



A CHILD'S RIGHT TO EDUCATION: LAWS AND FLAWS

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Introduction

Food, shelter and clothes are the basic requirement of all human beings. This has been admitted and well accepted phenomenon since the evolution of human civilization. As we have passed through various phases of evolution and landed in today's era. Gradually, Education has become another important and most valuable basic requirement of human life. A critical examination of the concept of education will definitely prove that without education the evolution development in today's era would not have been possible. It is undoubted fact that the education (practical, theoretical or any other form) has been the sole basis of growth of human civilization. On the other hand, at this point of time the human beings existence without education cannot be imagined. The life of a human being is considered to be merely an animal existence if good quality food, shelter and clothes aren't provided to them, in the same manner denial of good quality education is also considered to be merely an animal existence for a human being.

Considering the importance of education, Various laws have been formulated to ensure proper education to citizens of our country. Since the inception of Constitution of India, Under the Directive Principles of

State Policy, in Article 45 the provisions for free and compulsory education has been enumerated likewise various other state legislations are /were to ensure proper education to the fellow citizens. But, in order to achieve the sole purpose of making the society educated and impart proper education and to ensure that no person should be deprived of proper education. In the year 2002, the Indian parliament amended the constitution and inserted Right to education as a fundamental right. Accordingly, A statute titled "Right of children to free and compulsory Education Act" was enacted in the year 2009. Rules have been framed by the State governments for smooth implementation of the Act for ensuring a developed environment in future.

The Right of Children to free and Compulsory Education Act, 2009

The Right of children to free and compulsory Education Act, (herein after referred as RTE Act) had received the assent of the president on 26th August, 2009. This Act has been enacted to provide free and compulsory education to all children from the age of 6 to 14 years. The said act focuses not only in quality education but also proper eliminatory education. Further, the act also focuses on the difficulties faced by the disadvantaged sections of the society. As a result of which, several children have been dropping out of the school. Therefore, some other important aspect of the RTE Act is to provide equal opportunity of education to all irrespective of class, religion, race, sex etc. When we talk about equal opportunity then a very popular scheme of Government of India comes to mind i.e. "Sarva Shikshya Abhiyaan" (herein after referred as SSA).



Sarva Shiksha Abhiyaan Under HRD ministry Government of India¹

The Sarva Shiksha Abhiyaan or SSA has been operational since 2000-2001 to provide for a variety of interventions for universal access and retention, bridging of gender and social category gaps in elementary education and improving the quality of learning. SSA interventions include inter alia, opening of new schools and alternate schooling facilities, construction of schools and additional classrooms. Toilets and drinking water, provisioning for teachers, regular teacher in service training and academic resource support, free textbooks and uniforms and support for improving learning achievements levels outcome. With the passage of the RTE Act, changes have been incorporated into the SSA approach, strategies and norms. The changes encompass the vision and approach to elementary education, guided by the following principles :

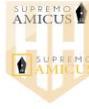
Holistic view of education, as interpreted in the National Curriculum Framework in 2005, with implications for a systemic revamp of the entire content and process of education with significant implications for curriculum, teacher education, educational planning and management. Equity, to mean not only equal opportunity, but also creation of conditions in which the disadvantaged sections of the society – children of SC, ST, Muslim minority, landless agricultural workers and children with special needs, etc can avail of the opportunity.

Access, not to be confined to ensuring that a school becomes accessible to all children within specified distance but implies an understanding of the educational needs and

predicament of the traditionally excluded categories – the SC, ST and other sections of the most disadvantaged groups, the Muslim minority, girls in general and children with special needs. Gender concern, implying not only an effort to enable girls to keep pace with boys but to view education in the perspective spelt out in National Policy on Education 1986/92; i.e. a decisive intervention to bring about a basic change in the status of women. Centrality of teacher, to motivate them to innovate and create a culture in the classroom, and beyond the classroom, that might produce an inclusive environment for children, especially for girls from oppressed and marginalized backgrounds.

