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Right to Education: A Fundamental Right

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ABSTRACT

Nobel Laureate Amartya Sen appropriately quoted that, "Education is the backbone of India". Well realizing this fact long before, the constitutional framers inserted Article 45, 41, etc. in the Directive Principles of State Policy to ensure that the educational needs are well catered to by the State. In 2002, vide the 86th Constitutional Amendment, Article 21 A was included which guarantees free and compulsory education to children from six to fourteen years of age. A corresponding duty was levied upon the parents/guardians under Article 51 A (k). To give effect to the same, the Right of Children to Free and Compulsory Education Act was promulgated in 2009 with a view to enhance the overall quality of education in the country. However, despite the massive statutory framework, the idea of "free and compulsory education" remains to be a distant dream for the nation. The research paper would thus focus on the varied legislative and judicial initiatives undertaken to achieve the 4A's of the right to education namely, availability, accessibility, acceptability and adaptability. It will highlight the pertinent lacunas in the aforementioned regime. Lastly, suggestions shall be made to improve the current state of affairs.

I. INTRODUCTION

Marriage Education is a dynamic process that starts from birth. It is the most important element for growth and prosperity of a nation. Education in its real sense is the pursuit of truth. It is an endless journey through knowledge and enlightenment. Such a journey opens up new vistas of development of humanism. Education is the manifestation of perfection already in man. It is the one that lends dignity to a man. Education is keystone for self-sustaining and livelihood and the education is life insurance for all children.

Education is essential for the development of human potential, the enjoyment of full range of human rights and respect for the rights of others. The right to education is a human right. A right is something, which one is entitled to and which one can claim. Having a right means that someone else has an obligation. If someone has the right to free education, then the government or school cannot demand one to pay to access education. As well as, being a right in itself, the

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right to education is also an enabling right. Education “creates the ‘voice’ through which right can be claimed and protected”, and without education people lack the capacity to “achieve valuable functioning as part of the living”. If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of right that they hold, and government’s obligations. It supports people to develop the communication skills to demand these rights, the confidence to speak in a variety of forum, and the ability to negotiate with a wide range of government officials and power holders. The right to education obligates governments to ensure the satisfaction of basic learning needs for all. The World Declaration on Education for All 1990 finds that: “These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions and continue learning.”

Unfortunately, our country is unsuccessful to eliminate the menace of illiteracy even after 6 decades of independence and our legislators have abandoned this prime area of human resource development for such a lengthy time. Because, it is and should be the prime duty of the state and centre governments to provide free Education and Health facilities to all the citizens of the country without any sort of prejudice. Anyway, because of the efforts made by our worthy educationists, academicians, NGO’S and civil society groups who followed a rights-based approach that resulted in the passing of 86th constitutional amendment by the parliament and Article 21A in the year of 2002 which made Right to Education a fundamental right. Subsequently, “Right to Free and Compulsory Education Act” was approved by the president of India on 26th August 2009 and got officially published in the gazette of India on 27th August 2009.

India became one of the 135 countries to make education a fundamental right for its citizens when the act came into force on 1st April, 2010. It put the Right to Education at par with Right to life. This act bounds all the stakeholders like parents, schools, society, states as well as central governments to play their roles in order to provide free and compulsory education to the children between the 6-14 yrs. of age. All the practitioners of education welcome the intent of the Act and believe it as a momentous movement towards the universalization of elementary education though out the nation.

(A) Aim of the Paper

Aim of this paper is to study the importance of education and implementation of Right to Education Act in India. Also, to interpret its constitutionality and legal aspect.

(B) Objectives of the Paper

1. To analyze the implementation of Right to Education Act, 2009 in India.
2. To analyze the varied legislative and judicial initiatives undertaken to achieve the 4A's of the right to education.
3. To discuss and critically analyze the pertinent lacunas.
4. To suggest the potential solution and recommendations to improve the current state of affairs.

