
An Appraisal on the Right to Education of Children in India – A Critical Analysis

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Education being the most essential need of the mankind has been reconsidered by all over the world as a fundamental right. Thus, to minimize the mistakes of ignoring the importance of education is a highly warranted task. Child education has been regarded as a very vital issue under the legal arena of the India. India is home to 19% of the world's children, more than one-third of the country's population around 440 million is under 18 years. India's children are India's future. The evolution of the education system in India towards the elementary education becomes a decisive factor in the development of the country. As far as India is concerned, 2011 was the year which had a significant nexus with the educations and its legal perspective. Needless to mention that, meticulously 100 years ago i.e. in 1911 the first Bill on education which sought to make the education to be a fundamental right was proposed on the Indian soil. The most drastic factor of making the education available for the public at large brought about a mammoth change on the horizons of the India and a magnificent upsurge has been achieved as far as education is concerned.

Key words: Right of Children, Act of 2009 and UN Convention.

Introduction

In 2011 the notification of the Right of Children to Free and Compulsory Education Act, 2009 was implemented. Thus, by making a concrete legislation for the child education India has shown its keen commitment to this vital issue.

One of the key achievements of India's education system since Independence has been the consistent rise in the country's literacy rate, which has risen from 18% in 1951 to 74% in 2011. Significant efforts have been made to universalize elementary education during these 60 years.

Albeit the appraisal of the success or failure of this attempt will be revealed with the journey of time. India has the world's largest child population, and children comprise 42% of India's people. Hence, an overview of the child education in India becomes quintessentially important.

Backdrop of Child Education in India

Despite being one of the oldest civilizations of the world, education has always been remained a limited sphere of few hands. Owing to the trap of caste system and orthodox social constraints

made education possible for public at large but once in a blue moon. As it remained to be available for a small section of society. However, in August 1848 the most significant step towards the education of the girls of lower caste was initiated by Mahatma Phule in Pune. That school was the first attempt towards the education of girls belonging to the disadvantaged strata of the society. Despite this attempt there was a scope for the generalization of education and to promote its widespread reach a statutory support was needed. During the British rule, in spite of compulsory education laws, not much progress was made in this direction.

International Scenario of the Child Education

As far as international arena is concerned, a very keen and deliberate framework has been vested by the United Nations with its member states. The journey of education as an essential human right can be traced back till Universal Declaration of Human Rights which expressly approves that, Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Article 26 of the 1948 Universal Declaration of Human Rights 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Apart from this, European Convention on Human Rights, Protocol 1 (1952) promotes the education by providing, that no person shall be denied of the right to education. Perhaps one of the oldest provisions of the education as a matter of right can never be completed without mentioning the UNESCO Convention against Discrimination in Education, 1962. In addition to it, International Covenant on Economic, Social and Cultural Rights, adopted in 1966 and abbreviated as ICESCR did provide a conclusive provision about the education for all. Convention on the Rights of the Child: (1989): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: make primary education compulsory and available free for all.

However, as far education being a fundamental right of the children has been primarily focused by the UN Convention on the Rights of Child (UNCRC), 1989 which provides that, 'the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential' United Nations Convention on the Rights of the Child (CRC), in 1992 is yet another significant step of child education. Being the United Nations Literacy Decade (2003-2012), the Commission on Human Rights urged the member states:

"To give full effect to the right to education and to guarantee that this right is recognized and exercised without discrimination of any kind. In furtherance to this, five principal International Treaties influenced by UDHR and relating directly to education have played a pivotal role in the education for children, viz., a) International Covenant on Economic, Social and Cultural Rights (1966); b) Convention against Discrimination in Education (1960); c) Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which may arise between States Parties to the Convention Against Discrimination in Education (1962) d) Convention on the Rights of the Child (1989); and e) Convention on Technical and Vocational Education (1989).

Indian Scenario in Furtherance to Address the International Treaty Obligations

India had marched a significant journey towards the child education. As a vital part of the adoption of various international obligations into the municipal laws, India has come up with various national level policies. Some of the significant policies include, National Policy on Education, 1968 which brought the most decisive impact on India's education system. In the year 1974, India adopted its National Policy for Children. The text opens with the affirmation: 'The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility.' This was further emphasized in the National Policy on Education, 1986. In the review of the policy in 1990, it was recommended to include Right to Education as a fundamental right in the constitution, on the basis of which National policy on Education 1992 was formulated. Being a signatory to the UN Convention on the Rights of the Child (CRC), in 1992 India had initiated the process to bring the education into the purview of fundamental rights of the children and all next generations.

Constitutional appraisal of right to education in India

Being the roundworm of the Indian legal framework, the Constitution of India has been equipped with the various vital provisions for the education. An integral component of fundamental rights i.e. Part III of the Constitution of India Article 29 and 30 of the Indian constitution provide citizens the Educational and Cultural Rights. However, these provisions were having limited sphere of minorities and exclusive targeted subject matter.

The most significant step towards the education was the incorporation of education into the Directive Principles of State Policy i.e. Part IV of the Constitution of India. Article 45 of the newly framed Constitution stated that "the State shall endeavor to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education to all children until they complete the age of 14 years". However, despite of lacking the enforceability this step could not achieve the desired impact. And thus, nothing much happened towards universalization of elementary education.