Moral compulsion is imposed through the RTE Act on parents, teachers, educational administrators and other stakeholders, rather than shifting emphasis on punitive processes. Convergent and integrated system of educational management is pre-requisite for implementation of the RTE law. All states must move in that direction as speedily as feasible.

Even though, the Right to education has become a fundamental right in the year 2002. Much before that, Our Government had started the above programme i.e. SSA with a view to achieve freedom from illiteracy. In that process, Government (including various state governments) have implemented various programmes in order to attract the poor and disadvantaged sections of the society. From among such programmes, "Mid-day Meal", Supply of clothes, books etc. play a major role in encouraging the children towards education and in the process of achieving the



legislative intent of the RTE Act. However, the Act, along with equal opportunity for education focuses on eradication of barriers in the way of education which is of equal importance. Whereas, various barriers in the path of providing education varies from time to time and area to area. In rural areas, there might be different difficulties and the situation might not be the same as that of the urban areas. Due to the difficulties or the barriers proper environment has not been created and the rate of drop outs is increasing day by day. Thus, broadly the right to education act provides or takes care of few important aspects :-

- (i) Equal opportunity for Education
- (ii) Eradicating the barriers in the path of education
- (iii) Reduction of the rate of Drop outs.

According to a paper published, about drop - out in secondary education¹, the various causes and its effect with regard to drop out are purely socio-economic, some are individual reasons and some are very practical. As per as socio-economic reasons are concerned, early marriage, lack of awareness, lack of exposure, very less *per capita* income, poor financial conditions are generally found to be the major reasons for the dropouts. So far as individual reasons are concerned poor health, poor performance, safety and security are certain difficulties which not only creates barrier but also becomes a burden for an individual to go for proper education. Coming down to practical reasons, the distance of schools, infrastructure issues, attitude of teachers etc. discourages the implementation of the RTE Act. An Article published in "THE HINDU" newspaper in the year 2016¹, has provided a data obtained from ministry of Human

Resource & Development which states that the national drop-out rate at the primary level was 4.34% in the year 2014-2015 and in case of secondary level the percentage of drop outs are more than 17.36%. Further, the Article reveals that the problem of child labour can never be over ruled.

CRITICAL ANALYSIS OF THE RTE ACT

Admittedly, the RTE act is an welfare statute and has been enacted with an holistic aim but the same is also not free from practical difficulties as far as implementation is concerned. It is quite surprising that many states have not yet framed the rules so as to implement the RTE Act. Further, Section 4 of the Act provides special provision for children not admitted or who have not completed elementary education.

Special provisions for children not admitted to, or who have not completed, elementary education -

"Where 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, 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 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."



However, there is no such provision to provide the elementary education to children as mentioned in the above section. On the Other hand, there is nowhere mentioned about any specific device or system which will take the responsibility of facilitating the admission process of those students /children who could not complete their elementary education. Moreover, Admission in a class appropriate to the age of the concerned child is not justifiable it is because if a child who have not completed the elementary education and have attended an age of 12 years then admitting a child in the higher class is a frustrating act for him/her. Subsequently, as far as the special training to be provided to such children is concerned there needs to be an institutional approach and a specific system of implementation is to be developed. Further, Section 11 of the Act enumerates or empowers appropriate government to provide pre – school education.

Appropriate Government to provide for pre-school education –

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.

Pre-school education is important in order to encourage the children as well as parents towards education. But, unfortunately, In Government level there has been no such action taken for ensuring pre-school education in order to strengthen the foundation of free and compulsory education. For an example, In the State of

Odisha the pre- school education is been imparted in a specific category of centre called “Aanganwadi Centre”. But, the Aangwadi workers and the centre has been facing lot of practical difficulties with regard to pre-school education. The persons engaged in such pre-school education and activities are not provided with the basic requirements such as proper remuneration, job security, proper status in the service as a result of which they are not encouraged to take up or perform the responsibility for imparting proper pre-school education.

