



ENFORCEMENT OF RIGHT TO EDUCATION TO PREVENT CHILD ABUSE AND CHILD LABOUR WITH REFERENCE TO RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

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Introduction

Children are the nation's asset and future resource of manpower for the country. They constitute the core of human society. It is their development, which sustains the society. Their development with dignity is a matter of great concern throughout the world.¹ It has been recognized that Elementary Education is a fundamental component of education, and the most significant part of the development process.² Education plays perhaps the most important role in the development of a human being, and national development. The realization of the right to development of every human being and nation is impossible without the recognition of the right to education.³

Right to Education – International Perspective

On the International level, several Conventions and Declarations

have recognized the right of a child to education. The world over it has been realized that everyone has the right to education. Moreover, it has been recognized that elementary education should be compulsory and free and available to all. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom.⁴ The emphasis laid on the education of children is more manifest in the UN Declaration on the Rights of the Child, 1959 wherein *inter alia*, it has been provided that children who are physically, mentally or socially handicapped shall be given special treatment, education and care required by their particular condition.⁵ The emphasis is to provide an education, which will promote general culture and enable children to develop their abilities, individual judgment and sense of moral and social responsibility thereby becoming useful members of society. The best interests of the child shall be the guiding principle of those responsible for

¹ Awasthi, S.K., & Kataria, R.P., Law Relating to Protection of Human Rights, Millemmiun ed., (Orient Publishing Co. New Delhi/ Allhabad, 2001) P. 619.

² A. Chandrasekaran, Human Rights Awareness in Education, 72-89, at 72, in : C.J. Nirmal (ed.), Human Rights in India. (Oxford University Press, New Delhi, 2002).

³ Mukulita Vijaywargiya; The Child Right to Primary Education in India ; Law Policy and Enforcement, (1998-99) 20 Law Review, J.N. P.G. Law College, Lucknow 13-22, at 13.

⁴ Universal Declaration of Human Rights, 1948, Article 26 and International Covenant on Economic, Social and Cultural Rights, 1966, Article 13.

⁵ Declaration on the Rights of the Child, 1959, Principle -5.



his education and guidance and that responsibility lies in the first place with his parents.⁶ American case law worth to be noted in *Pierce v. Society of Sisters of Holy Names*.⁷

About children, a specific commitment has been made under Convention o the Rights of the Child, 1989. Article 28 recognizes the rights of the child to education and declares primary education compulsory and available free to all children. The World Declaration followed this Convention on 'Education for All' in March 1990. The Declaration represented a worldwide consensus or an expanded vision of basic education and renewed commitment to ensure that the basic learning needs of all are met effectively the world-over. It asserts the fundamental right of all persons to education as an indispensable key to personal and social development. Thus, under International Law, the right of a child to compulsory and free primary education has been guaranteed. At the international level, UN agencies and organs, international development agencies and regional institutions were urged to help implement child development strategies. The UNICEF was assigned the role of a analyzing various plans and actions and preparing a consolidated report. This is in a nutshell, the international commitment to children for their free and compulsory primary education. Many countries including England, U.S. European Countries, Australia, New Zealand, China, Singapore etc., have accepted elementary education as a fundamental right for all children between the ages of 6 o 18.

Elementary Education – Role of State

India has accepted elementary education as the basic need every individual. Over a century ago, the India leadership and the intelligentsia of the time were conscious of the poor state of education. This is reflected from the indigenous Common wealth of India Bill, 1895 drafted under the inspiration of Tilak wherein free elementary education was declared a fundamental right. Gokhale's Education Bill, 1911 advocated the principle of free and compulsory education to all. Mahatma Gandhi formulated the basic education plan, which was discussed at all India National Education Conference at Wardha.