(C) Hypothesis

This paper is an attempt to critically analyze the access and quality of Right to Education, Act 2009. This topic is so extensive relating to almost every individual of the country, it would be too unmanageable to study each and every factor related to it. Similarly, all the very basic concepts and reasons are not described and discussed in detail. For this purpose, only prominent reasons for study have been analyzed to sort out the areas in which potential solutions and reforms are suggested.

II. INDIAN CONSTITUTIONAL BACKGROUND

In 2002, through the 86th Amendment Act, Article 21(A)² was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age.

Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008. **The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE)**³, which was passed by the Indian parliament on 4 August 2009, describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. The bill was approved by the cabinet on 2 July 2009. Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 3 Sept 2009 as The Children's Right to Free and

² THE CONSTITUTION OF INDIA.

³ Right of Children to Free and Compulsory Education Act, 2009

Compulsory Education Act.

The law came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Manmohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India." People are not aware even about their fundamental rights. Youth is the future of the Nation and their empowerment through RTE.

In ancient times youth was not compelled to study but at present times he has to study to deal with the present world as illiterate person may be deceived or may not know his right and duties towards society and family. The Indian Constitution has recognized the importance of education for social transformation and is committed to social justice. The Preamble determines, to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. Literacy forms the foundation stone for making the provision of equality of opportunity a reality. The objective specified in the Preamble contains the basic structure of the Constitution, which cannot be amended, and the preamble may be invoked to determine the ambit of Fundamental Rights and Directive Principles of State Policy. Judicial interpretation has brought alive many an Article of the Constitution, which if read literally may seem to be a colourless Article. Of relevance to literacy, for instance, is the wide interpretation given to the words 'personal; liberty'.

(A) Legal background under Indian Constitution

The following provisions have a great bearing on the functioning of the educational system in India:

Article 28: According to our Constitution Article 28 provides freedom as to attendance at religious instruction or religious worship in educational institutions.

Article 29: This article provides equality of opportunity in educational institutions.

Article 30: It accepts the right of the minorities to establish and administrate educational institutions.

Article 45: According to this article "The state shall Endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for

all children until they complete the age of 14 years. “We notice that the responsibility for universal elementary education lies with the Central Government, the State Governments, the Local Bodies, and voluntary organizations.

Article 46: It provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.

Article 337: This provides for special provision with respect to educational grants for the benefit of Anglo-Indian community.

Article 350A: This article relates to facilities for instruction in mother tongue at primary stage.

Article 350B: It provides for a special offer for linguistic minorities.

Article 351: This article relates to the development and promotion of the Hindi language. The seventh schedule of the Indian Constitution contains legislative powers under three lists viz. The Union List, the State List and the Concurrent List.

III. CAUSE AND BACKGROUND OF RIGHT TO EDUCATION ACT 2009

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

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

On conflicting basic learning need of youth and adult are diverse and may be met through a diversity of delivery system. Literacy programmes are crucial because literacy is an essential

skill in itself and the foundation of other life skills. Literacy in mother-tongue supports identity and legacy of community and its people. Other needs of learning and education may be helped by skill drill, apprenticeship, formal and non-formal education programmes in health, nutrition, population, agricultural technique, environment, science, technology, family life including productiveness awareness and other societal issues.

Accordingly accessible instrument and channel of information, communication and social action could be used to help transfer in dispensable knowledge to educate people on social issues. In addition to traditional methods, library, television, radio and other audio-visual methods can be organized to meet their simple educational need of people. All these components should constitute an combined system – complementary, mutually reinforcing and of comparable standard, and they should donate to creating and developing possibility for lifelong learning, World Declaration on Education for All, Article 5, New York, Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for World Conference on Education for All, 1990.]

Scope of ‘basic education’ has been extensively understood across community and society to comprise, among other things, ‘early childhood care and initial education’, i.e. activity intended to meet ‘basic learning need’ of children before they reach school-going age. In this context prevalent concern exists among nations across globes to remove mock barrier within basic education, particularly for addition of children with special educational need in consistent schools.

(A) Right to Education in India

To ensure global and international covenant on education, earnest struggle is made and essential amendment are brought in constitution of India to safeguard educational right to all citizen in light of global principle.