Section 13 of the Act provides :

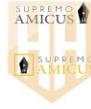
No capitation fee and screening procedure for admission :-

“No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardians to any screening procedure. Any school or person, if in contravention of the provisions of sub-section (1):

1. Who receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

2. Subjects a child to screening procedure shall be punishable with fine which may extend to Rs 25,000 for the first contravention and Rs 50,000 for each subsequent contravention.”

As per the above provision the school will not take any capitation fees and the school will be prohibited from conducting any kind of screening process in the event of admitting children into the schools. Therefore, there arises very practical difficulty with respect to imparting quality education. When the government is not adequate to provide necessary funds, then



schools generate funds from the students and try to impart quality education by providing good environment to the students. But, strict implementation of such provision makes it difficult for the management of the schools for imparting the quality education. Accordingly, Screening, Interview, entrance test is concerned in my humble opinion it is required, atleast for schools which are known for their rich culture, good reputation and excellent result. If the entrance procedure is stopped then admission of good and meritorious student will be restricted. Then, there will not be healthy competition between the students. As a result of which, not only the healthy competition between the students is restricted but quality education is also affected. In this process the competitive spirit is lost somewhere. In my personal opinion, mere education is not sufficient but quality education and development through healthy competition is much more important. Practically, I have seen that some schools which have been established ages before and have been very well known for producing meritorious students, they are unable to take good or atleast average students with minimum basic knowledge as a result of which the good will of such schools are going down and meritorious students are losing interest in prosecuting their studies in such schools. For an instance, Ravenshaw collegiate school which was established in the year 1851 by T.E. Ravenshaw, in the city of Cuttack, Odisha has got a very rich heritage and exceptional good will in terms of results. It has produced great sons of the soil like Netaji Subhash Chandra Bose, Madhusudhan Das, Kartar Singh, Biju pattnaik etc. Since long this school has been securing 100% result along with top rank

holders in the state level board examination. But, after implementation of the above provision of no screening/no entrance the school authorities are unable to take good students thus, the teachers are facing difficulties in maintaining proper environment for the studies and good students are getting discouraged resulting in poor performance in state and national level. Furthermore, the guardians are also discouraged because like previous year they are unable to encourage their students to take admission in such schools which was an honor by itself. Therefore, entrance test should be allowed to certain extent. Further more, this provision can be properly successfully implemented only when pre-school education is extended with 100% success rate.

Prohibition of physical punishment

Section 17 provides that, **Prohibition for physical punishment and mental harassment has been incorporated :**

The research has revealed that the above provision has been misutilised and abused by the students and parents as because when the teacher tries to become a bit strict for the development of the student and takes the liberty of punishing the student for his benefit then also, this becomes an offence for which the teachers are refraining themselves from taking extra effort for quality education. Many educationalist, have opined that modern technology which are cordial and friendly should be adopted for imparting education but the appropriate governments have not devised proper training programmes for the teachers.

Another, important provision which needs to be looked into and worked upon i.e. School



management under Section 21 of the RTE Act :

School Management Committee: (1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers: Provided that at least three-fourth of members of such Committee shall be parents or guardians: Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section: Provided also that fifty per cent. of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:-- (a) monitor the working of the school;

(b) prepare and recommend school development plan;

(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and
(d) perform such other functions as may be prescribed.

[Provided that the School Management Committee constituted under sub-section (1) in respect of,-- (a) a school established and administered by minority whether based on religion or language; and (b) all other aided schools as defined in sub-section (ii) of clause (n) of section 2, shall perform advisory function only.]

As far as this provision is concerned, the school management committee has got an important role to play in development of Environment for quality education and for

monitoring the working of educational institution. But, most of the time the interference of the school management committee is so high that kills the essence of quality education and smooth management of the schools. The most vital aspect which needs to be implemented in order to achieve the sole purpose of the Act is school's responsibility in extending at least 25% of the strength of a particular class as reserved for children belonging to weaker section and disadvantaged group in neighbourhood and provide free and compulsory elementary education till its completion but we are yet to achieve success in identifying weaker and disadvantaged group in the neighbourhood of a school, and the proper procedure for extension of such benefits to the beneficiary is yet to be developed.

