

REALISATION OF THE RIGHT TO DEVELOPMENT THROUGH THE RIGHT TO EDUCATION

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Abstract

‘Development’ is a term that is used often by people in daily parlance. Different people have different connotations for the term- some relate it to having access to ‘luxuries’ of life, some relate it to the standard of living or the way of living. In the year 1987, ‘development’ came to be recognized as a right through a Declaration by the United Nations. The Declaration, while providing for definition of the right, provides that it is an inalienable human right. The questions that come up regarding this right is the fact as to its awareness amongst the masses or the beneficiaries or against whom such a right can be enforced. The Right to Development may be analysed through various indicators like availability of basic rights such as that of access to food, shelter, education, health services etc. the present article focuses upon the Right to Development *vis-a - vis* the Right to Education. Development, as a right has many facets and education is one facet that is absolutely necessary for the all round growth of a person. The article analyses various schemes and programmes that the Central and the state governments have devised to make the Fundamental Right of Education a reality in India and how in turn this right can be a helpful tool in the realization of the Right to Development in India.

I. Introduction

‘Development’ is a term that one often comes across. The term ‘development’ means different things to different groups of people, some relate it to the process of industrialisation and the related aspects and some others see development as related to economic growth and the easy availability of certain “luxuries”. Some relate it to ‘progress’ while some others relate it to ‘improvement’. Hence, the perception of the term ‘development’ varies from person to person.

After 1986, this term came to be recognised as a ‘right’. In other words, ‘development’ is available to the people in the form of a ‘claim’. The ‘right to development’ is a human right, a right which is recognised as belonging to the ‘Third Generation’ of human rights. The right to development can be enjoyed by an individual by the virtue of his or her being a member of a particular community or a collectivity. The individual is the true beneficiary of this group right. But the question arises as to against whom do we claim the availability of such a right? Is it the

State or the individual against whom one enforces the right to development? If it is the State then the question arises as to how the State would be able to provide this right to all the citizens, especially when the case relates to that of a developing nation where the resources are minimal and the claims are many.

There is no one particular right that alone can be called an ingredient of the right to development. The right to development is a concept which encompasses all aspects that have a relation to an individual's life- be it the economic, social, cultural, civil, political or any other aspect. All the processes have an effect on one's life directly or indirectly. Thus, it may be said that the right to development is something that encompasses all human rights that have an importance in one's life. All rights play an important part in the holistic development of a person. Hence, the right to development is a homogenous mixture of all rights. All rights have to be given importance in the process of development so that a person and subsequently a nation is able to realise the right to development completely and successfully.

It is very hard to define the contents of the right to development because no two countries can have the same requirements for the process of 'development'. It is precisely this feature of the right to development that has made it a much debated and contentious right ever since its recognition in the 1970s. The right to development is a multi- dimensional concept. There are many dimensions that can be studied to actually understand the right completely. The concept is something that constantly evolves with time because as the society changes so do the needs and requirements of a State and its people.

The right to development was proclaimed in the Declaration on the Right to Development, adopted in 1986 by the United Nations General Assembly (GA) in its resolution 41/128. This right is also recognized in the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights and re-affirmed in several instruments including the 1992 Rio Declaration on Environment and Development, the 1993 Vienna Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document and the 2007 Declaration on the Rights of Indigenous Peoples." The 1986 Declaration, too, terms the 'right to development' as an inalienable human right. The right is given a status of a human right, thus, it is something that a human being is born with and under no circumstances can a human right be violated. Like all the other human rights, the right to development too faces the question regarding its implementation. Such implementation gaps

develop between the national and the international human rights regimes when the question comes to the enforcement of a particular right.

The Declaration on the Right to Development, 1986, defines the right to development as a process in which every person has the right to participate and enjoy the process of the development. The emphasis is on the participation of people in the process of development that they are entitled to. Thus, the participation of people has to be given importance. The right to development would be complete and meaningful only when the true beneficiaries participate in the process of development. As per Article 2.1 of the Declaration on the Right to Development, 1986, the human person is the central subject of the process of development as well as an active participant of the process. The Declaration places the responsibility of evolving appropriate national and international framework for the development of the individual and the collectivity.

In the present article, the author is focussing on the concept of the “right to development”, its evolution over the past few decades after the Declaration of 1986. Further, the researcher shall also discuss the enforceability and justiciability aspect of the right to development. Since there is no specific Treaty or Convention that acts as a binding force on the ‘right to development’, it is to be analysed as to how this right can be enforced and what shall be the scenario in case of its violation. It has to be assessed as to who actually is the true beneficiary of the right to development- the individual or the State.

