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A PEEP INTO RIGHT TO EDUCATION ACT, 2009

Dr.T.S.N.Sastry*

Education is a process by which character is formed, strength of mind is increased, and intellect is sharpened, as a result of which one can stand on one's own feet—

- Swami Vivekananda

The development of any society depends upon several factors and indicators. Amongst them, Education being an important tool to gauge the development of a polity, it needs special attention with all the seriousness. Education brings in not only development to a country but also helps to augment the duty-based realisation of human and fundamental rights of the masses. This spirit of education has been given due importance in the Indian society from ancient Periods. However, due to a number socio, economic, Political and cultural aspects, it has been neglected to a great extent in practice, especially in the contemporary era. After a consistent pressure from the international and judicial quarters, finally, the government of India enacted the Right to Education Act in 2009 in tune with Art. 45 of the Constitution, which advocates that elementary education, offered on a compulsory basis to every

child below the age of fourteen years with in a period of ten years from Independence. Though RTE was enacted in 2009, yet the State is able to achieve the the concept of compulsory education to all. In fact, a number of road blocks need to be cleared to augment India as a true knowledge based economic society.

Right to Education in International Perspective

Right to Education (hereafter words referred to as RTE) as a fundamental human right was recognised by international law long back. The conceptual idea of education has a human right was derived from the fundamental philosophy of the concept of human dignity and personality. The UDHR in 1948 explicitly expressed through Art 26, that since education promotes tolerance, friendship and help to develop relations between states; it needs to be nurtured and developed at all levels. And, it further advocates everyone has the right

to Education, and up to the elementary stages it should be free and compulsory to all, and higher education be made easily accessible without any discrimination. The same was expanded through the International Covenant on Economic; Social and Cultural rights vide Arts. 13 and 14, Articles 28 & 29 of the Children Rights Convention and Article 10 of the CEDAW. Apart from the few mentioned international instruments, through a number of other documents and declarations the UN clearly advocates the significance and the impact of education in the realization of human rights. Much earlier to these international instruments, the ILO as early as in 1920 itself advocated the importance of education. The UNESCO Convention of Discrimination in Education in 1969 makes it mandatory to states parties to adopt policies that will equally tend to promote equality of opportunity and treatment, and, in particular, *make elementary education compulsory to all*. A number of regional

agreements in every region have advocated the significance of imparting education, especially in the elementary level¹.

From the above brief discussion of international perspective, it can be aptly stated that as a human right, the right to education is also an enabling right. Since it is a facilitating right, the World Conference on Human Rights in 1993 proclaimed that for the realisation of human rights, education be made compulsory for the promotion of dignity, liberty and individuality of individuals, and, imposed a duty on the nation states to take necessary steps to impart it on a compulsory basis². 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 rights 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 forums, and the*

ability to negotiate with a wide range of government officials and power holders. Further, the economic growth of a country is interlinked with education.

Education in Indian Context:

In ancient India Education occupied a unique place. According to Dr. P.N. Prabhu, unlike other states, in ancient India education was free from the interference of the state and was the duty of the king that the pundits who pursued education need to discharge their duty to impart to all without any kind of interference. Education received recognition as an important tool of the society since ancient periods. However, for varied reasons, the selfish interest of wealthy and educated elites of the society, it did not transform into a common ideal and access of it was restricted to a few in the later periods³. In the British period, though impartation of Education to all was compulsory, for a number of varying issues, education was not considered as a right of people, and remained accessible for affluent classes of the society. Though the Compulsory education Act was enacted in 1870 by the British Parliament to cover Britain, it was not extended to India. The 1882

Indian Education Commission confined itself to Imperial class but not to masses.

In 1906 for the first time, Shri Gopal Krishan Gokhale made a public demand for free and compulsory education to masses in the elementary level. In the Imperial Legislative Council, Shri Gopal Krishna Gokhale on March 18, 1910, made a demand for free and compulsory elementary education through a Private Members bill. The bill in no uncertain terms demands the responsibility of the state and highlights the advantages of education, especially that of at least elementary education. The bill further emphasizes that imparting even elementary education is a great thing, which in turn help people to not only attain moral and economic standards but also lead them to lead a dignified life⁴.

The plea of Gokhale fallen in the deaf ears. The attempts were continued and finally in 1917, Sardar Vallbhai Patel with his efforts succeeded in getting the Bill Passed. This was the first law on compulsory education in India. By 1930's all most all the provinces implemented the

compulsory education regulations and laid rules to impose fines for the parents if their children are not sent to schools. Later Gandhi made a frantic call for adequate funds for imparting education. By 1937, the government decided to impart free education, in the entire country with the revenue generated through the sale of liquor. This made Gandhiji to painfully advocate "the cruelest irony of the new reforms lies in the fact that we are left with nothing but liquor revenue to fall back upon in order to give our children education." This led Gandhiji to advocate a national system of education that would be self sufficient, than depending on the funding of the state⁵.