An enactment is always done on the basis of socio-economic and educational scenario of the contemporary society in the relevant time but that needs to be modified in course of time as per the requirement. Thus, Many supreme court judgments on various contexts have quoted *Bhagvad Gita* :

यदा यदा हि धर्मस्य
व्यवहाराः क्षयान्ति तदा
अधि-उत्थानम् अधर्मस्य
तदा आत्मानं सृजामि अहम् ।

परित्राणाय साधूनां
विनाशाय च दुष्-कृताम्,
धर्म-संस्थापन-अर्थाय
सम्भवामि युगे युगे ।



Figure 1. *Shrimad Bhagvat Gita*¹
For doing so, the role of executive, judiciary and legislatures are very much essentials and all these three wings should work in proper coordination. When the Right to Education have been made as a fundamental right the role of judiciary becomes very crucial so far as protection for the same is concerned.

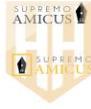
The judiciary is expected to play a significant role in enforcing the RTE Act. Courts have been acting and have to continue to act as first port of call in the absence of proper statutory bodies and grievance redressal mechanisms. However, it is imperative that judicial efforts be supplemented by building awareness and strengthening grievance redressal mechanisms under the RTE Act. This will lead to saving of litigation costs as well as remove the barriers to secure rights for parents and their children. Side by side, strategic litigation across High Courts should also be explored, for pushing implementation of the RTE Act by state governments. In a PIL filed in 2014 by National Coalition for Education in SC, it pointed out that at least 3.77 crores children between the age of 6 to 14 years were not in schools. It also highlighted sluggish implementation of the RTE Act, leading the Apex Court to direct all states and union territories to respond to these issues. Thus, more such efforts by civil society organizations will be useful in getting targeted judicial orders for the effective implementation of the Act. RTE is here to stay as its focus on educating all children is core objective of a developing India. Now the executive has to strengthen education

delivery mechanisms and summon necessary political will to implement Act. Simultaneously, judiciary will continue hold government accountable and ensure the Act's enforcement.

Right to Education Act It's been eight years since the Right to Education Act, 2009, came into force. The RTE Act has been touted to be a landmark legislation that seeks to realize the fundamental right to education for all children in the age group of 6-14 years. Yet it is being perceived as an ill-drafted and poorly implemented legislation. Many schools in country still suffer from lack of adequate drinking water facilities, playgrounds or the necessary infrastructure prescribed by the Act. There still exists cases of corporal punishment which has been banned by RTE. The learning outcomes which are the indicators of quality of classroom instruction have been found to be badly low. Thus, it shows that bureaucratic apathy and weak institutional mechanisms are some factors that have contributed to poor and less significant implementation of the Act.

However, there is relatively unexamined indicator of how the law has worked is its contestation in courts.

As discussed above, the judiciary alone cannot protect the rights of the citizens if proper awareness and information is not circulated among the members of the society. There, the role of media and social organizations becomes very crucial. Hence, All the responsible pillars of our society should come forward and join hands for achieving the greater goal with regard to Right to Education.



Conclusion

Education is the best tool or weapon to wipe out all the difficulties from personal and social life. Without education, growth of individual and society as a whole is next to impossible. Understanding the above idea laws have been formulated and various steps have been taken by the Government and various other agencies to ensure proper education to each and every individual as a matter of right. But, the concept of education should not be confined only to theoretical or conventional educational system rather vocational, artistic and creative areas are to be included within the scope and ambit of Right to education. The statutes including constitution needs to be amended as to inclusion of vocational, artistic and creative trainings in right to education.

On the other hand, the existing provisions of law needs to be extended with a practical, and holistic approach in order to make it convenient for implementation of the laws without any practical hindrances. It is high time to develop a system of strong monitoring unit either by way of enactments and by way of awareness. If there would be institutional approach to implementation of the existing laws then also a drastic change in a positive direction can be seen. Lastly, without disputing the existing provision of law or the prevailing practice in implementation of laws. I suggest for creating awareness with regard to implementation of the said Act.