As mentioned earlier, the ‘right to development’ does not contain that specific number of rights that can be culled out. Right to development is a mixture of rights; there are various indicators of the right to development. Of these many indicators, the author has selected a very basic right that is very essential in the course of development of an individual as well as that of the nation- the Right to Education. By the medium of this article, the author shall study the evolution of this rights as being ‘fundamental’ in India.

Lastly, the author after providing an analysis in short of the right to development and the the selected indicator of the right to development shall provide a conclusion to the study. The conclusion after all the research work might be able to clear all the doubts that come to one’s mind while thinking about the “right to development.”

II. Meaning of the Right to Development

The Declaration on the Right to Development, 1986 provides a definition for the right to development under Article 1:

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social and cultural and political development in which all human rights and fundamental freedoms can be fully realised.”

According to Mohammed Bedjaoui,

The Right to Development is a fundamental right, the precondition of liberty, progress, justice and creativity. It is the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights; in short it is the *core right* from which all the others stem.

Arjun Sengupta, former United Nations Independent Expert on the Right to Development defines the rights as “the right to a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value.

The right to development is therefore seen as an inalienable human right which is a right which is participatory in nature, i.e., it requires the participation of all people in all activities. It is a process which takes care of the outcome of a particular process and also to the fact that such an outcome results in the improvement of the people and is the result of the active participation of the people. Many scholars also consider the right to development on one hand as the ‘synthesis of already existing rights’ and on the other it marking the intersection between Human Rights and International Law.

Specifically, the right to development, as expressed within the Declaration on the Right to Development is (1) a human right; (2) takes into account both UN Covenants represented under the UDHR and enshrines the rights expressed in them freely, equally and fairly; and (3) is the

obligation for duty-holders of the individual, state and international scales to uphold. It also

explains development both as an individual and a collective right.

III. Enforcement and Justiciability Mechanism of Right to Development

In resolution 1998/72, the Commission on Human Rights decided to establish the mandate of the Independent Expert on the Right to Development as part of the follow-up mechanism to the Declaration on the Right to Development. The United Nations did not formulate any specific enforcement mechanism for the right to development. In the year 1988, the United Nations Commission on Human Rights established an open-ended working group to review and monitor the working and implementation of the right to development.

One of the alleged setbacks of the right to development is that it is a right which is non-justiciable. By non-justiciable it means that this right is not enforceable in a court of law in case of any violations. The Declaration on the Right to Development, 1986 is just a Declaration and is not a legally enforceable document as it does not have the status of a treaty. It has been said that since the right to development is not legally enforceable it can best remain as a set of social aspirations or statement of objectives. But the right to development being a human right has to be given a special place. Human rights do not need to have legal authority to be made available to citizens. Justiciability of a right surely makes the right more powerful and meaningful for the people but not being justiciable does not affect the importance of the right. For example, the Constitution of India contains Fundamental Rights under Part III and the Directive Principles of State Policy in Part IV. Part III is justiciable in nature whereas Part IV is non-justiciable but that does not mean that the Directive Principles are of less importance. The Directive Principles of State Policy provide support to the Fundamental Rights and act as a set of guidelines for the proper and efficient management of the country. In the same manner the Right to Development even though non-justiciable is an important human right and emphasis should be given to make this right effectively enforceable more than justiciable.

IV. Right to Development and India

Rights are necessary for the creation of a better life for the citizens. They provide for the external conditions necessary for the development of the individual personality to its best. In the words of Harold Laski, "rights are those conditions of social life without which no man can seek to be himself at his best." In India, rights have occupied a very special place within the Constitution, which guarantees certain 'Fundamental Rights' to all the citizens under Part III. Ever since the Constitution of India came into force, many important rights that are necessary for the comfortable living of the people have been guaranteed to them by the law of the land. These Fundamental Rights are justiciable in nature, hence making them all the more effective. Under Part IV of the Constitution of India, there are the Directive Principles of State Policy which act as guidelines to the State machinery and place an obligation on the State to take positive action in

certain directions in order to promote welfare of the people.. Even though the Directive Principles are not justiciable, they are as important as the Fundamental Rights and now many of the Directive Principles are finding legal backing and support under the extended view of Article 21 through the active role played by the Judiciary.

The right to development cannot be said to be a single right but it is an amalgamation of a number of important rights that are necessary for the all round development of an individual. In India, not much has been done for the realisation of the right to development even though India is an official signatory to the United Nations Declaration of the Right to Development, 1986. Many elements of development have been given due regard but any specific measure taken towards the right to development have been limited. There is a need to develop specific rules to further develop this right in India.

