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A Decade of Right to Education Act, 2009: Its Impact**INTRODUCTION**

Education is the backbone of a nation. Dr. Martin Luther King, Jr. quoted, “Intelligence plus character - that is the goal of true education.” If a person educates himself he’s not shaping himself only but he’s helping in shaping a good society by acquiring, knowledge, learning behavioral activities and methods to survive in the society. In short, a person will be respected if he had some dignity in the society, and the only way to attain dignity and personality is educating himself. But there’s a saying that whenever we take a step forward, we learn something whether it will give us fruitful results or not and that learning shapes us. In our society, educated people earns more respect than that of uneducated one, at the same time it does not denote uneducated are worthless.

Education was made a fundamental right by the Constitution 86th amendment act, 2002. It added article 21(A) which provides, “*The State shall provide free and compulsory education to all the children of the age of 6 to 14 years in such manner as the state may by the law determine.*” Education is very vital for exercising human rights. The progress and the advancement of the nation totally

depends upon the quality of education delivered to the person. Yes, it's a dynamic process which starts from the birth and ends till death. Therefore, the right to free and compulsory education is a human right to which a person is entitled to and has a power to claim it.

The bill was approved by the cabinet on 2nd July, 2009, Rajya Sabha passed the bill on 20th July, 2009 and the Lok Sabha on 4th August, 2009. It then received consent by the President of India and was notified as law on 26 August 2009 as The Children's Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1st April, 2010 and made India one of the 135 countries to have made education a fundamental right for every child.

BACKGROUND

The importance of education has been also recognized by many scholars and jurist. According to Earl Warren, Chief Justice of Supreme Court of United States-“Education is perhaps the most important function of state & local governments. It is a foundation of good citizenship.”

The importance of right to free and compulsory education can be found signed in 1948 in aftermath of the second world war in article 26 of the Universal Declaration of Human Rights which states that- “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.” There are many international instruments like article 13 and 14 of the international covenant on economic, social and cultural rights, 1966 and article 28 and 29 of convention on the rights of the child, 1989 stipulated that primary education should be “compulsory and available free to all”, and that it should allow children to reach their fullest

potential and also in article 10 of convention on the elimination of all forms of discrimination against women, 1979 which covers aspects of right to education.

In ancient times, India had gurukula system in which the student would go to teacher's (guru's) house (ashram) and learn from Sanskrit to the holy scriptures and from Mathematics to Metaphysics. The learning was closely related to nature and to basic features of life. Then modern school system was brought in India which included English as the language originally by Lord Thomas Babington Macaulay in the 1830s and the subjects were confined to THE modern subjects such as science and mathematics which was divided into different sections of juniors and seniors. Then the Uttar Pradesh Board of High School and Intermediate Education was the first Board set up in India in the year 1921 with jurisdiction over Rajputana, Central India and Gwalior. And in 1929, the Board of High School, Rajputana, was established. Later, boards were established in some of the states. But eventually, in 1952, the constitution of the board was amended and it was renamed as Central Board of Secondary Education (CBSE). And lastly, Universal and compulsory education for all children in the age group of 6-14 was a cherished dream of the new government of the Republic of India. This is evident from the fact that it is incorporated as a policy in article 45 of the constitution. And the pressures of economic growth and the acute scarcity of skilled and trained manpower must certainly have played a role to make the government take such a step.

TIMELINE FROM 1950 TO 2010

In 1950, the Constitution of India stated in the article 45 that, *“The state shall endeavor 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 fourteen years.”*

In 1975, the central government put the responsibility for primary education on a joint state, the 'concurrent list' in the 42nd amendment of the Constitution.

In 1993, article 21 known to be a fundamental right to life and liberty in the constitution which was used to promote 'elementary education' in a legal case against the regional state government of Andhra Pradesh stated, *“Entitlements sanctioned by the Constitution cannot be deferred by the State at its convenience. The State has to make the necessary reallocation of resources, by superseding other important claims, if necessary, in a manner that the justifiable entitlement becomes a reality.”*

In 2002, the 86th constitutional amendment act (2002) by means of article 21A in Part III of the Constitution of India looks for free and compulsory education for the age group of 6-14years.