86th Constitutional Amendment Act 2002

86th Amendment Act, 2002, makes three exact provisions in constitution to facilitate understanding of free and compulsory education to children between age six and 14 as a fundamental right. These are:

1. Adding Article 21A in Part III initiating provision that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norm and standard.
2. Modifying Article 45, and

3. Adding a new clause (k) under Article 51A (fundamental duties), making parent or guardian responsible for providing opportunity for education to their children between six and 14 year. Need to address inadequacy in retention, residual access, particularly of un-reached children and question of quality are most compelling reason for insertion. After much dithering for almost seven years subsequent to 86th Amendment to constitution, RTE Act 2009 received presidential assent on 26 August 2009, taking forward agenda of free and universal elementary education.

Report of Steering Committee on Elementary Education and Literacy for Eleventh Five Year Plan (2007-12), {2009} mentions that even after end of fifty-six years as a Republic, elementary education could not be universalized, enormity of challenges inherent in country's size, monumental diversity of its people and their problems, development of education until now in the country could by no means be said to be reasonable.

Swedish International Development Cooperation Agency (SIDA) in its report "Free and Compulsory Education for all Children: Gap between Promise and Performance" emphasizes on debt we owe to millions of children whose right to education we should – but often do not – classify and defend. It underlines gaps between promise and demonstration in securing free and compulsory education for all children, which has grown much better at beginning of new millennium than it was in the 1960s.

After many rounds of drafting and redrafting that went into Right of Children to Free and Compulsory Education Act of 2009, which would be a genuine instrument for any child to demand her basic entitlement. Yet, a close look at provisions reveals distressing features.

(B) Main features of Right to Education Act

- 1) Every child of India in the 6 to 14 years age group; has a right to free and compulsory education in a neighbourhood school till the achievement of elementary education.
- 2) Children who have either dropped out from the school or have not be present at any school will be enrolled in the schools and no school can reject them for taking admission.
- 3) Private and unaided educational institutes will have to reserve 25 percent of the seats for the students belonging to economically weaker section and disadvantaged section of the society in admission to class first (to be reimbursed by the state as part of the public-private partnership plan).
- 4) All schools except government schools are required to be recognized by meeting the specified norms and standards within 3 years, failing of which they will be penalized for up to

Rs. one lakh. It also prohibits all unrecognized schools from practice and makes provisions for no donation or capitation fees and no interview of the child or parent at the time of admission.

5) For the purpose of admission in a school, the age of a child shall be determined on the basis of certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed.

6) The National Commission for Protection of Child Rights (NCPCR) and state commissions will monitor the implementation of the Act.

7) All schools except private unaided schools are to be managed by school managing committees with 75 percent parents and guardians as members.

8) Child's mother tongue as medium of instruction, and comprehensive and continuous evaluation system of child's performance will be employed.

9) Financial burdens will be shared by the Centre and the state governments in the ratio of 55:45 and this ratio is 90:10 for the northeastern states.

Various initiatives like Five year plans, Sarva Siksha Abhyan (SSA), Mid-Day Meal Scheme, Rashtriya Madhmayak Siksha Abhyan (RMSA) were launched by the central government to promote universalization of primary education before the induction of the RTE Act. To make this act most effective tool for eradication of illiteracy, we have to plug the lacunae based on the experience gained through earlier launched schemes and follow the track of roles being played with different parties and to take remedial measures to prevent the deviations from the set path.

IV. JUDICIAL APPROACH

State of Madras v. Shrimati Champakam Dorairajan⁴ is a landmark judgment of the Supreme Court of India. This decision led to the First Amendment of the Constitution of India. Supreme Court held that providing such reservations was in infringement of **Article 29(2)** of the Indian Constitution. Court held:

“The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate Article in Part III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion that is the correct way in which the provisions found in Part III and Part IV have to be understood. However, so long there is no

⁴ State of Madras v. Shrimati Champakam Dorairajan, 1951 AIR 226, 1951 SCR 525

infringement of any Fundamental Right, to the extent conferred by the provisions in Part III, there can be no objection to the State acting in accordance with the directive principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution.”