Ever since Independence, India has produced a mixed report card. There are many evils still persisting in the Indian society that put a hindrance to the developmental plan of the country, for example, practices such as bonded labour, high rate of population growth, malnutrition, high drop- out rates from schools etc. The Constitutional provisions do contain many of the ingredients of development and the judiciary through its pro- active role has tried to build a connecting bridge between the Fundamental Rights and the Directive Principles of State Policy. The courts have given Article 21 which talks about the right to life and personal liberty such a wide meaning that almost all the ingredients of development have been included within the wide ambit.

There are many important parameters of development that are contained under Chapter IV of the Constitution such as right to work, just and humane conditions of work and maternity relief, early childhood care, right to education, the duty of the State to raise the level of nutrition etc. These provisions have put to life by the Judiciary by interpreting these provisions within the ambit of Article 21. Now, the provisions have gained force and momentum as they have been interpreted as being a part of the 'right to life'. The Supreme Court has taken the view that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated as a Fundamental Right. Accordingly, the Supreme Court has implied a whole bundle of human rights out of Article 21 by reading the same along with some Directive Principles. Also, in certain cases another way adopted by the Supreme Court with a view to expand the ambit of Article 21 and to imply certain rights therefrom, has been to interpret Article 21 along with international charters on human rights. Article 21 since the past few years has assumed a "highly activist magnitude". Justice Krishna Aiyer has characterised Article 21 as "the procedural *magna carta* protective of life and liberty."

V. The Right to Development *vis-a-vis* the Right to Education

The right to development contains within its fold many facets of growth- personal, social, cultural, political and economic. There are a number of elements that can be counted within these facets. In a country like India, the realisation of the right to development has to progress step- by step. The very basic rights have to be ensured to all the people first before going on to ensuring other rights. Nelson Mandela said:

“Education is the most important weapon which you can use to change the world.”

Education is a powerful tool that can help one to transform his or her life. Education perhaps plays the most important role in the development process, both of the individual as well as that of the nation. Education is an indispensable component of human development. It has now been realised that education is development in itself rather than merely an instrument of development. The State's role in providing education to the citizens is often debated upon because education is viewed as a basic human right. Education is a human right, the exercise of which is necessary for individual development and fulfilment.

i. Right to Education under International Law

The Universal Declaration of Human Rights under Article 26 Clause (1) states that

“Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.”

The International Covenant on Economic, Social and Cultural Rights, 1966 contains the most wide ranging and comprehensive provision on the right to education in the entire international human rights law. Article 13 of the Covenant states that primary education shall be compulsory and available free to all and higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

The Convention on the Rights of Child in Article 28 too lays emphasis the right to education of a child and also talks about the making of primary education compulsory and available free to all. The Convention on the Rights of Child postulates four basic rights of civil, political, cultural, social and economic nature, these being:

1. Right to Survival

Right to survival includes the right to life, the highest attainable standard of health, nutrition and adequate standards of living. It also includes the right to a name and nationality.

2. Right to Protection

It includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment and negligence including the right to special protection in situations of emergency and armed conflict.

3. Right to Development

Which includes the right to education, support for early childhood development and care, social security and the right to leisure, recreation and childhood activities.

4. Right to Participation

Which includes respect for all views of the child, freedom of expression and freedom of thought, conscience and religion.

The international documents that make a mention of education place emphasis on the fact that basic education should be made compulsory and freely available to all. The documents do not talk much about higher education. But there isn't much distinction made between the two levels of education. The national governments are required to gradually develop the area of higher education as when the resources and the infrastructure permit. Both the Universal Declaration on Human Rights, 1948 and the International Covenant on Economic, Social and Cultural Rights, 1966 talk about making primary education compulsory and freely available to all while the higher levels of education should be made accessible to the people. Article 14 of the ICESCR requires those State parties which do not have the provision of free and compulsory primary education to undertake to adopt a detailed plan of action for its introduction within a reasonable number of years. The World Declaration on Education for All, 1999 (also known as the Jomtein Declaration) under Article 1 added the aims of building upon collective, cultural, linguistic and spiritual heritage, promotion of the education to others and achieving environmental protection. General Comment 13 has identified certain obligations relating to the right to education, in addition to the obligations to respect, protect and fulfil. The immediate general obligation is to guarantee that the right to education will be exercised without discrimination and to take deliberate, concrete and targeted steps to achieve the right. This shall be a continuing obligation.

ii. Right to Education and India

Education has always remained one of the most discussed and worked on issues in India. When the Indian Constitution came into effect in 1950, it placed an obligation on the State to achieve compulsory universal primary education in the country within a span of ten years under Article 45. This provision was substituted in 2002 by the 86th Amendment Act. Now the provision provides that the State shall provide education to children upto the age of six years.

