



## RIGHT TO EDUCATION: A CRITICAL ANALYSIS

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### Abstract:

Education plays a vital role in shaping a society into civilized nation. It boosts up the progress of a nation in every sphere of activities. It operates as a 'catalyst' for entitlement of all individual rights and freedom. It incorporates all civil political, social, economic and cultural rights. Primary education for kids is maybe the foremost important constituent of life because human life cycle requires that the fundamental competencies and life skills be acquired at an early age. the right to education is recognized as somebody's right by the UN and is known to determine an entitlement to free, compulsory primary education for all children, an obligation to develop educational activity accessible to all or any children, furthermore as equitable access to education, and a responsibility to produce basic education for people who don't have primary education. Additionally to those accesses to education provisions, the right to education encompasses also the requirement to eliminate discrimination at all levels of the academic systems, to set minimum standards and to enhance quality. Although, the Constitution of India and Supreme Court have declared that the right to education is now a fundamental right, but it's disregarded countless children who are within the age bracket of 0-5 years. it's needed that the Constitution should again be amended and

therefore the children of group of 0 -5 years should be included; as by the time the kid reaches the age of 6 years he/she driven in to the practice of child labour thanks to poverty. Moreover the Constitution only ensures that the state shall provide primary education to to child up to the age of 14 years, and also the secondary and higher education are kept contingent and conditional upon the economic capacity of the state. the right to education are going to be meaningful, providing all the degree education reaches to all or any the sections of the people otherwise it'll fail to realize the target set out by our founding fathers to form Indian society. This project is aimed to give for a critical view of the steps taken towards the enforcement of this right.

Key words: right to education, fundamental rights, right to education act 2005, Right Of Children To Free And Compulsory Education Act, 2009, new education policy,2020.

### Introduction

Education plays a vital role in shaping a society into civilized nation. It boosts up the progress of a nation in every sphere of activities. It operates as a 'multiplier' by strengthening the all individual rights and freedom. It incorporates civil political, social, economic and cultural rights. It's the duty of the State to take all endeavours, to coach every section of the society who needs a hand in marching ahead to a stronger future together with others.<sup>1</sup> Although we've a lot of such provisions and policies on right to Education, still we've not achieve this right as developmental right. Since independence, the target has not yet been achieved as reflected

<sup>1</sup> Per Quadri, J. T.M.A.Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481 as a referred in

P.A.Inamdar Vs. State of Maharashtra, (2005) 6 SCC 537 p.588 para 85.



within the educational backwardness and poverty especially among certain groups of the society who have faced social discrimination.

According to the sociological perspective<sup>2</sup>, education doesn't arise in response to the individual needs, but it arises out of the requirements of the society. The academic system relates to the whole system of any society. In an exceedingly changing society the academic system must not only transmit the cultural heritage, but also aid in preparing the young for adjustment to any changes in them that may have occurred or may occur in future. In reaction to changes in social structure educational system should change. Otherwise a niche is made between the goals and demands of the society and also the goals and demands of the educational system. A number of such gaps are seen within the Indian educational system after independence which have in many ways performed a dysfunctional role in Indian society.

The right to education is recognized as an individual's right by the United Nations and is known to determine an entitlement to free, compulsory primary education for all children, an obligation to develop secondary education accessible to all or any children, moreover as equitable access to education, and a responsibility to supply basic education for people who don't have primary education. Additionally to those accesses to education provisions, the right to education encompasses also the duty to eliminate discrimination the least bit levels of the educational systems, to line minimum standards and to boost quality.

<sup>2</sup> <http://www.countercurrents.org/sharma270709.htm> visited on 25/5/2020.

Right to Education and the Constitution of India.

The journey give free and compulsory education for youngsters has not been a simple journey. Initially, the Constituent Assembly didn't make education a fundamental right, it provided free and compulsory education as Directive Principles of State Policy which are although not enforceable by the court of law but are made fundamental within the governance of country and it's been made a obligation of the State to pertain these principles in making laws. In original Constitution, education was confined to Part IV of the Constitution. Article 41 of the Indian Constitution provides that the State shall within the bounds of its economic capacity and development; make effective provisions for securing right to work, and also the right to education<sup>3</sup>. From the very inception the Indian Constitution had Article 45 as a directive principle that promised free and compulsory education to all or any children till they reach an age of 14 years. The state was held responsible to implement the promise made by the constitution free and compulsory education which wasn't done. The drafters of the Constitution within the Constituent Assembly had debated over the difficulty of right to free and compulsory education over an extended period of time. Finally, in 1947, the Ways And Means Committee was founded to deliver for the means to attain education within ten years at lower costs. The committee placed Right to education under Fundamental Rights, under Clause – 23. However, in 1947 the Advisory committee of the Constituent Assembly rejected the concept of introducing free and compulsory

<sup>3</sup> Constitutional Assembly Debates, (Vol. II) (1948-49)



as a Fundamental Right. one among the key reasons for doing so was cost.