The right to education was produced under **Article 21**, read with **Article 19(1) (a), (b) and (c)** in 1978 in the case of **Ananda Vardhan Chandel v. Delhi University**⁵. The judge observed that the merely disparity in the nature of the rights under Part III and IV of the Constitution is that the Fundamental Rights are ‘natural rights’, which people forever enjoyed and which do not need definite socio-economic conditions to be produced by the State before they can be imposed as is the case with the DPSP which are ‘man-made rights’.

In **Bandhua Mukti Morcha v. Union of India**⁶, the Supreme Court held that while exploitation of the child must be gradually banned; other substitutes to the child should be developed including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person.

The question of right to free and compulsory education was elevated in the case of **Mohini Jain**⁷, in 1992, popularly known as “**capitation fee case**”.

The issues of the case were:

1. Is there a ‘right to education’ guaranteed to the people of India under the Constitution?
2. If so, does the concept of ‘capitation fee’ infract the same?
3. Whether the charging of capitation fee in consideration of admission to educational institutions is arbitrary, unjust, and unfair and as such violates the equality clause contained in **Article 14** of the Constitution?

The division bench of the Supreme Court held that the ‘right to life’ is the compendious phrase for all those rights which the Courts must implement as they are indispensable to the dignified enjoyment of life. Court stated:

“The right to education flows directly from right to life. The right to life under **Article 21** and the dignity of an individual are not being assured unless it is accompanied by the right to education. The state is under an obligation to make endeavor to provide educational facilities at all levels to its citizens”.

⁵ Ananda Vardhan Chandel v. Delhi University, 2163(NCM) of 1978

⁶ Bandhua Mukti Morcha v. Union of India, 1984 AIR 802, 1984 SCR (2) 67

⁷ Miss Mohini Jain vs State Of Karnataka And Ors on 30 July, 1992 AIR 1858, 1992 SCR (3) 658

Judges declared that the education in India has never been a commodity for sale. It further settled that “We hold that every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions – whether State-owned or State recognized in recognition of their ‘right to education’ under the Constitution. Charging capitation fee in consideration of admission to educational institutions is a patent denial of a citizen’s right to education under the Constitution.”

Court considered that the Constitution made it compulsory to give education to all its citizens. This interpretation alone, said the court, would assist the people to differentiate the objectives of dignity, political economic and social justice. They found that charging capitation fee of large sums by institutions of higher education is a disavowal of the right to education.

The Supreme Court observed the accuracy of the verdict given by the court in **Mohini Jain** in the case of **Unnikrishnan**.⁸

The five Judges bench by 3-2 majority partially agreed with the Mohini case decision and held that right to education is fundamental right under **Article 21** of the Constitution as it directly flows from “right to life”. As consider its content, the court partially overruled the Mohini Jain’s decision and held that the right to free education is available only to children until they complete the age of 14 years, then the responsibility of the State to provide education is subject to the limits of its economic capacity and development. The duty created by **Articles 41, 45 & 46** can be executed by the State either by establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions.

Court mentioned that **Article 45** in Part IV has to be read in ‘harmonious construction’ with **Article 21** in Part III of the Constitution, as the impact of right to life is of no use without education. The apex Court made the following interpretation:

“It is thus well established by the decisions of this Court that the provisions of Part III and Part IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV. It is also held that the fundamental right must be constructed in the light of the directive principles.”

⁸Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors., 1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474, 1993 SCALE (1)290

Court held that children of the nation are an extremely important asset. Their nurture and attentiveness are our responsibility, children's programme should find a noticeable part in our national plans for the development of human resources, so that our children grow up, to become healthy citizens, physically fit, mentally alert and morally healthy; endowed with the skills and enthusiasms needed by society. Equal opportunities for development to all children during the period of development should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

M.C. Mehta v State of Tamil Nadu &Ors.⁹, the Supreme Court stated that **Article 45** had obtained the status of a fundamental right following the Constitutional Bench's decision in Unnikrishnan. In addition, the Court said that, it is not necessary that in order to treat a right as fundamental right, it should be expressly stated in Part III of the Constitution: "the provisions of Part III and Part IV are supplementary and complementary to each other". The Court discarded that the rights in the provisions of Part III are superior to the moral claims and aspirations in the provisions of Part IV.