Till 1976, education was exclusively the responsibility of the states, it was a State subject. The Central Government was only concerned with certain areas like coordination and determination of standards in technical and higher education. In 1976, through the 42nd Amendment Act "education" became a part of the "Concurrent List". In other words, education is now a joint responsibility of the State governments and the Central Governments. Decisions regarding the

organisation and structure of education are largely the concern of the states, though the Union Government has a clear responsibility regarding the quality and character of education. In addition to the policy formulation the Ministry of Human Resource Development, Department of Education share with the states all the planning of education. The Central Advisory Board of Education (CABE) develops monitors the educational policies and programmes in India, including the National Policy on Education, 1986, after the announcement of which, the task of providing education to children gained some momentum.

Under the Constitution of India prior to 2002, the right to education was not recognised as a Fundamental Right. Article 45 which falls under Part IV of the Constitution of India and is a Directive Principle of State Policy states that the State shall endeavour to provide free and compulsory education to all children till the completion of the age of 14 years.

iii. Right to Education: A Judicial Outreach

In the case of *Mohini Jain v. State of Karnataka*, the Supreme Court's two-Judge Bench after mentioning that 'right to education' such has not been guaranteed as a fundamental right under Part III of the Constitution, held that reading Articles 21, 38, 39 clause (a) and (b), 41 and 45 together make it clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens. Further, the Court said that the right to education flows directly from the right to life. The Court further argued that without making the right to education under Article 41 a reality, the Fundamental Rights would remain beyond the reach of a large majority which is illiterate; 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. Further, the Court said that the 'right to education' being concomitant to the fundamental rights, "the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens."

The Court took an absolutist view of the State obligation to provide education to its citizens and the Bench observed 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".

In the case of *Mohini Jain*, the Court took an expansive view on the obligation of the State with regard to providing the right to education to the citizens at all levels. The decision, on an analysis would prove to be very harsh and hardly feasible for a State like ours, mainly because of the

financial costs of setting up professional colleges to cater to the demands of the ever- growing population. India has not been able to achieve the introduction of compulsory and universal primary education in the country. This has been the case even after decades passing after the Indian Constitution came into effect. Article 45 is the only Constitutional provision that had a time frame attached to it. The time frame was of 10 years which ended in 1960. The judgment placed a very harsh obligation on the State, the basic level of which still remains unachieved.

A larger bench in the case of *J.P. Unnikrishnan v. State of A.P.* limited the scope of the right to education for children till they completed the age of 14 years. Thereafter, the right to education is subject to the limits of its economic capacity and development of the State. The Court further said that more money is spent and more attention is directed to higher education than to- and at the cost of- primary education.

In the case of *University of Delhi and Another v. Shri Anand Vardhan Chandal*, reiterated the decision given in *Unnikrishnan's* case and observed that:

“There is therefore no dispute the right to education is a fundamental right to the extent it has been spelt out in *Unnikrishnan's* case.”

The Supreme Court of India has also decided various cases with regard to the educational institutions of the minorities which is provided for by the Constitution. One of the main cases include the *T.M.A Pai Foundation v. Karnataka*, whereby the Supreme Court provided its views on a number of issues pertaining to the educational institutions of minorities. The Court was of the view that the term ‘minorities’ in Article 30(1) covers linguistic and religious minorities. For the purpose of determining the ‘minority’, the unit will be the State and not the whole of India. Article 30(1) gives minorities the right to establish and administer educational institutions ‘of their choice’ which means that the institutions can also be professional educational institutions. The right conferred by Article 30(1) is not absolute and is subject to Article 29(2) and other Fundamental Rights. Further it was said that admission to unaided minority institutions cannot be regulated by the State. A minority institute may have its own method or procedure of admission as well as selection of students, as long as the procedure is fair and transparent. While giving aid to professional institutions, the aid giving authority may prescribe the conditions on the basis of which admissions will be granted by the aided college by virtue of merit, coupled with reservation policy of the State qua non- minority students. Fees chargeable by the unaided institutions cannot be regulated but no capitation fees should be charged. From the pattern of the judgment of the Court in the above mentioned case, it appears that an avowed object propounded therein is to promote private educational and professional institutions of excellence. The Court has emphasised on the quality of teaching staff.

