

## SECURING FUTURE, 'OF THE STATE, BY THE STATE & FOR THE STATE', THROUGH EDUCATION: A CRITIQUE OF CHILD RIGHTS

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### ABSTRACT

*Education is the most important element for the growth and prosperity of a nation. It is the principal means through which the poor and marginalized individuals can break through the vicious cycle of poverty and participate in society. Despite progress at various levels, children in developing countries are still discriminated in accessing education, health, employment due to a number of factors like poverty, illiteracy, early marriage, violence at home and school. Even though there are a number of legislations that attempt to eliminate discrimination against children, still they do not have access to primary and elementary education. Through this paper, an attempt is made to analyze various provisions in municipal and international law relating to right to education. In addition, an attempt is made to answer important questions as to why right to education is so difficult to achieve in spite of special provisions which specifically directed towards providing education to women and children under the Constitution of India and various judicial pronouncements which time and again try to uphold these provisions. Lastly, the researcher would try point out the lacunas in the present system due to which the 86<sup>th</sup> Constitutional Amendment which casts a duty on the state to provide free and compulsory education to children is difficult to achieve.*

### INTRODUCTION

*"... education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."*

***Committee on Economic, Social and Cultural Rights, 'General Comment No. 13***

Gender equality and non-discrimination are the core issue that are major concern of all the states and is discussed in various national and international levels. Education is the most

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important element for the growth and prosperity of a nation.<sup>2</sup> It is the principal means through which the poor and marginalized individuals can break through the vicious cycle of poverty and participate in society. Despite progress at various levels, women and children in developing countries are still discriminated in accessing education, health, employment due to a number of factors like poverty, illiteracy, early marriage, violence at home and school.

Like all human rights, right to education is inalienable and universal. Several international conventions have enshrined it in international law thereby placing a commitment on ratifying State to make necessary provisions in the municipal law. Article 26 of the UDHR<sup>3</sup> provides that “education shall be free at least at elementary and fundamental stages. Elementary education shall be compulsory....”<sup>4</sup> Since India is a signatory to UDHR and other international human right treaties which uphold the right to elementary education; it has an obligation to give effect to its commitment to education for all. The Constitution of India under Article 21A<sup>5</sup> states 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.

The Hon’ble Supreme Court in its landmark decisions in *Mohini Jain V. State of Karnataka*<sup>6</sup> and *Unni Krishnan V. State of Andhra Pradesh*<sup>7</sup> has declared that the “right to education flows directly from the right to life.” Although the need for education has been recognized by one and all, it would become a reality only when it is made available and accessible to all children. The Right of Children for Free and Compulsory Education Act, 2009 is a significant step towards the realization of this goal. India’s education scenario looks improving in the records. The 2011 census records a 9.2 per cent rise in the total literacy rate of 74.04 per cent, however the dropout of children from schools is very shocking despite the huge investment in education right to education still remain a distant dream for many owing to various reasons. In spite of the implementation of the RTE Act, 2009, fundamental right to education is not being enjoyed by all children the way it ought to and this is a continuous cause of concern for India. In the back drop of this, it becomes important to take stock at the quality of elementary education in India and the major hurdles standing on the road to right to

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<sup>2</sup> Dr. A.P.J. Abdul Kalam, Mission of Education in The Week, 19-3-2006, P. 33

<sup>3</sup> Universal Declaration of Human Rights, 1948

<sup>4</sup> Universal Declaration of Human Rights, 1948 Article 26

<sup>5</sup> Constitution (Eighty Sixth Amendment) Act, 2002

<sup>6</sup> (1992) 3 SCC 666

<sup>7</sup> (1993) 1 SCC 645

education.

## **RIGHT TO EDUCATION UNDER THE INDIAN SYSTEM**

The right to receive education constitutes the core of the right to education under international human rights law. Article 28 of CRC<sup>8</sup> guarantees this right by imposing positive obligations on the States Parties to develop and maintain an educational system in order to provide education to all children at specific levels (primary, secondary and higher), and, according to the level, cost-free and compulsory in lines with other international conventions<sup>9</sup> emphasize on the providing basic education to children.