In 1950 finally, Article 45 of the Directive Principles of State Policy gave the way for introducing Free and Compulsory education to children until they attain the age of fourteen. This was then updated with introducing right to free and compulsory education under Article 21- A, which provides that the state will provide free and compulsory education, children of the age of 6 to 14 years. This Art was introduced after 60 years of Indian Independence.

In 1990, after the enforcement of the Constitution for the primary time recommendation was made for introducing Right to Education as a Fundamental Right by Acharya Ramamurti Committee. This had led to several political changes which actually influenced right to Education. the advice was made by the committee though it had not been implanted or put in action immediately.

The Supreme Court in 1992 through the Judgment of Mohini Jain Vs. State of Karnataka<sup>4</sup> had held that Right to Education is related to the basic Rights of each citizen. It's an expression for all other rights which must be enforced through courts as they're there basic right for a dignified life. This judgment was further analyzed by the Supreme Court in case of J P Unnikrishnan vs. State of Andhra Pradesh<sup>5</sup>, 1993. it had been held that while Right to Education isn't talked about as a Fundamental Right but there are several other articles that do speak about the same. Articles like 41, 45 and 46 all speak about right to education in some sense or other. Thus, right to education in context as

mentioned under Article 45 and 41 means Firstly every child or citizen of India incorporates a right to free education till he/she attains an age of fourteen years and secondly after a citizen completes the age of 14 years; his right to education depends completely on the financial capacity of the state.

After the Unnikrishnan judgment there have been several Public Interest Litigation petitions that had been filed in various High Courts which actually led to pressure, parliament after which a proposal had been for a constitutional amendment to insert right to education as an element of the basic Right. The constitution through the 83rd Amendment Bill proposed Making Right to Education a component of the basic Rights by introducing Article 21- A and further to get rid of Article 45. This proposal took several years to truly inherit force because the period between 1997 and 2001 there have been change in governments which had several political issues that didn't allow the amendment, into force. The 83rd bill in 2001 was renumbered because the 93rd bill and Article 45 was to be deleted completely from the Constitution. The bill was passed in 2002 because the 86th Amendment Act and at last a Provision free and Compulsory Education was provided as a Fundamental Right. This then led to introducing 'Right of children to Free and Compulsory Education' was drafted in 2005 and have become an Act in 2009, whereas it came into force on 1st April, 2010. Education related rights within the context of minorities and weaker sections of society are part of the Constitution, right from its inception. Our Constitution fathers were sensitive of the academic interests of the weaker sections of the people, and

<sup>4</sup> Mohini Jain Vs. Union of India AIR 1992 SC 1858

<sup>5</sup> (1993) 1 SCC 645



specifically of the Schedule Castes and Schedule Tribes and girls. Hence, various provisions concerning their educational enhancement are being provided within the Constitution. Art. 46 as a Directive Principle of State Policy requires the 'State' to push with special care the academic interests of the weaker sections of the people, who include, particularly, the Scheduled Castes and Scheduled Tribes. Articles 330 and 332 (related to reservation of seats for SCs/STs within the House of the people and also the Legislative Assemblies of the States) Article 335 (claims of SCs/STs to services and posts), Article 338 to 342 (National Commissions for SCs/STs) and entire Fifth and Sixth Schedules of the Constitution cope with special provisions for implementation of the objectives set forth in Article 46.