The continuously upgraded development pertaining to the education in India brought many fruitful results. In India, the education falls under the control of both the Union Government and the State Governments, with some responsibilities lying with the Union and the States having autonomy for others. Entry 66 of the Union Subject List provides the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The Constitutional Amendment Act, 1976 included the subject 'Education' in the Concurrent List of the VII Schedule of the Constitution of India which enables the Union Government to make law on this subject.

This being a substantive, financial and administrative step made an efficient bridge for a new sharing of responsibility between the Union Government and the States. Moreover, by virtue of various national policies and schemes the Union Government of India made the education an agenda of first priority.

Entry 25 of the Concurrent list provides that 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 and entry 26 of this list includes Legal, medical and other professions.

The Article 51(A) (k) has added the significance of the education being a prime area of development of the nation. The fundamental duties have been annexed by the duty on the parents/guardian to provide opportunity of education to the children. This Article provides that “it shall be the duty of every citizen of India who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

In 2002, the amendment to the Constitution of India made education as a fundamental right. To that effect an Article 21A had been inserted into the Part III i.e. fundamental rights within the constitution of India. thus, Article 21A provides that, “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

However, it has been further qualified by adding that the manner of this right would be as determined by a follow up consequential legislation. Incorporation of the education into the segment of right to life has engraved the significance of education into the constitutional framework of India. No wonder due to which a never-ending enforceability of the right to education has been proclaimed to the citizens of India.

Legal scenario of child education in India

By duly recognizing the importance of the free and compulsory education for the children in India the law commission of India in its report on “Free and Compulsory Education for Children” had suggested the Indian legislatures to pave the way for this vital issue. Moreover, this follow up ultimately resulted into a full-fledged legislation i.e. ‘The Right of Children to free and Compulsory Education Act 2009’, passed by parliament in August 2009, and notified into force in April 2010.

Based on this Act, a subordinate legislation, the Model Rules, was framed by the centre to provide guidelines to states for implementing the Act. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, thus represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

The latest Act provides a justifiable legal platform which enables that all children between the ages of 6-14. The quality of this education would be reasonable one and due to its free nature, the Act has become a most healthy enactment towards the desired goals.

Overview of the Right of Children to Free and Compulsory Education (RTE) Act, 2009

This Act basically deals with the child education and the first solely dedicated enactment towards the issue of education of children in India. Thus, it essentially provides – free and compulsory education to all children of India in the 6-14 age group.

- No child shall be held back, expelled or required to pass a board examination until completion of elementary education.

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- A child who completes elementary education (upto class 8th shall be awarded a certificate).
 - This Act mandates education of children along their peer age group (“age-appropriate”);
 - It provides for “special training” to facilitate age-appropriate education
 - It calls for a fixed student-teacher ratio.
 - It will apply to all over India except Jammu and Kashmir.
 - 25% reservation for economically disadvantaged communities in addition to class 1 in all private schools.
 - Mandates improvement in quality of education and sets qualification and working norms for Teachers in all schools
 - It mandates the school teachers to be eligible with adequate professional degree within 5 years or else will retrenchment from job.
 - It mandates curriculum in all schools to be in consonance with Constitutional Values.
 - It provides school infrastructure to be improved in 3 years else recognition cancelled.
 - It mandates participation of civil society in the management of schools; makes teachers accountable to parents and the community
 - It provides that, financial burden will be shared between state and Union it government.
 - It protects children from labour, marriage, exploitation, discrimination, abuse, violence and neglect.
 - It Separates agency for implementation of Act (Education Department) from agency charged with monitoring the implementation of the Act (NCPCR)

Thus, by virtue of this Act, most of the accumulated constrains regarding educations have been successfully wiped out by this legislation. There are several provisions in the Act, including, for example, provisions prohibiting corporal punishment, detention and expulsion which need to be fore-fronted to ensure that we move towards a system that, as the National Policy on Education states, provides 'a warm, welcoming and encouraging approach for children to learn' (NPE, 1986/92).

One of the most important aspect, however, is to ensure that the teaching-learning process is free from stress and anxiety with obvious implications for curricular reform. School Testing and grading systems need to be reviewed to motivate children to deepen and widen their learnings. This Act also lays down the responsibilities of teachers. Teacher accountability systems would need to ensure that children are learning and that their right to learn in an environment that is free from stress and anxiety is not violated.

This UN recommendation has been reinforced in the provisions of the Right of Children to Free and Compulsory Education (RTE) Act (2009), which came into effect in India on 1 April 2010, enshrining in law for the first time the rights of all Indian children aged between six and 14 years to free and compulsory elementary education regardless of caste, class, gender, etc. The RTE Act, though deserves due credit for laying down in fairly specific terms state’s responsibility towards education, it would be appropriate to examine the status and awareness on the part of schools and concern authority to provide free elementary education to the children aging between six to fourteen years of old.