### **A. THE DEFINITION OF EDUCATION**

The international charters on human rights as well as CRC do not give a precise definition of the term education. The term 'education' has been used by these international instruments to have a dual meaning: a) education as the provision of basic skills, and b) education as the development of the intellectual, spiritual, and emotional potential of the young person or in other words the broader development of his or her personality.<sup>10</sup> The CRC stresses that the notion 'basic skills' does not only include 'literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life'.<sup>11</sup> These aspects refer to the second, broader aspect of the term 'education'.

### **B. SIGNIFICANCE OF EDUCATION**

Article 21 A of the Indian Constitution has been described as the most important fundamental right and stands above the rights, "as one's ability to enforce one's fundamental right flows from one's education."<sup>12</sup> For education promotes good and dignified life. Right to education is a highly powerful concept because where it is effectively guaranteed and implemented; it leads to social transformation of the society. Right to development is an important human

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<sup>8</sup> Convention on the Rights of the Child Adopted , G.A. Res 44/25 of 20 November 1989

<sup>9</sup> Universal Declaration of Human Rights, 1948.

<sup>10</sup> See Mieke Verheyde, 'Commentary on the United Nations Convention on the Rights of the Child, Article 28', Martinus Nijhoff Publishers.

<sup>11</sup> CRC Committee, *General Comment No. 1 on the Aims of Education* (UN Doc. CRC/GC/2001)

<sup>12</sup> *Ashok Kumar Thakur v. Union of India*, (2008) 6 SCC 1

right and education is means for right to development. Education makes an individual virtuous and enables him to integrate completely to the affairs of the State. It means education helps not only to acquire knowledge and skills, but also helps in capacity building. It capacitates the individuals to think, to ask questions and to make judgment. It opens up new horizons for an individual, provides new aspirations and develops new values. Education generates in an individual a critical outlook on social and political realities and sharpens the ability to self examination, self monitoring and self criticism.<sup>13</sup> Further the Supreme Court in *Mohini Jain V State of Karnataka*<sup>14</sup> held that the fundamental rights including the freedom of speech and expression and other rights guaranteed under Article 19 cannot be fully appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

### C. ELEMENTARY EDUCATION FROM AN INTERNATIONAL PERSPECTIVE

The right to education has its roots in several international human right conventions. India is a signatory to the Universal Declaration of Human Rights and has acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10<sup>th</sup> April 1979.

- Article 13 of the Covenant on Economic, Social and Cultural Rights reads as under:
  - (1) The State parties to the present covenant recognize the right of every one 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 all human rights and fundamental freedoms.
  - (2) (a) Primary education shall be compulsory and available free to all.
    - Article 28 of the Convention on the Rights of the Child (CRC) provides that the State parties recognizes 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 to all.
    - Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that the “State parties shall take all appropriate

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<sup>13</sup> J.S Rajput, Education: Vision 2020, P. 250

<sup>14</sup> *Supra* note no. 4

measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.”

- The World Education Forum held at Dakar, Senegal, in the year 2000 which was attended by one hundred and eighty two countries adopted a specific Frame Work of Action.
  - I. Recognizes the right to education as a fundamental human right.
  - II. Reaffirms the commitment to expanded vision of education as articulated in Jomtien Declaration 1990, and
  - III. Calls for renewed action to ensure that every child, youth and adult receive education by 2015.

This Frame Work of Action has been adopted by all the participant countries.

- Article 30 of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) provides that each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned.

The right to basic education has been a key element of all most all the international covenants and human rights treaties. Most Constitutional and Municipal Laws in the world recognize the child’s right to education.

#### **D. THE SUPREME COURT’S VIEW ON RIGHT TO EDUCATION**

Child rights movement has gained a lot of momentum in the first decade of the 21<sup>st</sup> century. In the need to legislate for universal and compulsory education had been in focus since 1911 when the Gokhale Bill for elementary education was prepared. The first law on compulsory education was the Bombay Municipality (Primary Education) Act 8, 1918. Thereafter many States followed the suit.<sup>15</sup> Further from the commencement of the Constitution of India it has becomes a constitutional mandate on the States to provide free and compulsory education to children. Several provisions in the Constitution reflect this constitutional commitment.