Child Education – Indian Constitutional Provisions

The conference resolved, *inter alia* that free and compulsory education be provided for seven years on a on a nationwide scale. The Constituent Assembly endorsed the vision of free and compulsory universal education gave it a place in the Directive Principles in Part - IV of the Constitution. Some of the child specific provisions of the Constitution which have a bearing here are contained in Part-III dealing with Fundamental Rights and in Part-IV (*supra*). In the former, the State has been empowered to make special provisions for children.⁸ The employments of children under the age of 14 years have been prohibited.⁹ In the latter, the State is directed to prevent the abuse of children¹⁰ and to ensure that children are given opportunities and facilities to grow in a healthy environment, and with freedom and

⁶ *Ibid*, Principle 7.

⁷ (1925) 268 US 510, 535: 69 Law Ed 1070, 1078.

⁸ Constitution of India, Article 15(3).

⁹ *Ibid*, Article 24.

¹⁰ *Id.* Article 39(e)



dignity. Childhood has been protected against exploitation and moral and material abandonment.¹¹ The State is also urged to secure the right to education within the limits of its economic capacity and development.¹² The State is further obliged to provide for free and compulsory education for all children until the age of 14 years within a period of 10 years from the commencement of the Constitution.¹³ The State is also obligated to promote educational interests of weaker sections of society, particularly SC and ST.¹⁴ The provision for free and compulsory education is so vigorous in its impact that, if sincerely implemented the other provisions would largely be complied with.

Education Commission

In compliance with the aforesaid constitutional mandate legislation dealing with primary education was framed in various States and Union Territories. The Delhi Primary Education Act, 1960 was enacted as a model. Despite legislation, and numerous Reports on educational reform (for eg. Report of the Education Commission, 1966), Five – Year plans and administrative planning and action, the goal of free and compulsory education largely remained on the paper, and the target year went on changing. Some major factors for this were, the absence of a clear national policy on education, planning process without due emphasis on human development and lack of resources. All this needed political will. However, since 1986 some positive trends are clearly visible; The National Policy on Education

1986 and Plan of Action, Revised Policy Formulation, Plan of Action of 1992. There is another major development, that is, the decision of the Supreme Court in *Mohini Jain Case*,¹⁵ wherein the Supreme Court has rightly held that the right to education is a fundamental right. Later, in *Unnikrishanan v. State of Andhra Pradesh*,¹⁶ the Apex Court held that the right of free education for all children until they complete the age of fourteen years was a fundamental right. In pursuance of this case, the Central Government amended Article 21 of the Constitution of India, and incorporated a new Article 21-A right to education. The Act makes Education a fundamental right for those between the ages of 6-14 years.¹⁷ The said amendment to provide for the following insertions/changes in the Constitution of India:

- a) The insertion of article 21-A which provides that ‘the state shall provide free and compulsory education to all children between the age of six to fourteen years in such manner as the state may, by law, determine.’¹⁸
- b) An amendment of Article 45 that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.
- c) An amendment of Article 51-A inserted therein a new clause (k) after clause (j) that ‘a parent or guardian shall provide

¹⁵ AIR 1992 SC 1858.

¹⁶ AIR 1993 2178: (1993) 1 SCC 645, quoted in M.R. Siva Kumar v. State of Tamil Nadu, AIR 1999 Mad, 187 at 190 (DB).

¹⁷ The Indian Constitution (Eighty Six Amendment) Act, 2002.

¹⁸ The Indian Constitution (Eighty Six Amendment) Act, 2002.

¹¹ *Id.* Article 39(f)

¹² *Id.* Article 41

¹³ *Id.* Article 45.

¹⁴ *Id.* Article 46



opportunities for education to his children or ward between the ages of 6-14 years’.

The Right to Education Bill, 2005

The Central Government put up in the Parliament ‘The Right of Education Bill, 2005’. In a panel discussion recently organized by the Centre for Civil Society on the ‘Right of Education Bill, 2005’, Amit Kaushik, Director, Elementary Education, Ministry of Human Resources and Development (MHRD) said that though the Bill was a result of collective wisdom of various stakeholders; it was still an evolving document, open to alterations keeping in mind the needs of the states and local conditions. ‘The draft attempts to find the balance between all the desirable and practical reality’ he added. However, he went on to clarify that the Bill should not be looked at as an ultimate solution for the ills playing the education system.