As far as 'Social equality' is concerned Article 14 of the Constitution guarantees that all citizens shall be equally protected by the laws of the country. Further, Article 15 of the Constitution, states that no person shall be discriminated on the basis of caste, colour, language, place of birth etc. Article 15 of the Constitution, as it was originally framed in 1950 did not include the term "admission to educational institutions." Article 15, was first amended by the Constitution (First Amendment) Act, 1951 enacted on June 18, 1951, as a result of the decision of the Supreme Court in *Champakam Dorairajan Vs. State of Madras*<sup>6</sup>. In that case the Court struck down community-based reservations in the then Madras State in educational Institutions as it violated Article 29(2), a fundamental right which guarantees that no citizen shall be rejected admission in the

educational institution which is maintained by the State or which has been granted aid out of the State funds, on grounds of religion, race, caste, language or any of them. Article 15(4), therefore, was carved out as an exception to both Article 15(1) and 29(2). To Art 15 of the Constitution, the clause (4) was added: "Nothing in this article or in clause (2) of Art 29 shall prevent the State from making any special provision providing for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Schedule Tribes". Amendment talks about "educational advancement" it doesn't use the term "admission to educational institutions." Article 15(3) is suitably amplified by Article 46. The state may make special provision for the advancements of any socially or educationally backward class or scheduled tribes in the matter of admission in the educational institutions maintained by the State or receiving aid from the State or for women under article 15(4)<sup>7</sup>, 15(3). Article 15(4) provides an exception to Article 29(2). Thus, it confers a fundamental right to socially and educationally backward classes to seek better educational opportunities from the state. The object of clause (3) and (4) of Article 15 is to improve the educational opportunities of the neglected segments of society.

Realizing the Government's lethargic attitude and delaying tactics in implementing the Constitutional commitment of education that was basically in the provisions of Directive Principles of State Policy, the Court shows an activist approach, by effective recharacterization of the right to education as

provision for the advancement of any socially and educationally backward classes or citizens or for the scheduled castes and scheduled tribes

<sup>6</sup> AIR 1951 SC 226

<sup>7</sup> Nothing in this Article or in Clause (2) of Article shall prevent the state from making any special



a fundamental right. It was in fact Supreme Court public interest cases that set in train the movement to create an enforceable Constitutional Right to education in India.<sup>8</sup>

The Court's initiative had a huge impact in terms of mobilizing civil society, legitimating demands for a right to education, and unleashing extensive pressures on the government to formally amend the Constitution so as to bring it into line with the Court's approach. The Central government responded to the Apex Court's agenda of re-characterization of the right to education as a fundamental right, by establishing two committees to investigate both the desirability and financial implications of amending the Constitution to establish primary education as a fundamental right. The Saikia committee concluded in 1997 that the Constitution should be amended to create the right to free and compulsory education from six to fourteen years of age, as 'fundamental right' and to impose a 'fundamental duty' on parents to provide opportunities for education to their children in this age group. A second expert committee, the Majumdar Committee concluded in 1999 that the universalisation of elementary education for children aged six to fourteen years would require an additional expenditure of Rs.136,922 Crores over the ten years from 1998-99 to 2007-08 per year. The Govt of India created the Tapas Mujamdar Committee in 1999 to estimate the funds needed to make sure that primary education of eight years is provided to children. The committee estimated that an

additional investment Rs.1,37,600 crores would have to be made over a 10-year period to bring all out-of school children into the school system (not parallel streams) and enable them to complete elementary stage. This works out to an average investment of Rs.14,000 crores a year, which in 1999 amounted to a mere 0.78 percent of the gross domestic product (GDP); in other words 0.78 percent of the gross domestic product (GDP); in other words, 78 paise out of every Rs.100 India then earned. In 2002-03, the same amount works out to a lesser proportion, that is, 0.63 percent of the GDP. However, as per the Financial Memorandum to the Constitution (93rd Amendment Bill), 2001, a sum of about Rs.98,000 crores will be needed over a 10-year period for implementing the fundamental right to education for children in the age group of six to 14 years. It works out Rs.98000 crores a year on an average (0.44 percent of the GDP in 2002-03). About 30 percent less than that estimated by the Tapas Mujamdar Committee, The financial implications of the Constitutional Amend draft Bill, 2001 prepared by Mr.Bomma, Union Education Minister were calculated by the Saikia Committee and estimated as Rs.40,000 cores for a five years period, subsequently, the Tapas Mujamdar committee set up by the MHRD estimated the figure to be about Rs.63,000 crores for the same period of the 83rd Amendment.<sup>9</sup>

Committee's report caused a bill to amend the Constitution. In 2002, the 86th Amendment to the Constitution of India was passed

<sup>8</sup> In 1992 and 1993, the Supreme Court of India decided two PIL cases *Mohini Jain Vs. State of Karnataka*, AIR 1992 SC 1858; *Unni Krishnan J.P. Vs. State of Andhra Pradesh*, AIR 1993 SC 2178. Here, the Court took the opportunity to develop a precedent that governed the public provision of elementary education. Prior to 86th Constitutional

Amendment Act, 2002, the Apex Court treated the Right to Education as a part of the Right to Education as a part of the Right to life and liberty guaranteed under the Article 21 of the Constitution.