- Article 15 (3): empowers the State to make special provision for children.
- Article 24: prohibits employment of children below 14 years in factories.
- Article 39 (e): mandates the State to directs its policy towards securing that the

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<sup>15</sup> Rao, Didla Venkateswara, 2004 *Child Rights: A Perspective on International and National law* 1<sup>st</sup> ed Pp. 158-159

tender age of children are not abused and that citizen are not forced by economic necessity to enter avocations unsuited to their age and strength.

- Article 45: makes provision for early childhood care and education for all children until they complete the age of six years.
- Article 46: cast a duty on the States to promote the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the society.

The above Articles emphasize the fact that education is a fundamental right of every child and it must be available to all without discrimination. As observed by Justice Bhagwati, J., in *Lakshmi Kant Pandey v. Union of India*<sup>16</sup> “it is obvious that in a civilized society the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth, and development depend on the health and well being of its children.

Children are a supremely important national asset and the future well being of the nation depends on how its children grow and develop. The judicial construction of the fundamental rights in the light of Directive Principles of State Policy, have got many of the fundamental policies incorporated into Part III of the Constitution. The right to education is the most significant example to this. The Supreme Court has implied the right to education“ as a fundamental right from Article 21. The word life has been held to include education because education promotes good and dignified life.

Further the Court in *Mohini Jain v. State of Karnataka*<sup>17</sup> held that right to education flows directly from the right to life and that the right to education being a concomitant to fundamental rights the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizen.<sup>18</sup> Subsequent to the decision in *Unnikrishnan v. State of Andhra Pradesh*,<sup>19</sup> where the main question before the Court was whether right to primary education under Article 45 is a fundamental right under Article 21 of the Constitution, the Constitution (Eighty Sixth Amendment) Act, 2002 inserted Article 21 A in the Constitution. It reads as under;

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<sup>16</sup> AIR 1984 SC 469

<sup>17</sup> AIR 1992 SC 1858

<sup>18</sup> Jain, M.P. 2011. Indian Constitutional Law. 6<sup>th</sup> ed. Nagpur. LexisNexis. Butterworths Wadhawa Pp.1298-99

<sup>19</sup> (1992) 3 SCC 666

“The State shall provide free and compulsory education to all children of the age six to fourteen years in such manner as the State may, by law, determine.”

Thus the right to education became a fundamental right of all children enforceable against the State. The passing of the Right of Children for Free and Compulsory Education Act, 2009 (RTE in short) added more flesh and blood to this right. It became the most significant enactment since independence towards universalization of education for all which should have become a reality in India by 1960. Translating a Directive Principles of State Policy (Article 45) into a fundamental right (Article 21 A) and then to a Statutory guarantee to right to education (RTE Act 2009) took, unfortunately several decades.<sup>20</sup> Some of the basic features of this Act, in the context of education for all are the following;

- The Act provides free and compulsory education to every child of the age of six to fourteen years.
- The Act ensures compulsory education, attendance and completion of elementary education by every child of the age of six to fourteen years.
- It ensures the availability of a neighbourhood school.
- It ensures that the children belonging to weaker section and the children belonging to disadvantaged groups are not discriminated against and prevented from pursuing and completing elementary education.
- It provides infrastructure including school building, teaching staff and learning equipment.
- It ensures good quality elementary education conforming to the standards and norms specified in the schedule to the Act.

Indeed no doubt the Act, as it stands, is a significant step towards universalisation of elementary education across the spectrum. Further the Government has launched many schemes and programmes like *Sarva Shiksha Abhiyan* (SSA), District Primary Education Programme (DPEP), Operation Black Board and Midday Meal for increasing the percentage and quality of elementary education in India. For instance the *Sarva Shiksha Abhiyan* is being projected as a historic stride towards improving the performance of the school system and to provide community- owned quality elementary education.<sup>21</sup>

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<sup>20</sup> Supra note no. 6

<sup>21</sup> Bajpai, Asha, 2006. *Child Rights in India: Law, Policy and Practice*. 2<sup>nd</sup> ed. Oxford University Press P. 348

