

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

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Right of Children for Free and Compulsory Education

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ABSTRACT

The Indian Constitution was amended to add Article 21A, which declared education to be a fundamental right. The Bill's rough draft was written in 2005, and it drew a lot of criticism because of its mandated provision of a 25% reservation for disadvantaged children in private schools. In the early 1990s, gaining the right to free and compulsory education for all children in India took a dramatic turn. Previously, numerous education policies were established, but neither the policy nor the programme required that students get free and compulsory education. However, the Ramamurti Committee Report on the Review of the 1986 Education Policy, published in 1990, chastised the government for failing to pay attention to the Right to Education. In 1976, an amendment to Article 42 of the constitution was added, making education a concurrent list topic, allowing the central government to legislate it in the manner most suited to it. This paper is totally on the doctrinal research design and suggestions and conclusions are added up to give more analysis on the paper.

Keywords: Article 21A, Private Schools, free education, Article 42.

I. INTRODUCTION

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, is the follow-up legislation to the Constitution (86th Amendment) Act, 2002, which incorporated Article 21A into the Indian Constitution. The RTE Act was signed into law on April 1, 2010, and went into force on April 1, 2010. On April 9, 2010, the Government of India published the Right of Children to Free and Compulsory Education Rules, 2010 in the Official Gazette. The RTE Act establishes the legal framework for elementary school universalization (UEE). The SSA has been aligned with the RTE mandate. The following are some of the key characteristics of the RTE Act of 2009:

- Children's entitlement to free and compulsory education in a neighborhood school until they complete elementary school.

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- It defines 'compulsory education' as the obligation of the competent government to provide free elementary education to all children aged six to fourteen, as well as to ensure compulsory entrance, attendance, and completion of primary school.
 - 'Free' indicates that no kid will be required to pay any fees, charges, or expenses that would prevent them from pursuing and completing elementary school.
 - It provides for the admission of a non-admitted youngster to an age-appropriate class.
- The Right of Children to Free and Compulsory Education Act of 2009 is a welfare act that is organized into seven chapters and contains 39 provisions.

II. PASSAGE

The bill was approved by the cabinet on 2nd July, 2009, in Rajya Sabha and Lok Sabha on 4th August, 2009. The law came into effect in the whole of India except in the State of Jammu and Kashmir from 1st April, 2010, it was brought by the speech of former Prime Minister Manmohan Singh, stated, 'We are committed to ensure that all children, irrespective of gender and social category, have access to education. An education that allows children to get the skills, knowledge, values, and attitudes that they need.' ²It is a fundamental right for children aged 6 to 14 years old that establishes minimal standards in elementary education. It requires 25% seats to be reserved for poor families in school.

- There is also a provision for specific training for school dropouts in order to bring them up to speed with peers their age.
- Persons with disabilities have the right to education until they turn 18 years old under a separate law called the Persons with Disabilities Act. A number of other provisions regarding the improvement of school infrastructure, teacher-student ratio, etc are made in the Act.
- It outlines the roles and obligations of appropriate governments, local governments, and parents in delivering free and compulsory education, as well as the financial and other responsibilities shared by the federal and state governments.
- It establishes norms and standards for Pupil Teacher Ratios (PTRs), facilities and infrastructure, school working days, and teacher working hours, among other things.
- It ensures that the stated pupil-to-teacher ratio is maintained for each school, rather than just as an average for the State, District, or Block, guaranteeing that there is no

² Right to Education. in(<http://righttoeducation.in/know-your-rte/chronology>)

imbalance in teacher postings between urban and rural areas. It also prohibits the use of teachers for non-educational purposes, with the exception of the decennial census, local authority elections, state legislative and parliament elections, and disaster assistance.

- It calls for the appointment of teachers who are properly trained, that is, instructors who have the necessary entry and academic qualifications.

Note: The Ministry of HRD established a 14-member high-level NAC to oversee the Bill's implementation. According to a report provided by the Ministry of Human Resources and Development, 8.1 percent of children aged 6 to 14 years are out of school, and there is a teacher shortage of 508,000 across the country.

The Supreme Court of India has also intervened to urge that the Act be implemented in India's north-eastern states.

Criticism:

- Excluding the children under 6 years of age
- Not considering quality of education

III. EVEN DURING THE PANDEMIC THE EDUCATION CONTINUED

- In India, during the pandemic, there was School Closure for 503 days, between March 5, 2020, and July 20, 2021, out of which 404 days were characterized as being at the most severe policy response (requiring the closure of all types of educational institutions); while for 62 days closure of some types of institutions and only 37 days at level 1 where closure was either only recommended or school opening was allowed with precautions.
- Due to the closure, around 265 million school children were taught under remote learning, the largest number in any country for the longest period of time.

It prohibits:

- Physical punishment and mental harassment,
- Screening methods for children's entrance, capitation fees, private teacher tuition, and the operation of schools that are not recognized.
- It calls for the creation of a curriculum that is consistent with the Constitution's values and that ensures the child's all-round development by enhancing the child's knowledge, potential, and talent while also removing fear, trauma, and anxiety through a child-friendly and child-centered learning system.