<sup>9</sup>

<http://www.educationforallindia.com/anilsadgopalnew.htm>



making education a fundamental right under Article 21-A of the Constitution which state free and compulsory education for all children of age 6-14 years. Article 45 of the Constitution was substituted by providing early childhood care and education for all children until they complete the age of six years<sup>10</sup> and in Article 51-A of the Constitution, a new sub-clause (k) was added, which provides for a fundamental duty of every citizen who is a parent or guardian to provide opportunities for education to children of the age of six and fourteen years . Education in the age group 0-6 is an enormously complicated one, especially in case of disadvantaged groups, who are living below poverty line and are socially, educationally, economically deprived.

On the other hand, this initiative has brought a ray of hope to millions of children in the age of 6 to 14 years, who are either school drop outs or are not enrolled at all. The majority of such children are from Schedule Castes, Schedule Tribes and other Backward Class communities and the fundamental right to free and compulsory education will have paramount importance to them. The controversy in this regard has arisen because Article 45 does not make any mention of age restriction whereas Article 21-A, seeks to restrict the age to 6-14 years. The proposal also includes deletion of Article 45. The Directive Principles were incorporated in the Constitution with the objective to achieve the ideal of a democratic welfare state set out in the preamble.

It is of interest to note here that when the Amendment Act was in the Bill form, the

Report of the National Commission to Review the Working of the Constitution was published and in the Report, the Commission after stressing that the constitutional commitment for free and compulsory education for all the children until the age of fourteen should under no circumstances be diluted and suggested that the responsibility for the universalisation of elementary education should be entrusted to panchayats and local self-help government institutions and recommended for an enlargement of fundamental right to education by an amendment to read as under:

“30-C Every Child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of Schedule Casts and S T, until they complete the age of eighteen years.

Education Responsibility of State and Centre ‘Education’ was a State subject in Entry 11 placed in List II (State List). By the Constitution (42nd Amendment) Act, 1976, the above said Entry was deleted and a new Entry 25 was inserted in List III Concurrent List. Entry 25 incorporates education, including technical education, medical education and universities, subject to the provisions of Entries 63,64,65 and 66 of List I; vocational and technical training of Labour. Swaran Singh Committee (1976) also suggested to enlist education in the Concurrent list and highlighted that education is a subject of prime importance to

<sup>10</sup> Article 45. (As inserted By Constitution (86th Amendment) Act, 2002) Provisions for early childhood care and education to children below the

age of six years. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.



country's rapid progress towards achieving desired socio-economic changes<sup>11</sup>

#### Decentralization of Education

The new third level of Constitutional authority within the shape of the panchayati raj bodies, is virtually created by the Constitution (73rd Amendment) and Constitution (74th Amendment) Acts of 1992. These now enable under Article 243 of the Constitution to impart for bodies similar to the district planning committees and also the metropolitan planning committees to accommodate, besides certain other subjects, the planning and administration of education. Education now thus becomes a Concurrent subject at three levels of democratically elected government the centre, the state and so the districts.<sup>12</sup>

Thus the 73rd and 74th constitutional amendments provide for Decentralizing education at the district level is just one step. These ideas are imagined to be applied essentially of the activities and facilitate transfer of power and participation of the local self-government institutions or the Panchayat Raj Institutions (PRIs). With the enactment of 73rd and 74th Amendment Act (Panchayat Raj Act) 1992, the most focus is now on democratically elected bodies at the district, sub-district, Panchayat and municipal levels. These Panchayat Raj bodies, which are to secure adequate representation of women, Scheduled Castes and Scheduled Tribes, minorities, representatives of parents, educationists, and appropriate institutions, will have the responsibility of preparing development plans and implementing educational programs besides handling those subjects

closely related to education like health, welfare and girls and child development. The Panchayat Raj Act, 1992 envisages the formation of Panchayats for a village or a bunch of villages. These Panchayats will have elected representatives. Each panchayat would constitute a Village Education Committee (VEC) which could be accountable for the administration of education programmes at the village level. the foremost responsibility of the VECs would be operationalisation of micro-level planning and school mapping within the village through systematic house to house surveys and periodic discussions with parents. Ensuring participation in primary education of every child in every family would be one in every of the prime aims of the Village Education Committees (VECs). it's created a friendly ambience for the Panchayat Raj Institutions to play a more dynamic and proactive role. States are purported to evolve institutional arrangements both in rural and city areas for undertaking these activities.