## E. EDUCATION FOR ALL INDIA, A MYTH OR REALITY?

The compulsory education defined by the RTE Act, envisages inclusive, accessible and affordable education for all. Inclusive education is defined by UNESCO as a process of addressing and responding to the diverse needs of all learners by increasing participation in learning and reducing exclusion within and from education. The objective of the inclusive education is to support education for all, with special emphasis on removing barriers to participation and learning for girls, and women, disadvantaged groups, children with disabilities and out-of-school children.<sup>22</sup> Availability means to ensure compulsory and free education for all children in the country. It also means making quality education available including adequate and necessary infrastructures, contents in curricula, methods of teaching, discipline, health and safety measures and professional qualification for teachers. Accessibility implies absence of discrimination from education on the grounds of socio-economic condition of the children.

In *Binod Vikash Maneh and Another v. State of Jharkhand and Ors*<sup>23</sup> it was held that Article 21 A not only enforce the right to primary education but also includes the right to quality education. Quality is one that is learner-centred, leads to the realization of every learners full potential and prepares the learners for the challenges faced in life. It is no longer focused only on teaching and learning in the class room, but is concerned with well being of the learners, the relevance of the context and outcomes, the quality of the teaching / learning process and the suitability of the learning environment.<sup>24</sup>

However the quality of education provided by the Government remains in question. If we look at the entire educational primary education scenario, it is not particularly alarming on paper. The Gross Enrolment Ratio (GER) from Class 1 to Class VIII was 94.9 percent and from Class I to Class XII 77 percent. But hiding behind the GER is the sheer number of children who do not attend, or those who drop out.<sup>25</sup> The report by Child Right and You<sup>26</sup> verifies that a large percentage of Primary schools in the country are has no buildings or other

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<sup>22</sup> Nimma, Sudarshan. 2007. Right to Education: Emerging Scenario. 1<sup>st</sup> edn. Hyderabad.

<sup>23</sup> 2003 (4) JCR 710 (JHR)

<sup>24</sup> Supra note no. 16

<sup>25</sup> Supra note no. 6

<sup>26</sup> Supra note no. 6



infrastructure including class rooms, black boards and teaching and learning aids necessary for imparting education and for many children these are the main reasons for non-attendance. Three factors have been commonly acknowledged to be important obstacles to universal primary education. First there is a problem of poverty; second reason pertains to the quality of schooling and school infrastructure and thirdly the lack of motivation both among parents and children.<sup>27</sup> A fourteen year child belonging to a weaker section of the society is invariably an earning member of the family. He / she become the bread earner of the family and naturally education is not their priority. The poverty situations of the people are not adequately taken care rather it's only made worse by privatization and commercialization of education.

A teacher plays the key role in any effective educational process. Therefore the proper training, appointment and supervision of teachers and teaching process are very essential to improve the quality of education. The minimum prescribed qualification for teaching in elementary school is Teacher Training in any recognized institution for the purpose. In view of this the Supreme Court in *Ram Vijay Kumar v. State of Bihar*<sup>28</sup> directed the State Government to immediately take steps to impart teacher training to all the untrained persons who are selected and appointed as teachers within a period of two years.

Lack of sufficient motivation among parents and children add to the poor situation of elementary education in India. Many of the parents are not concerned with the education of their children rather they prefer to add to their wages and make a living for the entire family.

## ANALYSIS

Right to education is a fundamental human right. It is the basic right of every child and not a matter of State's mercy to the child. It is constitutionally guaranteed and universally upheld. However the current status of elementary education in the context of RTE Act, 2009 reveals that the Act is just a sign that the Government has taken elementary education seriously and nothing significant done towards its proper implementation for providing education for all strata of the society.

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<sup>27</sup> Supra note no. 15 at p. 332

<sup>28</sup> (1998) 9 SCC 227

Right to free and compulsory education is a right of all children. By limiting the age of between the six to fourteen years, the Government categorically excluded children between the age group of 0-6 years or effectively 2-6 years and 14- 18 years from its fundamental duty. In fact it should provide free and compulsory education to all children till the age of eighteen years. India has ratified the Convention on the Rights of the Child wherein the child is defined as a person below eighteen years of age.

