

## **A Critical Evaluation of the Right of Children to Free And Compulsory Education Act, 2009**

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### **Abstract**

It is said that ‘mother and father are enemies, who do not provide education to their children’. Right to education means that these rights-holders can stand up and that something can be done. Right to education for all is one of the biggest development challenges faced by the International and National community today. Right to education is the most important part of the human development. It is the foundation of free and fulfilled life. Education plays an important role in building a good society; it also promotes good governance and transparency in a state. The growth and development of a state is primarily dependent upon the quality of education given to the people. Right to education has been universally recognized since the UDHR and has since been enshrined in various international conventions, treaties, constitution and development plans. In some cases, the right exists along with the assumption that the user should pay for this right, undermining the very concept of a right. On the other hand, the right exists in theory, but there is no capacity to implement this right in ground reality. Right to Education is facing various hindrances like, teachers, buildings infrastructure, water and government support. The fulfillment of right to education can be assessed using the 4A’s which asserts that for education to be meaningful right; it must be available, accessible, acceptable and adaptable. The question is whether right to education is available, accessible, acceptable and adaptable? This paper analytically evaluates right to education under RTE Act, 2009 in the light of 4A’s framework. The methodology of this paper is purely doctrinal.

**Keywords:** Right, Education, Availability, Accessibility, Acceptability, Adaptability.

### **Right to Education**

Education is a dynamic process that starts from birth. It is the most important element for growth and prosperity of a nation. Education in its real sense is the pursuit of truth. It is an endless journey through knowledge and enlightenment. Such a journey opens up new vistas of development of humanism. Education is the manifestation of perfection

already in man. It is the one that lends dignity to a man. Education is keystone for self-sustaining and livelihood and the education is life insurance for all children.

Education is essential for the development of human potential, the enjoyment of full range of human rights and respect for the rights of others. The right to education is a human right. A right is something, which one is entitled to and which one can claim. Having a right means that someone else has an obligation. If someone has the right to free education, then the government or school cannot demand one to pay to access education. As well as, being a right in itself, the right to education is also an enabling right. Education “creates the ‘voice’ through which right can be claimed and protected”<sup>7</sup>, and without education people lack the capacity to “achieve valuable functioning as part of the living”<sup>8</sup>. If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of right that they hold, and government’s obligations. It supports people to develop the communication skills to demand these rights, the confidence to speak in a variety of forum, and the ability to negotiate with a wide range of government officials and power holders. The right to education obligates governments to ensure the satisfaction of basic learning needs for all. The World Declaration on Education for All 1990 finds that: “These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions and continue learning.”<sup>10</sup>

## **Rights**

The Oxford English Dictionary defines a ‘right’ as a justifiable claim on legal or moral grounds to have or to obtain something, to act in a certain way. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology. ‘Ubi jus ibi remedium’ an ancient legal maxim says that where is right there is remedy. Lawyers have not pronounced the reason why this correlativity is so significant. Perhaps to them, it has been apparent. There are various rights and at the same time moral and values that need not be stated in terms of rights. Jurisprudence is concerned only with such rights are enforced by law. Right is an interest recognized and protected by law. ‘Rights’ are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are

often considered fundamental to civilization, being regarded as established pillars of society and culture and the history of social conflicts can be found in the history of each right and its development. The specific enumeration of rights has differed greatly in different periods of history. In many cases, the system of rights promulgated by one group has come into sharp and bitter conflict with that of other groups.

## **Education**

‘Education’ narrowly refers to formal institutional instructions. Generally, international instruments use the term education in a narrow sense. Education has defined the term “education” to mean “all types and levels of formal education, including access to education, the standard and quality of education, and the conditions under which it is given.” In a broader sense, education may describe “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist.” The wider meaning of education has been recognized in Article 1(a) of UNESCO’s 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. The Article states that education implies: “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge.” There is no absolute agreement as to how to define the right to education, but the aims and objectives of education, as defined in the international covenants, treaties and Supreme Court decisions, includes as below following:

- Education is special manifestation of man;
- The development of human personality, a sense of dignity of individual talent, mental and physical ability;
- Education is the treasure which can be preserved without the fear of loss;
- Enable people to participate effectively in a free society;
- The promotion of understanding, tolerance, friendship among all groups, and to maintain peace;
- Education secure honour at the hands of the State, not money.