These structures are providing voice to Women, SC and ST, minorities, parents and academic functionaries. they've also, been delegated with responsibilities with reference to location and relocation of existing primary and upper primary schools on the concept of micro planning and school mapping. in relation to this regard, decentralization of school management to grassroots level bodies is serving as a significant policy. Thus, the Constitution of India is that the final word document which guides State policy in all sectors, including Education. At this juncture our Constitution has surplus of provisions for safeguarding the educational

<sup>11</sup>Swaran Singh Committee Report, (1976) SCC (Jour) p.45

<sup>12</sup> <http://el.doccentre.info/eldoc/n00/17oct94tel1.pdf>



interest of the disadvantaged groups. Time to time an assortment of amendments made within the Constitution have given the strength for accessing education to any or all or any.

#### Right to Education (RTE) Bill, 2005

The Bill has the following features to achieve its clear and primary objective that every child between the age of 6 and 14 years has the right to elementary education that is (a) free, (b) compulsory, (c) of equitable quality, (d) confirming and (d) available in the neighbourhood<sup>13</sup>. This education will be available between Grades I to VIII. State shall ensure availability of a school in every child's neighbourhood within three years of the implementation of the Bill. Further, in case of non-availability of schools in nearby area, free transport or free residential facilities shall also be provided. Every School will also have to conform to minimum standards defined in the Bill.

- Government schools shall provide free education to all or any admitted children. The Bill provides for 25% reservation of seats in privately owned schools for kids from weaker sections in neighbourhood.<sup>14</sup> The govt would reimburse the money at government rate towards these seats to the extent of per child expenditure in government schools or the school fee, whichever is lower.
- State schools and fully aided schools shall provide free education to all or any admitted children. Partly aided schools shall provide free education proportionately to at least the

maximum amount of admitted children on the extent the govt. Funds its yearly expenses, subject to a min of 25%. Unaided schools and special category schools shall provide free education to a minimum of 25% of scholars.

- Non-enrolled children within the people of 7-9 years will have the right to admission in an age-appropriate grade within one year of the commencement of the Act. Further the kids of group 9-14 years have the right to special programmes which can enable them to attend such grade within three years.
- All State and aided schools are required to make School Management Committees (SMCs) with a minimum of 75% of the members being parents/guardians, and therefore the other members representing teachers, the community and also the authority. SMCs will manage the school, including the sanction of leave and distribution of salary to teachers. SMC / local authority shall even have the facility to assess teachers' performance and impose minor punishment.
- "The focus is more on quality, facilities and learning material". Each school has to maintain a pupil teacher ratio of 40:01. Urban-rural divide with relation to facilities and teaching staff are mitigated. It also specifies among other things school working days and teacher working hours. It further prohibits physical punishment to children and prohibits the teachers from providing private tuition.
- Nobody shall prevent a child from participating in educational activity. not everybody shall employ or engage a child

<sup>13</sup> Definition (a) "Neighborhood" means such area around the residence of a child as may be prescribed. (b) "Neighborhood School", in relation to a child, means any school located within the neighborhood of the residence of the child.

<sup>14</sup> "Weaker Section", in relation to a Child, means a child in need of care and protection, or a child, the annual income of whose parents or guardians is less than such minimum limit as may be notified by the appropriate government in this behalf from time to time.



during a manner that renders her a working child.

- Central govt shall provide financial support to state govts in accordance with such formula regarding sharing of costs as determined in consultation with state govts. The authorities shall provide the specified financial assistance to the local authorities.