In 2003, the first draft of the right to education bill was circulated on public platform for their reviews regarding it.

After the feedback of first draft the second one was drafted in 2004 for public review.

In 2005, the CABE (Central arranging leading body of Education) advisory group drafted the 'Right to Education' Bill and submitted to the Ministry of HRD. MHRD sent it to North Atlantic Council and they sent the Bill to PM for his perception.

In 2008, the Right of Children to Free and Compulsory Education Bill was introduced in the Rajya Sabha and referred the bill to the Department-related Parliamentary Standing Committee on Human Resource Development.

In 2009, on 20th July, Rajya Sabha passed the bill with minor changes which was drafted in 2008 while Lok Sabha passed the bill on August 4th and the President of India gave the assent on 26th August, thereby, notifying it and bringing it into force as an act.

And finally on 29th January, 2010, Minister for Human Resource Development Kapil Sibal approved the Model Rules for the Right to Education which state governments will use for their implementation of the Act. And on 1st April, 2010 the RTE came into effect.

ROLE OF THE RIGHT TO EDUCATION ACT, 2009

According to the World Bank, India had been making major strides in reducing the number of out of school children – from 25 million in 2003 down to 8.1 million in 2009. Building upon this progress, the act included provisions to address access, equity, quality, and retention.

In a country where it's not uncommon to find instances of discrimination against the weaker sections of society, the government, in a bid to offer equal opportunities to all, has enacted the Right of Children to Free and Compulsory Education Act, 2009, which, as is evident from the name itself, ensures free and compulsory education for children aged between 6 and 14 years. This act serves as a building block to ensure that every child has his/her right to get THE quality elementary education with the help of the state, families and local authorities. Thus, the most important features are:-

- (1) To provide free and compulsory education to all the children of India between the age group of 6-14 years.
- (2) It makes the provisions for the children who are not admitted to be admitted as per the appropriate class.

- (3) It lays down the norms and standards regarding fixed pupil- teacher ratio.
- (4) It specifies the duties and responsibilities of appropriate government, local authorities and parents in providing free and compulsory education and sharing of the financial requirements with the government.
- (5) An improvement in the quality of the education which is most essential component.
- (6) It provides for appointment of appropriate trained teachers with required academic qualifications.
- (7) It prohibits any kind of physical punishment and mental harassment, capitation fee, running of schools without recognition and etc.

Though RTE Act has achieved huge success with its features but it has encountered many criticisms for structural and administrative lapses. Various provisions have failed to achieve the desired results of enhancing the quality of education. Shortcomings of the act are:-

- (1) Looking at the united nation's charter signed by the India which mandates free and compulsory education to the age group of 0-18years but, the act provides privileges to only 6-14 years of age group and leaves out the age group of 0-6years and 14-18years. Hence, this is the greatest loophole of RTE act.
- (2) Since the act came in 2010so therefore there is an inability to meet the distance criteria and also the certification matters to be done by the government authorities due to the lack of awareness among the poor people.
- (3) There are no prescribed penalties in the RTE act, 2009 if the administration or the government fails to discharge their duties and responsibilities.

- (4) The act explains about the right to schooling and physical infrastructure, but it does not guarantee that child might learn something and moreover, the government schools will not be held accountable if they fail to meet the required norms.
- (5) Since the “reservation” policy of this act mentions about 25% seats for the unprivileged children in private/public unaided schools that means the state government bears the fees of the students. The fees gets reimbursed at the governments rates. Therefore, there will be a huge gap between the cost of education pf per child and the reimbursement by the government which would lead to the question of deficit.
- (6) It raises the conflict with the article 30 of the Indian constitution as no exemption is been provided for the minority schools.
- (7) The act along with the government initiatives have invited the children to schools but is still at distant as per the quality of education as it still suffers with the shortage of teacher, infrastructural gaps and several habitations continue to lack schools altogether.
- (8) And lastly, a deeply disturbing aspect highlighted by many school managements is that the RTE Act, by giving absolute power to the Education Department and local bodies to make or mar schools, will become the ideal tool for large-scale, systemic corruption.