After independence, the Constituent Assembly considering a number of aspects finally recognised right to education as a part of the Directive Principles of State Policy. According to Art 45 of the DPSP, the state has an obligation to take adequate steps to impart free education up to the age of fourteen years with in ten years

from the date of the adoption of the constitution⁶. During the debate, it was strongly resisted by K.T. Shah making it as part of Directive principles of State Policy. He fervently opposed the introduction of such an important provision under the directive principles of state policy, and expressed that the state may not implement it in the near future and may bye time on one pretext or the other. As opined by K.T. Shah, the issue of compulsory education was not at all discussed in the first two five year plans or in the ten budgets passed after independence. It remained as a dream for long, and remained in only as a directive in spite a number of decisions and suggestions given by the judiciary. Every time, the State came up with excuse of sufficient resources to implement the directive as visualized by K.T. Shah⁷. This shows even our neighbours like Sri Lanka, Malaysia, and Singapore and many more countries achieved Universal compulsory education, we could not achieve it. This and other factors of the government buying time to implement

universal elementary education led Supreme Court in Unni Krishnan's Case to make it as a fundamental right⁸.

After a long list of cases, finally in Unnikrishnan's case the court directly held that the parameters of Art 41, 45 and 46 constitute as a part of Life and Liberty and as a fundamental right, the state cannot avoid its responsibility in offering free and compulsory elementary education. The dictum of the court finally led the legislature to amend the constitution to guarantee it as a fundamental right in 2002⁹. Immediately in 2003, the Government adopted a Bill guaranteeing Right to Education as a fundamental right and it took almost six years to enact it into a legislation, which finally came into existence in 2010.

Salient Features of Right to Education Act 2009:

- ❖ To impart free and compulsory education to all children of India in the age group of six to fourteen.
- ❖ No child shall be held back, expelled, or required to pass a board examination until

completion of elementary education;

- ❖ 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.
- ❖ Proof of age for admission: For the purposes of admission to elementary education, the age of a child shall be determined based on 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

- ❖ A child who completes elementary education shall be awarded a certificate;
- ❖ Calls for a fixed student-teacher ratio;
- ❖ Will apply to all of India except Jammu and Kashmir;
- ❖ Provides for 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools
- ❖ Mandates improvement in quality of education;
- ❖ School teachers will need adequate professional degree within five years or else will lose job;
- ❖ School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
- ❖ Financial burden will be shared between state and Union of India

Critical out Look at Act

Thanks to the clarion call

of the Supreme Court of India in recognition of the right to education as a fundamental right, one hundred years after the first attempt by Gokhale for compulsory primary education, the RTE has seen light in 2009. In spite of the enactment after six decades of independence, it fails to cover entire child population, which stands at 40% of the total population of the country on a number of counts. Among the numerous issues, a few are discussed here. Firstly, according to the UN and the Child Rights Convention, any child below the age of 18 years constitute as children. This definition has a universal application, as a standard of age of determination for a child, since it is a prescription of the norms of international law. However, India being a party to the Children Rights Convention, it is surprising that the Act completely deviates from age of 18 years and it confines only to the age group of 6 to 14 years. By elimination of the children below the age of 6 years, and above 14 years, does it to be constructed that the state has no

obligation towards these children. Further, since the act is strictly to comply with Art 21-A of the constitution, which prescribes the above age group, it is a major lacuna that the act, and the constitutional amendment need to under go a change in tune with the standards prescribed by the UN. By amending the said provisions, the state not only fulfills the social justice objectives of the constitution and helps the augmentation of the rights of disadvantaged and vulnerable groups of people of the polity.

Secondly, another important parameter is the quality of schools, place of the schools and the quality of teachers. In majority part of the country, there are no proper school buildings and quality of teachers. The act provides that the Local Committee may appoint teachers and with in a period of five years, they can acquire the required qualifications. This is a eyewash clause, since the teachers are not qualified at the time of initial attempt, what could be expected of them to impart education to children at the first instance and, since

they are interested to acquire qualifications, the question arises is, whether they concentrate on children education or on their educational qualifications.

Thirdly, the act aims to integrate education of all types of schools that exist in the country under a single system of education. In a country with divergent cultural and linguistic, historical backgrounds and filled with politics of power, how could all the different models exist in the country be integrated under a single system. From the inception until date, no formula has been worked out to decide the fate of nearly two lakh schools functioning under different streams.

Fourthly, when the country needs more than 200,000 billion rupees are required to implement the scheme of universalization of education even to the targeted group between the ages of 6 to 14, the mere allocation of 600 billion rupees so far how could will it bring in the desired results. Though the government says it has increased the money many folds to meet the expenditure, it is only a minimal allocation and not the actual amount that is required to meet the objectives of the

act. Further, it leads to another important aspect, that around two lakh private schools, which are under the various managements are integrated and brought into the fold of state, how far the state is going to meet the expenses of the integration of all the schools in the country.