In 2008, the National Commission to Review the Working of the Constitution suggested that Article 45 should be amended to read that the states shall make provision for education beyond the age of 14 years within the limits of its economic capacity and stage of development.

The 165th Report of Law Commission, 1998

1. Advocated legislation of a central Act for providing free and compulsory education without waiting for any amendment in the Constitution of India.
2. Suggested to include private unaided institutions in the scheme of free and compulsory education.
3. Advocated dispensing with the tuition fee, providing free text books, free uniform, free lunch, etc. whatever necessary.

iv. Education Related Incentives and Schemes

The Centre and the state governments have come up with various schemes so as to prompt parents to send their children to schools. Some of the schemes are as follows:

1. Mid Day Meal Scheme

The Mid Day Meal Schemes (MDMS) is an initiative of the Department of School Education and Literacy, Ministry of Human Resource Development, aimed at enhancing enrolment, retention and attendance, and simultaneously improving nutritional levels among children. The Mid Day Meal is the world's largest school feeding programme reaching out to about 12 crore children in over 12.65 lakh schools across the country. This scheme is deep rooted in history and is said to have begun in 1925 by the Madras municipal Corporation for the disadvantaged children. This scheme serves a dual purpose: It caters to the nutritional requirement of children required by them in a day and also it has resulted in an increase in the number of children attending schools. The MDMS was launched on 15th August, 1995, as a scheme sponsored by the Centre.

2. Sarva Shiksha Abhiyan

'Sarva Shiksha Abhiyan' (The teaching for every one), is an Indian Government proposal targeted at the universalization of basic teaching through district based, decentralized specific planning and implementation strategy by community ownership of the school system. The Abhiyan is to provide useful and relevant elementary education for children in the 6-14 age groups by 2010. Sarva Shiksha Abhiyan is being realized in cooperation with State Governments so as to cover the whole country and address the requirements of a large number of children across the nation. This program is aimed to start fresh schools in those regions which do not have schooling amenities and also strengthen current school infrastructure by means of extra class rooms, lavatory, drinking water, safeguarding grant and school development funding. Sarva Shiksha Abhiyan lays a special thrust on making education at the elementary level useful and relevant for

children by improving the curriculum, child-centered activities and effective teaching learning strategies. Available schools with insufficient teaching staff are given with extra teachers, while the efficiency of the present teaching staff is being increased through widespread training, funding for rising teaching-learning resources and strengthening of the educational support arrangement at a group, block & district stage. Sarva Shiksha Abhiyan looks to give quality basic teaching including living skills. The scheme places emphasis on the educational requirements of girl children and children who require special care.

3. Ladli Scheme

The Ladli Scheme is a scheme of the Delhi government which was started in 2008 with the main aim of empowering women by linking financial assistance with their education upto the senior secondary level. The beneficiaries of the scheme include the girl children born on or after 1st January, 2008. The amount is sanctioned in the name of the girl child and is deposited with SBI Life Insurance Co. Ltd. which manages the amount till the girl attains the age of 18 years and passes Class X as a regular student or takes admission in Class-XII. On attaining this milestone the girl child can claim the maturity amount, which can be utilized for her higher education or vocational training or for setting up a micro enterprise.

VI. The Constitution (86th Amendment) Act, 2002

The Parliament in the year 2002, passed a Bill making free and compulsory education a Fundamental Right for all children from the age of 6 to 14 years under Article 21-A. the journey of the 'right to education' from being a part of the Directive Principles of State Policy to now being a Fundamental Right has been a long one. The 86th Amendment Act made three changes in the Constitution:

1. Article 21-A. Right to Education: 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.
2. Article 45: Provision for early childhood care and education to children below the age of six years. "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
3. Article 51-A: It shall be the duty of every citizen of India:
(k) 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.

VII. The Right of Children to Free and Compulsory Education Act, 2009

It almost took 60 years for the country to transform education from a Directive Principle of State Policy to a Fundamental Right. In the year 2005, the Central Government introduced the "Right to Education" Bill. The Bill was amended and it finally became an Act in 2009. The Act came

into force on 1st April, 2010. After the Act came into effect, India has become one of the countries that have recognised education as a free and compulsory right.

The Statement of Objects and Reasons clearly explains the aim of the legislation as follows:

“The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through the provision of inclusive elementary education to all. The provision of free and compulsory education of satisfactory quality to children from the disadvantaged and weaker section is, therefore not merely the responsibility of schools run or supported by the appropriate governments, but also of schools which are not dependent on government funds.”