T.M.A Pai Foundation v. State of Karnataka¹⁰, held that the state governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state governments and universities can identify educational qualifications for students and make rules and regulations to maintain academic principles.

In the case of **Avinash Mehrotra v. Union of India and Others**¹¹, is whether right to education comprises right to study in quality school which does not pose threat to child safety? The court held that **Articles 21** and **21-A** of the Constitution obliges that India's school children obtain education in safe schools. The court had again stepped into the shoes of legislature by giving the aforementioned directions. The right to education has to move towards growth as merely primary education is made compulsory and free, the secondary education and other higher levels still lag behind. The problem of drop outs even at primary level needs to be solved. It could be considered that the court will always remain the guarantor of fundamental rights such as right to education and will direct the legislature and the executive when such questions are brought before it.

The Court has protected the lives of children by recommending safety majors to be followed and thus it is a challenge to those private management schools which view education only as a

⁹ M.C. Mehta v State of Tamil Nadu &Ors, AIR 1997 SC 699, (1996) 6 SCC 756

¹⁰ T.M.A Pai Foundation v. State of Karnataka, 1994 AIR 2372, 1994 SCC (2) 734

¹¹ Avinash Mehrotra v. Union of India and Others, WRIT PETITION (CIVIL) NO.483 OF 2004

business and hardly care about the lives of innocent children. The verdict has further enlarged the burden of government since by providing free education and free mid-day meals will not be adequate, the lives of children is also a condition.

“In **Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi JT**¹², right to education at the secondary stage was held to be a fundamental right.

In **J.P.Unnikrishnan V. State of Andhra Pradesh JT**¹³ 1993, a constitution Bench had held education up to the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under **Article 39 (e) and (f)** of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.”

V. FULFILLING THE RIGHT TO EDUCATION 4A’S FRAMEWORK

At International level the ICESCR¹⁴ devoted Articles to the right to education, namely; Article 13 and 14. Article 13 comprises the wider provision in the ICESCR, and is the most wide ranging and comprehensive article on the right to education in international human rights law. Articles 13(1) of the ICESCR, The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The fulfillment of right to education can be assessed using the 4A’s framework, which asserts that for education to be a meaningful right, it must be available, accessible, acceptable and adaptable.¹⁵ The 4A’s framework proposes that government, as the prime duty-bearers, have to respect, protect and fulfill the Right to Education by making education available, accessible, acceptable and adaptable. The framework also places duties on other stakeholders in the education process: the child, who as the privileged subject of the right to education has the duty to comply with compulsory education requirements, the parents as the ‘first educators’ and

¹² Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi JT, 1991 SCALE (1)187

¹³ Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors., 1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474, 1993 SCALE (1)290

¹⁴ International Covenant on Economic, Social and Cultural Rights 1666, Adopted and opened for signature, ratification and accession by General Assembly, resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.

¹⁵ Progress report of the Special Rapporteur on the Right to Education, Katarina Tomasevski, submitted in accordance with the Commission on Human Rights Resolution 1999/25, E/CN.4/2000/6 of 1 February 2000.

professional educators, namely teachers. The 4A's have been further explained as follows:

Availability

The availability of the educational institutions and programs has to be in sufficient quantity within the jurisdiction of the state party. All institutions and programs are likely to require buildings with adequate facilities of sanitation facilities for sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and soon; while some will also require facilities such as a library, computers and information technology.¹⁶

In this regard it is worth recalling Article 13(2) (e) of the ICESCR: "The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved".

Availability includes safe building; school in the village; sufficient number of teachers; free textbooks and uniforms; sanitation facilities; and appropriate transport. Funded by the government education is universal free and compulsory.