The Act provides that “compulsory education to all” in such manner as the State may by law, determine. This discretion will enable the Government to justify cheap, low cost alternatives in the name of education as the enjoyment of this right would depend upon the whims and fancies of the Government. Another provision of the Act, which states „provided where a child is directly admitted in class appropriate, he or she has a right to receive special training and this raise a serious question as to who will give the special training. While the rich can take care of special training by way of tuition and coaching classes, who will give special tutorials to the first generation learners coming from economically weaker sections. Consequently the academic incompetence and frustration would result in withdrawal of such children from the schools.

The country’s half the population is women. But the dropout rates of girls are alarming. The role of women being limited to the household activities, the education of the girl children still not recognized especially in the rural areas. The poor conditions of the educational institutions in rural areas contribute to the increased dropout rates of among girls. A good number of the Government schools function in tents. The children have to sit under trees and learn. Very often parents hesitate educate their girl children in such conditions. Knowingly or unknowingly girls “Right to Education” is being violated openly without their knowledge of the fact. There is a great gender disparity in basic education on account of the peculiar problems associated with them.

Schemes like the Operation Blackboard and Midday Meal though aimed to supplement the educational commitment of the Government have rather failed in achieving its objectives. For instance the centrally sponsored scheme of Operation Blackboard was launched in 1987 to address the task of providing basic educational facilities like, provision of essential teaching-learning material including blackboard, maps, charts, a small laboratory and some equipment for work experience to all primary schools. In spite of these efforts, the rural schools by and

large lack basic infrastructures for carrying out proper education.

Article 51 (k) states that “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.” Now in the case of street children or children at the platform their parents are not so alert to discharge their duty as stated by the Article. My finding is that it is the duty of the State Government to provide access to education. By shifting this burden on to parents or to private schools (reservation of 25%) the State is shirking its responsibility of imparting free and compulsory education.

The elementary education in India is not inclusive. It benefits by and large children belonging to the elite groups. It has not become a reality for all the children especially children belonging to the marginalized and disadvantaged groups.

## CONCLUSION

Education is central to individual's success, social development and promotion of values enshrined in the Constitution of India. It operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated. International human right law considers right to receive education as the central part of right to education. India still faces problems at imparting education at elementary levels due to the reason that at the base level the educational pyramid of India is weak. While the right to basic education has been a key element of almost every international declarations and treaties since the UN was established, the goal of Education for all has not been achieved as it ought to be. The study shows that there is almost always a decline in access and quality which inequitably impact on girls, children of the weaker section and disadvantaged groups. At the same time it also shows that mere enacting legislations, schemes do not result in more access to quality learning opportunities for all. The Right of children to Free and Compulsory Education Bill, 2008, seeks to give effect to this cherished goal. However the study shows that it has not seen many perceptible changes in the education system in India. It cannot become a reality unless the light of knowledge reaches to all sections of the society. The Kothari Commission started its report with the words that destiny of India is now being saved in her class rooms. If measures are taken for

adequate and proper implementation of the Right to Education Act, 2009 that itself is sufficient to save the destiny of India. For mere intention need not necessarily make good results. It is essential that the recommendations of CRC in using the non-formal education especially in India as an alternative are thought about. A vast majority of population in India still do not send their children to attend formal education which is structured, chronologically graded instruction due to majority of factors and the most common factor being unavailability of formal education in their vicinity. But at the same time if the government takes initiatives towards non-formal education which is an organised educational activity outside the established formal classroom system, such as village, community-based, or open air schooling, there is a strong chance that children can have access to education within their reach.<sup>29</sup> Further if the government sets up non-formal structures and use informal educational programmes, especially when it is impossible for the children to attend regular schools, such as working children and street children it will definitely bring up the education gap at elementary level.<sup>30</sup> It is very essential that the state has a strict policy for monitoring and guaranteeing the quality of non-formal education schemes, and that working and other children who participate in such schemes are integrated into mainstream education. Finally the State should harmonize the formal and non-formal education systems.

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<sup>29</sup> See Mieke Verheyde, 'Commentary on the United Nations Convention on the Rights of the Child, Article 28', Martinus Nijhoff Publishers.

<sup>30</sup> Supra Note 23.