- It establishes the National and State Commissions for the Protection of Child Rights, which will have civil court-like powers, to defend and monitor the child's right to free and compulsory education, as well as to address grievances.

Article 41 empowers the state to provide effective arrangements for the right to education. Article 45 mandated the state to make provision for free and compulsory education for children below the age of 14 years within the time limit of 10 years from the date of the commencement of the constitution of India. The right to education as understood in the context of article 45 and 46 means:

- Every child – citizen of this country has a right to education and nobody can take his or her rights
- Major protection is given to rural and weaker sections so that the children from these communities can study.

1997: Implications of the Proposal to Make Elementary Education Free. Saikia Committee of State Education Ministers. This committee also recommended that existing state compulsory education legislation be amended.

In Mohini Jain case:³ The notification provided for charging fee on the basis of 3 categories. These categories are as follows:

- On merit list by the Government, there fees will be rupees 2000/-
- Another category is who hailed from Karnataka State but cannot get in the merit list , so there fees will be rupees 25000/-
- Last category is that who could not come in merit list and neither from Karnataka, there fees will be 60,000/-

Miss Mohini applied for the admission and she belongs from city of Meerut, She was told that she would be enrolled if she paid 60,000 rupees towards the first year's tuition fees and provided a bank guarantee for the costs due for the subsequent years of the MBBS degree. She was being asked to pay the capitation fees of rupees 4, 50,000 as a condition of admission.

Judgment:

- Supreme Court held every citizen has a right to education

³ AIR 1992SC 1858

- The students are admitted in acknowledgment of their constitutional right to education.
- Capitation fee brings a bias.
- It enables the rich to take admission and poor has to withdraw due to the financial inability.
- Capitation fee cannot be sustained in the eye of the law.

Another case was, Unni Krishnan's case: here the Supreme Court gave a ruling that Right to Education is a fundamental Right, Supreme Court declared Article 21 as the heart of fundamental Rights.

The education brings excellence, it enriches one's mind and it prepares a child for good citizenship. While declaring the Children's right to education as the fundamental right under Article 21 of the Indian Constitution the court clarified that the Fundamental right and the Directive Principles are supplementary to each other.

Note: Directive principle supply life and blood to the Fundamental Rights. Education develops the understanding and knowledge and it makes the human being more powerful.

But, to my opinion the child's right to education should be determined in the of Article 41, 45 and 46 of the Constitution.

The Supreme Court however mentioned that education is the second highest sector of budgeted expenditure after the defence. But, let me portray my point here, according to last year budget of 2020 only 0.5% has been involved in our education system and this is the reason that we import research and development from another nation.

According to the Supreme Court judgment, there shall be no reserve quota for management or for any family member.

- The citizens of the country have a fundamental right to education; this right however is not an absolute right.
- Thus every child of this country has a right to free and compulsory education till he completes fourteen years of his or her age. Thereafter his right to education is subject to the limits of economic capacity and development of the state.
- The private Institutions have to and are entitled to charge higher fee but not exceeding the ceiling limit.

Major issue is that: The apex court has not touched the main problem that is the problem of child's education.

IV. LOOPHOLES

The Act only includes roughly 25% of seats for reservation in private/public unaided schools for less fortunate students under the "Reservation" programmed. As a result, there will be a significant disparity between the cost of schooling for each child and the government's reimbursement, raising the issue of the deficit component. Another flaw in this Act is that it makes no provision for providing education to children with disabilities, or more specifically for children with special needs (CWSN). There are no consistent declines in higher requirements for CWSN in school. It should also be highlighted that the RTE Act 2009 contains no specific consequences for government officials who fail to carry out their responsibilities. Most state governments want to avoid large-scale programmes in order to rely solely on federal aid, which arrives at irregular intervals.

V. CONCLUSION

The fundamental rights impose on state to enforce them. The Supreme Court in a landmark case in Unni Krishnan's case declared that right to education is fundamental right which is applicable to the children up to 14 years of age. The apex Court, not issued any guidelines as to how to implement it. Bharat lives in village and the condition of the primary education in village is worst. In our country school are opened on papers and not in a tangible manner. In India, poverty due to the uncontrolled population is the main cause for deprivation of a child of his or her primary education. Instead of going to school he has to go in search of bread and butter. Child labor is rampant in India. In village, girl's education is neglected more than that of the boys. In primary schools the teachers are appointed in their own villages. They take more interest in their household work at the cost of the Children's education. Children's rights are responsibility to every citizen. Social pressures to be build on the parents to send their children to school in spite of sending to him or her for laborer work. Teacher's responsibilities include creating appropriate learning climate for the children in the physical surroundings and emotional climate in which children are disposed to learn.

The students- teachers' ratio must be mentioned in every school according to their classes. At the end, schools are locked, teachers go home, and policy makers return to their respective lives. If the childhood is lost, primary and basic educated is not imparted the foundation of good citizen is weakened. The human rights enforcement mechanism must be geared up to ensure that the children below the age of 14years are not deprived of their fundamental right to education.