Accessibility

The educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the state party. Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination. The educational institution has to be within safe physical reach, by attendance at some reasonably convenient geographic location. Education has to be affordable to all. This dimension of accessibility is subject to the differential wording of Article 13(2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all". States parties are required to progressively introduce free secondary and higher education.¹⁷

Accessible means no child labour; no gender discrimination; no disability discrimination; affirmative action to include the most marginalized in school; and school within reasonable distance. All children should have equal access to school service regardless of gender, race religion, ethnicity or socio-economic status. Efforts should be made to ensure the inclusion of marginalized groups including children of refugees, the homeless or those with disability. This includes ensuring the proper laws are in place against any child labour or exploitation to prevent children from obtaining primary or secondary education.

¹⁶ General Comment No. 13 on the Right to Education (Article 13 of the Covenant) adopted by the UN Committee on Economic, Social and Cultural Rights at its 21st session in 1999

¹⁷ Ibid.

Acceptability

Acceptable means providing quality education and quality teaching that is relevant and pluralistic. The quality of education provided should be free of discrimination, relevant and culturally appropriate for all students. Student should not be expected to conform to any specific religious or ideological views. Methods of teaching should be objective and unbiased and materials available should reflect a wide array of ideas and beliefs. Health and safety should be emphasized within schools including the elimination of any forms of corporal punishment. Professional of staff and teachers should be maintained.

The form and substance of education, including curricula and teaching methods, have to be acceptable to students and, in appropriate cases, parents; this is subject to the educational objectives required by Article 13(1) and such minimum educational standards as may be approved by the state according to Articles 13(3) and 13(4). Article 13(3) provides, The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. Article 13(4) provides, No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.¹⁸

Adaptability

Adaptable includes meeting the specific needs of the children in the local context; meeting the changing needs to society; and contributing to gender equality. Educational programs should be flexible and able to adjust according to societal changes and the needs of community. Observance of religious or cultural holidays should be respected by school in order to accommodate students, along with providing adequate care to those students with disabilities.

It is important for the states parties, while considering the appropriate application of these “interrelated and essential features”, to have the best interests of the student as a primary consideration.

¹⁸ General Comment No. 13 on the Right to Education (Article 13 of the Covenant) adopted by the UN Committee on Economic, Social and Cultural Rights at its 21st session in 1999.

VI. FINDINGS

India's National Education Policy lays down the objective of setting aside at least six percent of the GDP for spending on education this target, originally suggested by the Kothari Commission, and has also found room in the policies of almost all major political parties. But the maximum share of the GDP devoted to education in India has been close to four percent and on most times it has been around three percent. The Minister for Human Resource Development has recently approved that the resources gap is enormous.

Mainly when we consider the fact that in many progressive and several more developed among developing countries, the expenses on education is 10 percent or above of the GDP. He has articulated the opinion that only the private sector can fill in the gap. He has, therefore, made a plea for public-private Corporation in education. Though private-public Corporation in education has been talked about for the last few years, the progress in this way has been negligible.

Even otherwise, the record of the private sector in meeting the demand for school education is not at all impressive. As many as 89.1 percent of the primary schools in India were in the public sector (government and local body) and only 10 percent in the private sector for upper primary schools, the percentage was 72 to 78 respectively¹⁹. The enrolment from Classes I to VII/VIII was 72.23 percent in government schools and only 27.61 percent in private schools.²⁰

In the case of Bihar, the contribution of the private sector to school education at the elementary level, in terms of number of schools as well as percentage of enrolment, is below six percent. 67 years of independence, the private schools have filled in a gap of merely a little over 10 percent, so far as the overall number of primary schools are concerned, there can be no guarantee that they will be able to contribute considerably to providing free and compulsory education to children in the age-group 6-14 and to universalizing secondary education.

At the current rate of their contribution, and if the state does not step in to shelter the gap, we may have to wait till the end of the era for universalizing school education in India and even then it may not come about. It may take even longer to universalize secondary education, because the number of supplementary schools to be built and additional teachers to be recruited at this level, is colossal. Besides, school education is a common good the provision of which is the accountability of the state. The provision of free and compulsory education is now a

¹⁹ India.gov.in. 2021. Information on Department of School Education and Literacy | National Portal of India. [online] Available at: <<https://www.india.gov.in/information-department-school-education-and-literacy>> [Accessed 16 July 2021].