Though the draft bill doesn't specify implications, a paper by the CIBE Committee indicates a tentative estimation of total additional costs between Rs.3,21,000crores and Rs.4,36,000 crores over six years.<sup>15</sup>

Recommendations given by Law Commission of India

The Law Commission of India took up the mater suo motu concerning provision of free and compulsory education to all children up to the age of 14 years. A cherished goal set in the Constitution of India observed that education has an acculturating role whereby it refines sensitivities and perceptions that contribute to National cohesion, scientific temper and independence of mind and spirit thus furthering various goals set out in our constitution<sup>16</sup>. The Commission emphasized the need for immediate Central legislation to give effect to the right to education without waiting for the constitutional amendment to go through in Parliament<sup>17</sup>and accordingly it suggested a draft Bill Free and Compulsory Education for Children Bill, 1998 in 165th report he Right of Children to Free and Compulsory Education Act, 2009 is based largely on the recommendation made by the Commission.

<sup>15</sup>

<http://www/pratham.org/documents/RighttoEducationBill2005.pdf>

ANALYSIS AND INTERPRETATION ON “RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009”

Legal issues for interpretation:

1. Section 2(f) of the Act, states that “elementary education means the education from first class to eighth class”. This is the old philosophy, which our ancestors thought that physically as well as mentally a child can study only after the age of five. But, due to era of information technology the exposure of children is above than that. Hence the defect identified that the Act had not concentrated to the present wants and needs of the society.
2. Section 3 of the Act states that, Right to free and compulsory education for the children mandatory. This provision failed to specify with whom the obligation vests? and if the child in not in a position to attain studies, what are those other education available in lieu of academic such as sports, art, vocational, etc.
3. Section 6 of the Act states that, the duty vested with the appropriate Government and local authority to establish schools within the period of three years from the date of commencement of this Act. But, this provision failed to specify that if the authorities are not accomplishing the target within the said period, what those remedies available to implement this provision are. This provision looks like a morality rather than legality.
4. Section 10 of the Act states that, it is the duty of the parents and guardians to admit their children in the neighbourhood schools. This provision does not mention the mandate of

<sup>16</sup> Law Commission of India (1998), *165th Report on ‘Free and Compulsory Education for Children*, 2nd edition, (Universal Law, New Delhi, 2010) p.165.5

<sup>17</sup> Ibid. p.165.43



the schools should admit those children to provide quality education wherever they are.

5. Section 11 of the Act states about the pre-school education for children up to the age of six years. Preschool education run by the state has no proper system of training to the children. Now-a-days, mushroom growth of Montessori's i.e., play schools, without any proper regulation, makes the children physically as well as mentally depressed.
6. Section 12(c) states that 25% of the seats shall be allotted for the backward communities, poor and under below poverty line. But the Supreme Court held in *P.A.InamdarVs. State of Maharashtra*<sup>18</sup> that neither can the policy of reservation be enforced by the State nor any quota or percentage of admission be carved out to be appropriated by the State in a Minority Educational Institutions. Hence, the State cannot regulate and control the admission in these institutions.
7. Section 13 of the Act states that "no institution or person shall collect any capitation fees or any screening procedure on the part of the child". This provision also states the penalty for the wrong doer, but it is very difficult to punish the offender because, the people themselves want quality education for their children, they are ready to pay any cost, because all institutions are not equally in par.

For example, Dowry Prohibition Act specifies that giving or getting dowry is a punishable offence. But till the dowry prevails in our society, unless and until the victims of dowry come forward to give complaint, the law enforcing authorities do not care about the dowry transactions.

Likewise, the victims are not coming forward; the authorities cannot impose punishment to the educational institutions with regard to capitation fees or screening procedures because all parents and guardians known of the infrastructure and the reputation of each and every institution.

8. In this Act, Section 14 clause 1 is conflicting with clause 2, that a child shall be admitted either with age proof or without proof. This provision will create problem to the private, aided or unaided schools that the reliability of the institution will be questioned if the child transfer from one school to another school.
9. Section 15 of the Act states that the educational institution shall not deny admission to any child at the commencement of the academic year or within such extended period or even beyond. This provision has not specified penal provisions, if any educational institution denies this right of the child.
10. Section 25 of the Act, enables the effective way of teaching which the ergonomic conditions suits the teaching methods. At the same time it does not specifies the penal provisions, if the appropriate Government and the local authority do not comply with the time limit i.e., six months provided by the statute.
11. Section 28 of the Act prohibits the teachers from taking private tuitions. Here the punishment has not mentioned if they do so.
12. Section 36 of the Act specifies that the previous sanction for the prosecution shall be vested with the officer appointed by the appropriate government. This will delay the process of action taken by the authorities against the institution who indulged in illegal activities as stated in the Act.

<sup>18</sup> (2005) 65 CC 537.