## **Importance of Education**

The importance of education has come to be recognised by various thinkers and in judicial decisions. The significance of education was very well explained by Chief Justice ‘Earl Warren’ of U.S. Supreme Court<sup>15</sup> in following words: “Education is perhaps the most important

function of state and local governments. It is the very foundation of good citizenship. It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms” After that the importance of education was emphasized by Supreme Court of India in the following words: “Education is the special manifestation of man; Education is the treasure which can be preserved without the fear of loss; Education secures material pleasure, happiness and fame; Education is the teacher of the teacher; Education is God incarnate; Education secures honour at the hands of the State, not money; A man without education is equal to animal”.

### **International Legal Basis of Right to Education**

Right to education is codified in the Universal Declaration of Human Rights,<sup>17</sup> Article 26 of the UDHR in the following terms: Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace. Parents have prior right to choose the kind of education that shall be given to their children. International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, the Convention on the Elimination of All Forms of Discrimination against Women 1979 and convention on the rights of the child 1989. The International community reaffirmed the right to education at the World Education Forum in 2000. The UNESCO has, therefore, place the right to education at the forefront of its activities and the Education for All 1990 is high on its agenda. The Dakar Forum agreed on six goals, which were considered to be essential, attainable and affordable, given strong international commitment and resolved. The six goals are as follows: (1) expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children; (2) ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory

primary education of good quality; (3) ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programs; (4) achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults; (5) eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality; (6) improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential lifeskills. The Constitution of UNESCO expresses the belief of its founders in "full and equal educational opportunities for all". The Dakar Framework for Action committed governments to strengthening national and regional mechanisms to ensure that Education for All was on the agenda, inter alia, of every national legislature. It also emphasized that at the national level concrete measures are to be taken so that legal foundations of the right to education are strengthened in national systems. To make poverty history the international community realized that there is a need to provide financial support to develop poverty stricken states for complete removal of poverty. A target has been fixed to achieve this goal by the UN General Assembly and the UN Millennium Declaration was adopted in September 2000 in which states agreed to endeavor their best to eradicate poverty, promote human dignity and equality and, thereby, achieve peace, democracy and environmental sustainability. In particular, the international community committed, in the Millennium Development Goals, to cut extreme poverty by half by 2015 and to banish extreme poverty by 2025. The international community has set a target that by 2015 children everywhere, both boys and girls, will be able to complete a full course of primary schooling.

### **Conclusion and suggestions**

The plentiful awaited RTE Act, 2009<sup>46</sup> which has just been passed by the parliament would play an important role in achieving universal elementary education in India. The success and failure of RTE would largely depend on consistent political attention. Budgetary allocation of funds should be sufficient in this respect. Every literate person should also come forward and spread the usefulness of education to illiterate parents who are unable to appreciate the relevance of education in curbing the social evils. Social inequalities and monopolization by any group should not be permitted at any cost. Education which is free of cost up to a certain level must be accessible to all.

Education is the responsibility of the Government. RTE needs to apply

first to the Government schools. The Act clearly states that the State Government is responsible for ensuring adequate number of schools and the infrastructure. The RTE is an effective tool that the Government has to use to improve enrolment and quality of education in fully aided schools first. We have seen in this paper that the Right to Education is now a Fundamental Right for all children in the age group of six to fourteen years. In simple word, it means that the Government will be responsible for providing education to every child up to the eight standards, free of cost, irrespective of class and gender. Part III of the Indian Constitution gives all force to every child to get free and compulsory education through Article 21, and insertion of Article 21-A by the 86<sup>th</sup> Amendment Act<sup>47</sup> is also a landmark in this respect.

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