Salient features of the Right of Children for Free and Compulsory Education Act are as follows:

1. The Act shall apply to all of India except Jammu and Kashmir;
2. The main focus of the Act is free and compulsory education to all children of India in the 6 to 14 age group;
3. Mandates improvement in quality of education;
4. No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
5. If a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.
6. No capitation fee shall be charged.
7. For the purposes of admission to elementary education proof of age has to be shown. The age of a child shall be determined on the basis of the birth 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. No child shall be denied admission in a school for lack of age proof.
8. A child who completes elementary education shall be awarded a certificate;
9. Calls for a fixed student-teacher ratio;
10. Provides for 25% reservation for economically disadvantaged communities in admission to Class One in all private schools;
11. School teachers will need adequate professional degree within five years or else will lose job;
12. School infrastructure (where there is problem) to be improved in three years, else recognition of the school shall be cancelled;

13. Financial burden will be shared between state and central government

The Act touches upon various aspects that can really help in improving the quality and standard of education in the country. Proper implementation of the provisions shall also help in the all round development of the child. As per estimates, approximately 22 crore children in India fall in the age group of 6-14 years of age. If implemented properly and efficiently, a huge number of children shall benefit from the provisions of the Act. The Act provides for a monitoring mechanism.

The Act empowers the National Commission for the Protection of Child Rights (NCCR) and the State Commissions for the Protection of Child Rights (SCPCR) with the responsibility to monitor the implementation of the Right to Education Act. However, it has been found that the appointment of many Chairpersons and Members of the National and State Commissions is often not too transparent. Many of the states still have not set up the SCPCR, adding on to the already existing burden on the NCCR.

VIII. The Right of Children to Free and Compulsory Education Act, 2009: A Critique

The main beneficiaries of the Act are children from the age of 6 to 14 years. The Act has conveniently left out children from the age group of 0 to 6 years. These years are the formative years of the life of a child. The Act does not talk about this specific age bracket at all. Hence, a large number of children might lose out on the benefits of education in the early years due to certain disadvantages such as financial inabilities, non-availability of a school nearby etc. This anomaly of the Act should be addressed because children should join school at the proper age and also that the development of the mental faculties of the child should begin at the right age.

Education being a subject of the Concurrent List is the responsibility of both the Centre and the States. The Act is a central legislation. The state is the one that makes rules for the implementation of the Act at the state level. Finally, the rules prepared by the State authorities are implemented by the school authorities. Such a long hierarchy of authorities trying to implement a central legislation; how successful will such implementation be? Will the main purpose of the Act not be diluted? The Act should be such that should meet the needs of the particular state. In India, all the states are different from each other in their own capacities. In certain states the rate of illiteracy is high, in some the school drop-out ratios are much higher than the others. The system should be made such that the states be made accountable to the centre in terms of the goals that are to be met in the field of education. There is also the barrier of funds and infrastructure that the states might face. Many factors have to be planned out between the state and the centre. The Right to Education although progressive, is not accompanied either by a well laid-out implementation mechanism of the law or by a financial memorandum. Thus,

the implementation of the Act remains difficult due to the financial and the infrastructural constraints. Many educationists believe there are serious problems with RTE as it turns the clock back by defining quality in terms of inputs (infrastructure, numbers of teachers, etc) and does not focus on learning at all. Concepts like Continuous and Comprehensive Evaluation are espoused, but practical reality and difficulties aren't recognised.

Just drafting a good piece of legislation is not enough. The states and the centre have to make combined efforts to turn the Right to Education Act into a success story. The States need to be more active in the implementation of the Right to Education. Till date, only 17 states have prepared drafts of their state rules on the Act but are yet to notify them. For this, a number of points have to be taken care of, which include curbing of menaces like child labour, children dropping out of schools etc. More and more people have to be made aware of the provision of 'free' education. Parents have to be made aware of the benefits their children are entitled to. The States should come up with more incentives such as the Mid Day Meal Scheme and the Ladli Scheme, so that parents do send their children to school keeping in mind the incentives that they might get.

Surveys have found the following impediments:

1. One- third of all primary and upper primary schools face acute shortage of classrooms and do not comply with the Right to Education requirement of the one teacher- one classroom ratio.
2. About half of the primary and upper primary schools face shortage of teachers
3. 25% of the schools lack office cum store, 48% lack playgrounds, 50% of schools do not have a boundary wall or fence
4. 37% of the schools do not have a library
5. Mid- day meals are not served on 17% of the schools while 19% of the schools lack a kitchen shed for mid- day meals.
6. 5.9% girls in the age group of 11- 14 years are out of school compared to 1-9% boys across India.