Fifthly, another important aspect is the promotion and protection of the health of children, especially that of the nutritional health. We have underweight children constitutes about 43% compared to many of the developing countries like Nigeria, Bangladesh, Pakistan and Sri Lanka which has around only 5%. The ratio of 43% India's mal nourished children is equivalent to that of the developing countries total. If this being the case so how far the state is going to address other important issues and attract the children to the schools and achieve the target of compulsory primary education to all.

Finally, the important question is though the judiciary upheld the Act and the constitutional provisions of extending to concessions to socially disadvantaged classes of people by the state including the private and minority

institutions, will the state able to come across the political mileages of the private educational institutions and the minority institutions to follow its mandate¹⁰. Another question arises is that, though the court has upheld the concession to be extended to disadvantaged groups of people, then what about the other poor children of the upper castes who constitutes as vulnerable due to their poor economic conditions. Apart from the above few discussed, many more issues are needs to be addressed to really achieve the issue of right to compulsory education.

Conclusion

Education constitutes as an important parameter for the all round sustainable development of either a nation or international community. However, the achievement of it has to cross number of obstacles. The efforts of the international and national governments could not yield results as desired. Resultantly, millions of children are still having a tough task to receive education. Among the various aspects that impair education, poverty

sincerity, and commitment of society and state for the promotion of it play a vital role. In order to drive the point back home, the UN Millennium Developmental Goal No.2 appeals all the states that Universal Primary education be imparted to all the children as a target by 2015.

The RTE is completing its 5th year of existence by April 2015, since its entry into existence in 2000. However, it could not achieve the concept of *Universal Primary education to all the children* as an important ingredient of the development of the country. India being a party to the Children Rights Convention, it has an obligation to augment the rights of children in all fields, especially in the area of right to education. However, the policy formulations and implementation mechanisms are miss match in the promotion of children's right to education.

The Government has introduced the Sarva Sikha Abhiyan and Mid Day Meal scheme to achieve the target of attracting the children to schools, allocated handsome amount to meet the

objectives of the schemes. However, they failed measurably for lack of execution or diversification of funds for other activities like school buildings, and other expenditures of education than on utilizing the purpose for which the funds are earmarked. Though the government many a times claims that it has achieved the object, or nearing to achieve it, according to the Census of 2011, about 11.7 million children are still working in various avocations to feed their families. According to estimates, 42% of Indian population is children below the age of 18 years and the future generations of the country. However, the economic policies of the state at no point of time receive serious attention than paying lip services by the respective governments by allocating few millions Crores of rupees and introducing schemes without any practical approach to their implementation. The poor quality of planning and the scanty attention paid by the state to plan for children's care and augmentation of their rights is sole problem that hampers the cause of right to Education. Whatever the lacunae's are there if the Government and the civil society takes the initiative to create

awareness about the the significance of right to education and its implementation, certainly it will help to educate the objective of education for all. Without any substantial effort by the state, the RTE will remain as another piece of legislation in the statute books than to yield the results for which it is adopted.

REFERENCES

* Professor & Coordinator Human Rights Education Programme, Department of Law, Savitribai Phule Pune University, Pune.

1. For detailed discussion see Circle of Rights, University of Minnesota Human Rights Resource Centre available at <https://www1.umn.edu/humanrts/edumat/HRIP/circle/modules/module1.htm> last updated 26.1.2015

2. See GA Resolution A/RES/48/127/ dated 20 December 1993.

3. For a detailed discussion during Vedic and Post Vedic Periods see Madras University Modules on Education, available at http://www.mu.ac.in/myweb_test/ma%20edu/History%20of%20Edu..pdf last updated 25.1.2015

4. speeches of Gopal Krishna Gokhale (Madras, 2nd ed.1916), p.718 f; also see at <http://cw.routledge.com/textbooks/9780415485432/32.asp> last updated on 26.1.2015

5. VINOD RAINA, Education and knowledge in the time of globalisation inclusion, quality and agency, B.M. PUGH FOURTH MEMORIAL LECTURE, 2010

NERIE, NCERT, SHILLONG

6. Art. 45 The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years

7. The dissent of K.T. Shah reads as follows "Once an unambiguous declaration of such a (justiciable) right is made, those responsible for it would have to find ways and means to give effect to it. If they had no such obligation placed upon them, they might be inclined to avail themselves of every excuse to justify their own inactivity in the matter, indifference or worse

8. Unni Krishnan V State of A.P. 1993 SCC 1 (645)

9. The constitutional Amendment is referred to as 86th constitutional Amendment and inserted Clause (A) to Art 21

10. Pramati Educational and Cultural Trusts & ors V Union of India and others W.P. (C) 461 of 212 SC delivered on 6 May 2014. (2014) 8 SCC 1

11. For details see the booklet of Bachpan Bachao Andolan 2013, In School and Working Children.