in the concluding remarks it is expected that that mere passing an act is not sufficient. The need of the hour is to keep a proper check on the functioning of the act . The constant monitoring and strong political will is a must to make it effective.

As per the UNESCO's „Education for All Global Monitoring Report 2010“, about 135 countries have constitutional provisions for free and non-discriminatory education for all. The much awaited Right to Education (RTE) Act which has been passed by the parliament of India should play a significant role in attaining universal elementary education in India. The victory and defeat of RTE would largely depend on consistent political care. Financial allocation of funds should be adequate in this respect. The youth in India should come forward and spread the utility of education to illiterate parents who are unable to appreciate the significance of education in limiting the social evils. Social differences and monopolization by any group should not be accepted at any cost. Education which is free of cost up to a certain age must be accessible to each and every one. Right to education for all and free education for certain age group of people is a brilliant policy by the government and we appreciate that, as key to a developed nation is that its citizens are literate enough to earn their

bread and to contribute in the economy. Every coin has two faces
Similarly RTE faces both criticism and appreciation at the same time, The right to education is a fundamental right and UNESCO purposes education for all by 2015. India along with other countries of the world should also put genuine and honest efforts to make this goal a real achievement.