²⁰ Id.

fundamental right accessible to children in the 6-14 age-group. It is obligatory upon the state to ensure this right with instant effect. It is legally and morally indefensible for it to make the fulfillment of this right conditional upon the contribution of the private sector.

The third common problem of education in India is the flourishing discrimination characterizing it. Children of the rich and the elite have entree to good quality private and special types of public schools, whereas children of the huge majority of the poor, including the minorities and side-lined groups, go to government schools which are in a shambles. Thus, the class partition in society is reflected in the division of the school system. The latter has been a major contributory factor to the perpetuation and accentuation of social disparity. It also makes for wicked education.

For, empirical studies have confirmed that schools which bring in children from diverse communities and classes provide better education and even the children of the rich and the elite stand to benefit from such a school system. Some key clauses of the RTE Act say that no child can be held back until the achievement of elementary education, unrecognized schools are expelled, donations and capitation fees are banned, interviews are banned, 25% of seats in private schools are to be kept for the poor (to be compensated, based on a formula, by the state), the accountability to get kids into schools is with the government and all schools have to follow to the prescribed norms and standards within three years. Some of these clauses are very decent, but the devil lies in the facts and in the delivery. We will look at one of these issues—the standards set for schools.

The human resource development minister had once said that the education system is not delivering, India has a shortfall of 1.2 million teachers and, we need to devote more to education. The gap in education needs and supply is vast and the investment required is way beyond what the government can devote. So, the balanced strategy would be to allow schools to proliferate. Yes, there will be more bad schools, but people will have choice and schools will have to compete to fill up their classrooms. C. Rangarajan, chairman of the Prime Minister's economic advisory council, has said that "competition is the best safeguard to protect consumers".

As capability ramps up fast, the poorly run schools will be forced to progress or close down—they will be forced to emphasis on outputs. But instead of letting schools to proliferate, the RTE Act emphases on inputs—infrastructure, teacher qualification and recompense, standardized textbooks and curriculum, etc. Many schools will not be able to meet these measures by the end of three years. The effect will be felt the most by the private, unaided

budget schools, where enrolment numbers are rising fast and which many parents choose over government schools.

These budget schools do not have the monetary means to meet the criteria set. They devote in basic infrastructure, their teachers are not essentially qualified and are paid small salaries (Rs3,500 per month against Rs15,000+ at a municipal schools) all because these schools demand a low fee of around Rs200-500 per month, which poorer parents can pay for. Many parents desire to pay a fee and send their kids to a private school because they have lost confidence in government schools and, in many cases, the teachers in private schools are more passionate and devoted.

RTE available only from Class I to Class VII:

This is the biggest drawback which RTE act is facing that it provide free and compulsory education only for students who falls in the category of class I to class VII, what about the students who wishes to appear for higher education. Let's forget about higher education, a child who cannot afford to educate himself he'll be struck till 8th standard and we fail to understand what good he'll be able to do for himself in that case. Also it is an established fact that a child learns more frequently when he is young that is from 3-4 years of age, now if RTE does not extend it boundaries to pre-primary level which is nursery (LKG, UKG) then there is a serious problem in this act.

The education department is thinking of directing baseline tests every two months to exam in the students' knowledge

This notion is borrowed from the United States' 'No Child Left Behind' programme. Its objective was to defeat the well-established public-funded school system. It achieved this by testing children frequently and then classification the schools as 'non-performing' and weeding them out, rather than aiding them to improve. This broadly discredited idea has ready approval in our government because this will hasten what the RTE Act is doing, which is thrashing government schools, thereby endorsing profit-making schools.