A Few Statistics

The Annual Status of Education Report (ASER) is an annual survey that aims to provide reliable annual estimates of children's enrollment and basic learning levels for each district and state in India. ASER has been conducted every year since 2005 in all rural districts of India.

In the year 2012, ASER conducted its annual in 14,591 schools across the country and the following is the data that was collected.

1. The enrolment of children in the age group of 6- 14 years remains high. Over 96% of children are enrolled in school.

2. Nationally, the proportion of children (age 6 to 14) who are not enrolled in school has gone up slightly, from 3.3% in 2011 to 3.5% in 2012. A slight increase is seen for all age groups and for both boys and girls.
3. Girls in the age group of 11 to 14 years are often the hardest to bring to school and keep in school. In 2006, in eight major states, more than 11% girls in this age group were not enrolled in school. By 2011, this figure had dropped to less than 6.5% in 3 of these states (Jharkhand, Gujarat and Odisha) and less than 5% in 3 others (Bihar, Chhattisgarh and West Bengal). The situation in these states remained more or less unchanged in 2012. However in Rajasthan and Uttar Pradesh, the proportion of out of school girls (age 11-14) has increased from 8.9% and 9.7% respectively in 2011 to more than 11% in 2012.
4. At the All India level private school enrollment has been rising steadily since 2006. The percentage of 6 to 14 year olds enrolled in private schools rose from 18.7% in 2006 to 25.6% in 2011. This year this number has further increased to 28.3%. The increase is almost equal in primary (Std. I-V) and upper primary (Std. VI and VIII) classes. In 2012, among all private school children (age 6-14), 57.9% were boys.
5. In 2010 nationally, 46.3% of all children in Std. V could not read a Std. II level text. This proportion increased to 51.8% in 2011 and further to 53.2% in 2012. For Std. V children enrolled in government schools, the percentage of children unable to read Std. II level text has increased from 49.3% (2010) to 56.2% (2011) to 58.3% (2012).
6. The proportion of small schools is rising in India.
7. There is an improvement of facilities available in schools. The meeting of the requirement of pupil- teacher ratio has gone up to 42.8% in 2012 from 38.9%. out of the total number of schools visited, 73% of the schools had drinking water facilities
8. The mid-day meal was observed being served in 87.1% schools that were visited.

The aforementioned statistics provides a glance at the level of implementation of the Right to Education. The percentage of enrollment of children has remained over 95% since the past four consecutive years. The Report though shows a dismal picture of the girl child. The drop- out rates have gone up among the girls. The government should take steps so as to keep the girls at schools till the completion of class XII. The Status Report of the Working Group on Human Rights, 2012 states that the children belonging to the Scheduled Castes are discriminated upon by the teachers and the peer group, they are often provided segregated seating arrangements in classrooms, more punishments are meted out to the children of this category and they are often denied the use of basic facilities at school. Further the Status Report states that discrimination is meted out even to the disabled or the differently-abled children.

The community shares a huge responsibility when it comes to education of children of the country. Education is one of the main keys to the development of an individual and subsequently

the nation. Awareness is to be created among the masses for this purpose. It is only the joint effort of the society as well the government that would lead to the ultimate success of the Right to Education. The schemes and policies of the government have been well drafted but they have to be transformed into a beautiful reality by proper planning and implementation that would take our country to new heights.

CONCLUSION

Development is an intrinsic part of any human society. With time, changes do come about in the society and the people who are the inhabitants of the society. Ever since 'development' transformed into a right, the issue of development has been widely debated upon. Through the medium of this dissertation, the researcher has tried to unveil the concept of 'right to development' through the lens of the United Nations Declaration on the Right to Development, 1986. The Declaration provides for a wide definition for the 'right to development', describing the right as a process which is an inalienable human right that can be realised through the active participation of the individuals who are the beneficiaries of this right.

Further, the Declaration also talks about the responsibility that the State and the international community has towards making this right a reality and not just a mere aspiration. It is true that the needs and requirements for the process of development are different for the developed and the developing nations. The Declaration even though provides for a definition of the right, is not really able to reach a consensus with the procedure that needs to be followed for the enforcement of this right. How is the international community supposed to enforce this right that has its basis in just a Declaration? A Declaration is something that is of a non-binding nature, it just lays down certain norms or guidelines that lay down a pattern for the nations to follow. It does not place a legal obligation on any of the countries regarding following any norms or standards for the enforcement of the right to development. The United Nations does not have any strict enforcement mechanism in place for the right to development.