13. Section 14(2) of the Right of Children to Free and Compulsory Education Rules, 2010 states that the Head-teacher should provide adequate training to the children who get admission even after the extended period of that academic year. This provision is very difficult to implement unless the appropriate government provides adequate infrastructure and monetary benefits to the teachers who engages in special training for those children.
14. Section 15(6) of the Right of Children to Free and Compulsory Education Rules, 2010 states that the schools which does not comply with the norms specified under section 15(1) shall cease to function. But the statistics says that most of the schools are not complying with the norms, but still functioning. If any school is closed, then what will be the remedies to the children who studied in that school, whether they will be placed in government schools or private schools? If these schools have full strength, is it possible to accommodate those children? Whether government can force those institutions? These are the questions that shall be answered by the appropriate government.
15. Section 16(2) of the Right of Children to Free and Compulsory Education Rules, 2010 states that the withdrawal of recognition passed by the said officer shall be operative from the immediately succeeding academic year and will also notify about the neighbourhood schools to which the children of that school shall be admitted. Whether, this provision is applicable only to the government schools or to all type of schools? If it is an unaided school, then the aided school will accommodate those children who studied from unaided school? Time alone can answer.
- These are the things lacking in this act, if we remove all these difficulties, then there is no

doubt that our nation will emerge as a knowledge superpower.

#### New Education Policy (NEP-2020)

The Union Human Resource Development Minister Ramesh Pokhriyal 'Nishank' has released the New Education Policy or NEP for School Education with policies for schools and Higher Education for colleges, universities and various other higher institutes. Some of the important features of the New Education Policy 2020 are:

##### 1. School education

- New pedagogical and curricular structure of school education (5+3+3+4): 3 years in Anganwadi/preschool and 12 years in school.
- For children of 3 to 6 years: Access to free, safe, high quality ECCE at Anganwadis /Preschool/ Balvatika.
- Foundational Learning Curriculum for age group of 3-8 divided in two parts:  
From age 3-6 in ECCE  
Before reaching the age of 5 every child will attend a "Preparatory Class" or "Balvatika" (that is, before Class 1)
- Age 6 to 8, Grade 1-2: Foundational Stage
- Age 8-11, Grades 3-5: Preparatory Stage, play, discovery, and activity based and interactive classroom learning.
- Age 11-14, Grade 6-8: Middle Stage, experiential learning in the sciences, mathematics, arts, social sciences, and humanities.
- Age 14-18, Grade 9-12: Secondary Stage, multidisciplinary study, greater critical thinking, flexibility and student choice of subjects.
- Medium of instruction upto grade 5, and preferably till Grade 8 and beyond, will be home language/ mother tongue/ local language.



- Beginning with Mathematics, all subjects to be offered at 2 levels.
  - School students will have 10 bag-less days during which they are taught a vocation of their choice (informal internship)
2. Board Exams and School Exams
- School Exams will be held only for 3 levels – Classes 3, 5 and 8. A formative style of Assessment will be used which will encourages higher-order of thinking skills, critical thinking and will promote conceptual clarity.
  - Board Exams will continue but these will be designed for holistic development. A new national assessment centre PARAKH (Performance Assessment, Review and Analysis of Knowledge for Holistic Development) is proposed to be established.
  - All students will be allowed to take Board Exams on up to two occasions during any given school year, one main examination and one for improvement, if desired.
3. Higher Education and College Entrance Exams
- National Testing Agency will conduct a common college entrance exam twice a year. This will be implemented from the 2022 session.
  - Bachelor's degree will be of 4 years with exit options as follows.  
Exit after 1 year: Certificate  
Exit after 2 years: Diploma
  - Midterm drop outs will be given the option to complete the degree after a break.
  - Bachelor's programmes will be multidisciplinary in nature and there will be no rigid separation between arts and sciences.
  - Indian arts, languages and culture will be promoted at all levels.
  - M.Phil degree will be discontinued.
  - By 2040, all higher education institutions like IITs will become multidisciplinary. There will be greater inclusion of arts and

humanities subjects for science students and vice-versa.

- Selected universities from among the top 100 universities in the world will be facilitated to operate in India.
- The system of affiliated colleges will be phased out in 15 years and colleges will be given greater autonomy and power to grant degrees. The deemed university status will end.