For better results the RTE act should:-

- (1) There should be increase in the age group rather only 6-14 years of age. It should also cover secondary education as the poor people till the age of 14 might not go for further education due to financial status.

- (2) As parents play a vital role in shaping a child so therefore, the parents should be made familiar with the RTE act, 2009 through counseling, campaigns, pamphlets and etc.
- (3) For achieving the goals of free and compulsory elementary education, it is vital to have a responsive curriculum to the changing needs and facilities.

CONSTITUTIONALITY

Our constitution has the remarkable feature of its own called the Preamble. The basic principles of democracy are justice, liberty, equality and fraternity to the people which largely depends on education and enlightenment of the mass people in the country. For successful running of the democracy, it's necessary for every person to be educated enough and to know their fundamental rights and duties. Education is considered as very important aspect of one's life. If the person is educated then it means a society is been educated and if the society is not been educated, democracy will not be successful and despotism, dictatorship will take its place. During the independence, literacy rate of the Indian people was only 19.78% which implied that in reality 80% of the Indian people remained illiterate and ignorant. Therefore, there are certain rights in the field of education for every citizen in a democracy, so as to eradicate illiteracy.

In Constitution of India, part III which guarantees certain fundamental rights which are important for the development of human personality. These rights enables a man to chalk out his own life in the manner he likes the best¹.

The Constitution of India has added under its 86th amendment act, 2002 a new article 21(A) after article 21 therefore, this provision makes education a

¹ 1967 AIR 1643, 1967 SCR (2) 762.

fundamental right. Article 21(A) may be read with new substituted Article 45 and a new Clause (K) inserted in Article 51A under same amendment Act, 2002. The following cases are discussed in the light of this act:-

In *Mohini Jain v. State of Karnataka*², the Supreme Court opined that the right to education is a Fundamental right under article 21. The court laid down in this case that the right to education flows directly from right to life. The right to life under article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

In *Unni Krishnan v. State of Andhra Pradesh*³, the Supreme Court examined the correctness of the decision given by it in Mohini Jain's case, the court partly agreed with the decision and held that the right to education is a fundamental right under article 21 as it directly flows from the right to life. But the court overruled and laid down that the right to free education is available only to children between 6-14 years of age. And the obligation to provide higher education will depend or be subject to the limitation of the economic capacity and development of the state.

In *TMA Pai Foundation v. State of Karnataka*⁴, a 11 judges constitution bench of the supreme court has partly overruled the Unni Krishnan's ruling and held that the scheme relating to the admission and fixing of fee were not correct.

And lastly, In *Ng. Komon v. State of Manipur*⁵ there was a government primary school in a village Liwachangning in Manipur. Due to heavy storm the school was blown away. The Chairman approached the concerned authorities but the

² 1992 AIR 1858, 1992 SCR (3) 658.

³ 1993 AIR 2178, 1993 SCR (1) 594.

⁴ Writ Petition (Civil) 317 of 1993.

⁵ AIR 2010 GAU 102.

authority decided to shift the school from its original site to the village. The petitioner filed a petition against the respondent to not to shift the school. The High Court held that the shifting of school to another village would deprive the school going children of the age group 6-14 years of their fundamental right to have free and compulsory education in government school and issued the notification to concerned authorities to establish school within the stipulated time from the date given by the court.

CONCLUSION

According to the World Bank education specialist for India, Sam Carlson- "*The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government.*" But it can only be achieved if implemented in a proper manner. Not only the state and central government is liable to take the responsibility but as a nation too we have the responsibility that each and every child gets to be educated. Education is the pillar of a nation. If the citizen of the nation is educated well then they become an asset for the nation and can help in achieving growth of the economy otherwise, non-educated citizens can be a liability for their own nation. It took years since Independence of India to make education a fundamental right. In our country, educational deprivation is one of the biggest challenges faced with the problem of unemployment, poverty, poor economic development & high crime rate etc. To change the past we need to make our present better so as to shape the future and that shaping can be done by educating the children and helping them to know their own rights and duties for the betterment for our nation.