After analysing the Declaration, the author is of the view that it is very difficult for any enforcement mechanism to work till the contours of a particular right are well defined. In the case of the 'right to development' the contents are not defined. It is not possible to clearly define its contents simply so because the criteria for development varies from country to country. Thus, when the contents of the right to development are not clear how can the responsibilities of State actors be fixed? All national governments hold larger responsibilities in this case because these governments are well versed with the conditions of life that exist in their country and hence that puts them in a better position to deal with the challenges and work towards achieving development for all. Since the definition provided under the Declaration does not provide for a

concise definition, it further adds to the difficulty of ascertaining enforcement mechanism of the right. Many developed nations because of this reason are very unsure of having such a right in place. Since the criteria between the developed and the developing nations differ, the developing nations would be able to place any right under the wide ambit of the 'right to development', hence increasing the scope of responsibility of the international community. There is a need for a more exact and precise definition for the right to development.

From the limited resources that the researcher had access to, it was found that a number of countries have recognised the right to development. But most of the countries recognise this right as that of an individual and not of a collectivity or a State. India too signed the 1986 Declaration but till date the country does not have a specific law that provides explicitly for the 'right to development' to the Indian citizens. There are various indicators of development. India still being on the path of development has to give importance to a number of rights. The Constitution under Part III and Part IV does recognise a number of rights but since rights contained under Part IV are not enforceable, a number of rights do lose their importance. In the past few decades, many of the rights have been recognised as being a part of the Fundamental Right to life under Article 21 of the Constitution.

The Judiciary has been playing a very important role in providing a face- lift to certain important rights through its decisions. Earlier, these rights were mere Directives to the State under Part IV but now they have got a legal recognition and are a part of the justiciable Fundamental Rights...

The author selected one basic indicator of the right to development. There are still many more indicators or aspects of this Third Generation Human Right but the indicator selected i.e., the Right to Education is the very basic rights that any individual should be entitled to. All the rights are interconnected with development.

The author in the present work, has traced by the way of case laws, the evolution of the Right to Education from being a part of the Directive Principles of State Policy to a Fundamental Right under Article 21-A. India has come a long way since Independence. There was a time in the Indian history when education was meant only for the elite of the society but now after the coming of the Right to Education Act, 2009, education has become accessible to all. But it cannot be said that we have done it all. A lot has to be done now. Even with such a good enactment in place, the enrolment rates are not cent percent, there are still students dropping out from schools, especially girl students. The reasons for these negativities need to be analysed and worked upon. The existent schemes and Acts need to be properly implemented. Implementation is where most of the schemes and enactments fail. Hence, there are grey areas that need attention of the authorities.

After the study of the concept of the Right to Development, the analysis of the Right to Development in India and the detailed study of an indicator of the Right to Development, viz. the right to education, the author considers that a few areas need attention and the following suggestions have been made by the researcher:

1. In a developing nation like India, for the true realisation of the Right to Development, the rights need prioritisation. Basic rights should be given priority and attempts should be made to achieve complete success with regard to those rights. The process of the Right to Development should be one that needs to go step by step. The process should be gradual. An individual or a nation cannot develop over night, the process has to be a gradual one so that all rights are ensured to all.
2. There are good governmental Acts and schemes in place giving force and meaning to various rights. But there are aspects that need the attention of the government. It has to be seen as to why there are shortcomings in the enforcement or availability of some basic rights even when there are laws in place. The enforcement mechanism needs attention.
3. The implementation mechanism that is in place is weak. There is lack of accountability. There are a number of factors that further cause deterioration to the already bad state, such as poverty, corruption, lack of resources and infrastructure and also societal practices like the caste system. Authorities need to be made accountable in cases where the true beneficiaries of schemes do not receive the benefits. Stricter punishments have to be brought in for culprits. An effective system of checks and balances has to be developed. The Budget outlays for the social sector are not being transformed into positive outcomes. There is a need to strike a balance between agriculture and economy and aspire for inclusive growth and faster and environmentally sustainable development.
4. Social evils such as the caste system still hinder the process of development in the country. People need to be made aware against such practices.
5. Lastly, the Declaration of 1986 emphasises on the 'active participation' of all persons in the process of development. The civil society and the NGOs should be made participants of the process of development. There are sectors where the NGOs and the Civil Society have better access than the governmental authorities. Their expertise can be put to good use by the government.

There is absence of political will and indecision that is prevalent within the government agencies. Certain issues do need immediate attention and action, thus, having a correct attitude towards the problems would help in tackling these challenges in a better way. The government needs to become more sensitized towards the problems.

With concentrated efforts from all sections of the society there shall be positive gains to the people and we would with time be able to transform the aspirations contained in the Declaration on the Right to Development, 1986 into a successful reality.