### CONCLUSION, CRITICISM AND SUGGESTIONS

Primary education for kids is maybe the foremost important constituent of life because human life cycle requires that the essential competencies and life skills be acquired at an early age. Strict implementation of those imperative laws is required to hide the massive number of children in our country, who are mainly victims of child labour and poverty. Legislation alone won't amend this neglect. Concerted efforts, by every citizen, is demanded to attain the required, result so it doesn't lead to the law merely on paper.

With regard to educational system, the govt. should spend money on educational infrastructure as classrooms in colleges are less than what's needed. India today needs more professional education without degrading primary education. India's primary educational system alone enables Indian graduates ahead of other foreign graduates abroad. Hence we want to enhance our primary educational system to administer our kids an environment where then can stand and speak in front of individuals.

The Government of India by Constitutional (86th Amendment Act) Act, 2002 had added a brand new Article 21A which was further



strengthened by addition of clause (k) to Article 51-A. Undoubtedly the govt. of India has, on the idea of Constitutional mandate provided in Article 41, 45, 46, 21A and various judgments of Supreme Court, taken several steps for the advance of the standard of education, to eradicate illiteracy and to make children return to school if they left, for one reason or other. A number of these programmes are National Technology Mission, District Primary Education Programme, and Nutrition Support for Primary Education, National Open School, Mid-Day Meal Scheme, Sarva Shiksha Abhiyan and other state specific initiatives. There is little doubt that Right to Education Act is one among the landmark legislation in Indian history which seeks to give basic education to poor children and aims at securing an improved way forward for the Country. But same can not be done at cost of the Rights of minority education institutions. So, certain amendments are required to be brought about within the act to exempt the minority educational institutions from the ambit of the Act.

Although, the Constitution of India and Supreme Court have declared that right to education is now a fundamental right, but it's ignored countless children who are within the age bracket of 0-5 years. It's needed that the Constitution should again be amended and also the children of age group of 0-5 years should be included; as by the time the kid reaches the age of 6 years he/she driven in to the practice of child labour because of poverty. Moreover the Constitution only ensures that the state shall provide primary education to the children up to the age of 14 years, and also the secondary, education are kept contingent and conditional upon the economic capacity of the state. The right to

education are going to be meaningful, on condition that all the levels education reaches to any or all the sections of the people otherwise it'll fail to realize the target set out by our founding fathers to form Indian society.

India is home to 19% of the world's children which means, India has the world's largest number of children, which is essentially beneficial, especially as compared to countries like China, which has an ageing population. It's a curse to mention that, India has, also, one-third of the world's illiterate population. It's not like literacy rate has not increased rather, that the rate of the rise of literacy rate is rapidly slowing. To combat this worrisome trend, the Indian government proposed the right of children to Free and Compulsory Education Act, 2009 making education a fundamental right of each child within the age bracket of 6 to 14. Unsurprisingly, the fact is extremely different.

Although the RTE could be a ground breaking piece of legislation, in fact, the primary in the world that puts the responsibility of ensuring student enrolment, attendance and completion of education on the govt., however, recent surveys by the State Commission for protection of kid Rights and UNICEF show that the state of education has not improved much since 2009, when the act was first proposed.

Schools that have understood the remedial teaching process are ironically unable to act accordingly due to the inappropriate student-teacher ratio. The RTE Act doesn't do enough justice to enable marginal improvements in quality and foster creative solutions within the larger system. By making clear choice for



access through the concept of neighbourhood schools, the Act has virtually sealed the door on drawing benefits from economies of scale within schooling systems.

The RTE Act appears, on paper at least, to be a perfect solution for the issues of education in India. However, its implementation too has been faulty. Although state education departments and native education authorities are liable for monitoring the implementation of the Act, this responsibility doesn't seem to have been taken seriously. There are not any special audit mechanisms like within the case of NREGA, This accountability mechanism is weak in the majority states and interpretation through PILs has been the common and fairly successful recourse. Further, campaigners claim that children from poor families are often pulled out of school by their parents, who need them to work. State and National child rights commissions have been working actively with governments to reduce the percentage of children out of school and in child labour. The reality is that there is still a lot to be done in order to ensure 100 percent enrolment and to ensure retention of all children within school for at least 8 years of schooling. Passing an enactment is as easy task but the key in ensuring this Act is successful, is to make parents, particularly in rural areas, aware of the benefits of education and to encourage them to send their children to school. Like many attempted social changes in India, this too has to start at the community level; it requires a widespread change of an age-old mindset and must make people at the helm of affairs accountable.

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