8TH standard policy:

The central government has instructed all states to include eighth standard in primary school education. To deliver free education to all under the Sarva Shiksha Abhiyan (SSA) project. However many primary schools in the state have not yet done so. Under SSA, students aged up to 14 years will be provided free education. In Dakshina Kannada district, there are 1,498 primary schools, which comprise government, aided and unaided schools. Of the 1,498 schools, as many as 651 are government primary schools. Till date, DK district administration has

involved eighth standard only in 262 primary schools.²¹

Migrated children still awaits for the RTE policy:

As many as 80 percent of children of migrant workers in the states either drop out of schools or have no education at all as they get sucked into the labour workforce. A study released reveals, according to the study by a noted NGO, while Maharashtra government's Right to Education (RTE) Act, 2009, rules instruct a tracking system to monitor drop-out rate and absentee children, till date there is no system to confirm enrolment of children into schools or an instrument to monitor that they do not end up as laborers. The study was conducted by Child Rights and You (CRY) in partnership with Vanchit Vikas Sansthan of Ahmednagar district.

Survey conducted by ASER:

The Annual Status of Education Report (ASER) is a model based household survey, these surveys have been in the district. These surveys are conducted each year between the months of September and November. In 2012, the survey conducted since 2005. ASER is conducted in every rural district in India and is carried out by a local organisation or institution stretched to 567 districts, 16,166 villages, 331,881 households and 5, 96,846 children. Two basic questions were raised in order to conduct this study, Are children enrolled in school? Are they learning? Using simple methods, children in the age group 5 to 16, are asked to do some basic reading and arithmetic tasks.

Nationally, for rural areas, ASER findings show that India is very close to achieving universal enrolment. For children in the age group 6-14 years, enrollment levels have been 96% or more for the last four years. We are now facing the "last mile" problem. Those who are still out of school are the hardest to reach and the hardest to teach. Special efforts have to be made to bring such children to school and to encourage them to attend school regularly. In some states, older girls (in the age group 11-14 years) also need focused and immediate attention. In Uttar Pradesh and Rajasthan, the percentage of girls of this age group who are not enrolled is higher than 10%. In Odisha, Jharkhand and Gujarat, the proportion of girls (11-14 years) who are not enrolled is more than 6%.

VII. CONCLUSION

Therefore, in the concluding remarks it is expected that that mere passing an act is not sufficient. The need of hour is to keep a proper check on the functioning of the act. The constant

²¹ Ssakarnataka.gov.in. 2021. [online] Available at: <http://ssakarnataka.gov.in/pdfs/data/2011-12_Analytical_Report.pdf> [Accessed 16 July 2021].

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

Right to education for all and free education for certain age group of people is a brilliant policy by the government and we appreciate that, as key to a developed nation is that its citizens are literate enough to earn their bread and to contribute in the economy. Every coin has to faces similarly RTE faces both criticism and appreciation at the same time, the right to education is a fundamental right and UNESCO purposes education for all by 2015. India along with other countries of the world should also put genuine and honest efforts to make this goal a real achievement.

(A) Suggestions to make Right to Education Act Effective:

1. The Right to Education act should not be limited to the age of 14 years it should be up to the secondary level. The government should make some changes like introducing diplomas/degrees with specialization in IT, mobile communication, media, entertainment, telecommunication, automobile, construction.
2. CSS (Common School System) was an indispensable step for achieving equality decades ago however now it should be changed into MSS (Model school system) based on the wants and demands of the society where education should be provided free of cost and on private institute patterns.
3. Parents need to play a significant role to make RTE the main success in India. It can be done only by motivating them through counselling and they must be made aware about the RTE Act through media, pamphlets campaigns, hoardings, rallies etc. only then we can expect that our future generation will be well educated.
4. Schemes like mid-day meal, SSA, RMSA along with world organization UNICEF are playing an important role in increasing the enrolment ratio. By providing initial and basic

education to Indian children. However these national and international agencies should aim weaker sections of the society, economically backward, females and highly populated states of India, these states and these societies should be the top priority to improve efficacy of this act.

5. Most importantly local governing bodies should get involved so as to enroll the new born babies and their record should be sent to nearby school. After that school authorities should follow up the child and sent the info for registration and admission to his/her parents without any biasness.

6. Provision for severe punishment regarding the abuse of this Act should be made and the responsibilities of state government, central government, parents, teachers, and administrators, Owners of the school, should be fixed. It should be made compulsory for all the government employees; whether state or centre or person working under centre or state funded agency, to send their children in government or in government aided institutes so as to promote these schools.

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