The main object of The Right of Children to Free and Compulsory Education Act, 2009 are-

- 1) To provide free and compulsory education to all children of India in the 6 to 14 age group.
- 2) To provide for pre-school education to prepare children above the age of three for elementary education and to provide early childhood care and education for all children until they complete the age of six years.
- 3) That no child is admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.
- 4) That a child who completes elementary education shall be awarded a certificate.
- 5) To provide for a fixed student-teacher ratio.
- 6) To provide for 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools.
- 7) To provide that no capitation fee and screening procedure for admission.
- 8) To ensure good quality elementary education conforming to the standards and norms specified in the Schedule.
- 9) To ensure adequate professional degree for school teachers within five years.
- 10) To provide that school infrastructure (where there is a problem) to be improved in three years, else recognition cancelled.
- 11) To provide that financial burden will be shared by State Government and Central Government.
- 12) To provide that no child shall be subject to physical punishment or mental harassment.
- 13) To provide for the duty of every parent or guardian to admit the child to a neighbourhood school for elementary education and that no child should be denied admission for lack of age proof.
- 14) To provide that the National Commission for Elementary Education shall be constituted to monitor all aspects of elementary education including quality.



- 15) To provide that no teacher shall engage himself or herself in private tuition or private teaching activity.
- 16) To ensure the availability of a neighbourhood school for providing free an compulsory education for every child within a period or three years form commencement of this Act.
- 17) To provide that the medium of instruction shall, as for as practicable, be in child's mother-tongue.

Right to Education is a Fundamental Right – Article 21-A¹⁹

The right to education, at least at the elementary level, has also been recognised and upheld as a fundamental right.²⁰ Education has now been recognized as a human right and an instrument of social change. It is the single-most vital element in combating poverty, empowering women, safeguarding children from exploitative and hazardous labour, promoting human rights and democratic ideals and protecting the environment. In the present article, an attempt has been made to examine different facets of the rights of a child to education, but more emphasis is on examining the legal position of the rights of child to education in India. The attempt is to find out whether is it a right in the real sense. This paper also traces the evolution of the fundamental right to education in India by referring to the International human rights framework as well as the Constitutional framework in India. The Supreme Court's role in developing fundamental right to education through

constitutional jurisprudence is also under examination.

Major Anomalies in the Act

In the Right of Children to Free and Compulsory Education Act, 2009 have major following anomalies which must be amended-

- 1) The Act is limited to elementary education of children between six to fourteen years only,²¹ which means exclusion of children in the age groups of 14-18 years from the ambit of the Act. Hence, the Act is depriving poor children from the opportunity and eligibility for technical education and higher education.
- 2) The Act aims to provide elementary schools in every neighbourhood within three years²² - though the word 'school' encompasses a whole spectrum of structures. A set of minimum norms have been worked out as there are the usual barrier of paperwork in remote rural and poor urban areas. The State is also obliged to tide over any financial compulsions that may keep a child out of school.
- 3) The Act provides that it shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to elementary education in the neighbourhood school.²³ But, if he has not performed his duty, there are no provisions to compel him to perform his duty.

¹⁹ Amendment Act, 2009.

²⁰ Bharat Kumar K. Palicha v. State, AIR 1997 Ker. 291 at 297.