Impediments to the Implementation of Free and Compulsory Education for Children in India

Albeit by virtue of the latest Act of 2009 the government has self-imposed the responsibility of child education on its shoulders, the implementation of this noble enactment has been seen to be lacking due to certain crucial factors. Such as-

Inability to Encompass the Children out of Mainstream Social Order

The number of out of school children is a challenge before the government. With more than one-third of its population below 18 years, India has the largest young population in the world. Out of every 100 children, 19 continue to be out of school. According to UNESCO's report on progress in primary education, around 7.74 crore children around the world are out of school. Three-fourths of these out-of-school children reside in 15 countries including India, Bangladesh, Pakistan, Indonesia, China, Brazil and the African nations. With one-third of the world's illiterate, the report places India 105th among 128 nations.

Financial Lacking for Resources

Insufficiency of funds has made the right to education a subordinate one as compared to the other right for almost half century after the independence. However, despite of new incarnation of right to education by virtue of new Act of 2009 could not avoid the financial constraints. Albeit the government is combating the financial insufficiency by ways of funds from the institutes like World Bank etc. Since it began funding education funding in 1963, the World Bank has provided over U.S. \$30 billion in loans and credits. It currently finances 153 projects in 79 countries.

Lack of Infrastructure

Financial scarcity further effects on the infrastructure and other essential equipment's for the education spreading and for imparting quality education to the children. Thus, the area of lack of sufficient infrastructure needs to be addressed by the government.

Poverty

Being a most vicious circle, poverty has been remained to be the box of pandora for most of the policies and plans of the government. Child labour, other evil practices and the non-willingness of parents to send their children to the schools has a harsh reality of poverty. Thus, empowerment of disadvantaged sections of the society becomes a pre-requisite to implement the free and compulsory education of the children in India.

Judicial Trend

The commitment of the government of India was further strengthened by the judicial trends especially in 1992 in the case of *Mohini Jain v. State of Karnataka*, the Supreme Court of India held "the right to education flows directly from the right to life as the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education", and "the fundamental rights guaranteed under Part III of the Constitution of India, including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity".

Subsequently, in the case of *Unnikrishnana, J.P. v. State of Andhra Pradesh*, the Supreme Court held that “though right to education is not stated expressly as a fundamental right, it is implicit in and flow from the right to life guaranteed under article 21 and must be construed in the light of the Directive Principles of the constitution.” In *Unni Krishnan* the Court took support from UDHR3 and Article 13 of ICESCR and for the first time articulated education as a ‘social right’ The argument that the right to life in Article 21 is merely negative in character was rejected by the Court. The question of insufficient resources was also very ingeniously dealt with by Jeevan Reddy, J.

He states quite naturally that it is only Article 41 which speaks of economic capacity of the State, whereas Article 45 does not speak of the limits of its economic capacity as does Article 41 and therefore this hurdle does not stand as an obstacle in carving out a fundamental right to primary education from Article 21. Thus, constructing a fundamental right to education from a long-ignored directive principle as presented in *Unni Krishnan* as merely an example of the old idea that the directive principles furnish the technology of construction of Part III and now as a *swayambhu* (self-manifesting) aspect of new judicial power.

Today, in India right to education has become a fundamental right of children of the age group of 6 to 14 years. Article 19 (1) (a) of the Constitution of India provides that all citizens have the right to freedom of speech and expression.

Freedom of speech and expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. Only the educated person can exercise the right to freedom of speech and expression in an aimed way. A Bench of Chief Justice S.H. Kapadia and Justice Swatanter Kumar also held that a child who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in Article 19(1) (a).

Along with this the newly enacted Act of 2009 had also been challenged for this 25% reservation provision under the Section 12(1) (b) was challenged. However, on April 12, 2012, the Supreme Court upheld the constitutional validity of the provision in the Right to Education Act, 2009 that makes it mandatory for all schools (government and private) except private, unaided minority schools to reserve 25% of their seats for children belonging to “weaker section and disadvantaged group”.

Suggestions

Through this way the discourse pertaining to the efficacy of free and compulsory education of children in India can be concluded with some of the possible suggestions. Being the most monstrous factor Corruption in education is omnipresent in India and it should be eradicate form the educations system. The Right of Children to Free and Compulsory Education Act, 2009 is a milestone enactment.

Especially for the age group of 6-14. However, the children below the age group of 6 years and above the age of 14 years have been left out from the purview of this noble enactment. Thus, an amendment to that effect should be carried out by the government. So that the children irrespective of their age would get ensured education.

Conclusion

As it has been rightfully quoted that, ‘education is a progressive discovery of our own ignorance. Thus, the journey of imparting education is an eternal process. It has been facilitated by a finest enactment of 2009 within India. However, with respect to children there is a scope of more deliberate provisions to be incorporated in this Act. India has 158.7 million children in the 0-6 year’s age group. Hence, the pivotal role of educational institutions cannot be afforded to be ignored. Former Chief Justice of India, Justice PN Bhagwati has rightfully quoted that, The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.’ Therefore, an appraisal pertaining to the children and their right to free and compulsory education can’t suffice merely granting them the right. Albeit, by enabling them to be an efficient beneficiary and by making them worthy of education the desired goals can be achieved.

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