²¹ *Id*, Section 3(1)

²² *Id*, Section 6

²³ *Id*, Section 10



- 4) In the Schedule to the Act, detailing norms and standards for a school, norms which all schools must follow for installing teaching, learning equipment, library, play material, games and sports, but equipment are not prescribed.
- 5) The Act is silent on the facilities needed to enable children with disabilities to attend schools (such as ramps, Braille readers, etc). In this Act, 'disability' has the meaning assigned by the Persons with Disabilities Act, 1995, which does not include such other disabilities as defined by the National Trust Act, 1999.
- 6) The Act continues to prorogate discrimination against Government school children, as their teachers will still be deployed for census, elections and disaster relief duties apart from being assigned tasks other than teaching.²⁴ This is a complete abrogation of the rights of children, particularly in times of disasters, when they are in urgent need of education to provide them a routine, and 'normalisation' process. Moreover, the shutting down of schools during emergencies and disasters has a strong co-relation to trafficking and 'missing' children.
- 7) The Act provides that the medium of instructions, as far as practicable, be in the Child's mother tongue. However, the Act does not provide what should be the medium of education. It is necessary that the primary stage for the children of linguistic minority group are provided education in their mother tongue. Hence, violating Article 350.
- 8) The Act does not adequately address the issue of child labour. The Act ignores the reality that a majority of poor children who are employed in agriculture, and who bear the burden of housework and sibling care. The Act need to categorically state that all forms of employment and engagement, which hinders the development of the child, should be banned and made a cognizable offence.
- 9) The Act defines 'disadvantaged' children as belonging to SC/ST/OBC...or suffering any other kind of disadvantage.²⁵ The word 'disability', mentioned in the draft, is not there in the Act that was passed. The effect of this is, that disabled children do not explicitly get to avail a 25 percent quota in private schools.
- 10) The Act will be the States financial contribution. The Law Ministry expected problems to arise from the 25% reservation, while Human Resource Development ministry estimates put the total cost at Rs. 55,000 crore every year. The Planning Commission expressed its inability to fork out the money; the State Governments said they are out the money; the State Governments said they were unwilling to supply even a part of the funding.

²⁴ The Right to Children to Free and Compulsory Education Act, 2009, Section 27.

²⁵ *Ibid*, Section 2(d)



- 11) The Act provides that no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education,²⁶ emphasise a no detention policy, but makes no mention of the learning levels of children. In light of current learning levels, as indicated in ASER Report (2009), the Act must have provisions for a database to capture learning levels of children, with a special emphasis on first generation learners.
- 12) The Act provides that every authority ensure 'Good quality' of elementary education as one of its objectives, but fails to define the term 'good quality'. The Act specifies norms for physical infrastructure of school (number of rooms, teachers, toilets, library, play material, games and sports equipment etc) but does not outline expectations on learning outcomes.

Free and Compulsory Education

The purpose of free and compulsory education is to provide a child enhanced awareness, greater openness, the courage to question, perseverance in searching for solutions and living in society with dignity. The goal of elementary education is to equip one with basic minimum levels of knowledge, attitudes, values and skills so to start the journey²⁷ of one's life. Keeping this in view, the International Law Policy and plan is very impressive. Also, India's

²⁶ *Ibid*, Section 16.

²⁷ Documental National Policy of Education, 1986, A review in *New Frontien in Education*, XXI(1), Jan-March, 991, p. 65-67.

conceptual frame, law, policy and programmes are largely in tune with international developments. The decisions of the Hon'ble Supreme Court and the enactment of the Right of Children to Free and Compulsory Education Act, 2009 are aids to fulfill the constitutional objectives of free an compulsory education to every child but the task in enormous. Only policy making is not sufficient for its success, until or unless it is implemented properly. Lata Vaidyanthan, also said that 'Laws and Bills don't make children go to school. Initially, there will be problems because while everyone must understand their social responsibility, what matters is whether the right children will have access to this programmed'. There are many problems in implementing the policy such as lack of public awareness, growth of child population, red tapes, mismanagement, corruption, lack of co-operation of NGO's etc. So, the Government must also make the provision to secure its implementation as well.

Conclusion

The Nations children are a supremely important asset. Their nature and solicitude are our responsibility. Children's programme should be find a prominent part in our National plans for the development of human resources. So that our children grow up to become rebust citizens. Physically fit, mentally alert and morally health, endowed with skills and motivations, needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

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