

A STUDY OF PROVISION FOR CHILD EDUCATION UNDER THE CONSTITUTION AND NATIONAL POLICY OF INDIA

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ABSTRACT :

The education system does not function in isolation from the society of which it is a part. The present paper attempts to :

(a) Understand the Indian perspective on child's right to education, (b) Analyse the feasibility of RTE and highlight the challenges in its implementation in India, (c) Present Case Studies to describe the present Indian scenario in education for the marginalised children in two progressive states of India that have the potential to show a way for the rest of the country.

In this study, the common issues are: attitudinal barriers, lack of awareness of the legal provisions and subsequent schemes, accessibility of schools being meager, lack of necessary infrastructure, lack of and retention of trained staff adaptation of curriculum and materials and lack of control systems. Though India has taken ownership for inclusive education by establishing legal provisions through the RTE, several issues continue to be faced. While many innovative programmes have been initiated, a stronger partnership between the government and the common man together is what is required to bring about the desired difference .

Key Words : education, children, government.

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INTRODUCTION

Education plays a cardinal role in transforming a society into civilized nation. It accelerates the progress of the country in every sphere of national activity. It operates as a 'multiplier' by enhancing the entitlement of all individual rights and freedom. It enables a person to control the benefits derived from other rights. It is 'the key to unlock and protect other human rights.' It embodies all civil political, social, economic and cultural rights. No segment of the citizens can be ignored or left behind because it would hamper the progress of the country as a whole. It is the duty of the State to do all it could, to educate every section of citizens who need a helping hand in marching ahead along with others.

Although we have so many provisions and policies on the Right to Education, still we have failed to achieve this right as developmental right which was already foreseen by our constitution makers to be implemented in a predetermined span of time. Since independence, the target has not yet been achieved as reflected in the educational backwardness and poverty especially among certain groups of the society who have faced social discrimination.

The right to education is recognized as a human right by the United Nations and is understood to establish an entitlement to free, compulsory primary education for all children, an obligation to develop secondary education accessible to all children, as well

as equitable access to higher education, and a responsibility to provide basic education for individuals who do not have primary education. In addition to these accesses to education provisions, the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational systems, to set minimum standards and to improve quality.

Educational Rights Under Constitution of India

The Constitution of India is a social document and the supreme law of the land. The founding fathers of the Constitution have incorporated a well designed constitutional manifesto under Part-IV of the Constitution to achieve socio-economic justice. The Directive Principles of State Policy is not a catalogue but principles of good governance. It imposes certain obligations on the State to take affirmative action to establish a welfare State. These principles give directions to the functionaries of the State, the manner in which the Constitutional vision has to be achieved. One of the important directives is the duty of the State to provide free and compulsory education for all children until they complete the age of 14 years.

Initially, the Constituent Assembly did not make education a fundamental right, it provided for free and compulsory education as Directive Principles of State Policy which are although not enforceable by the court of law but are made fundamental in the governance of country and it has been made a duty of the State to apply these principles in making laws.

As early as in 1978, the Supreme Court of India has widened the scope of Article 21 of Constitution of India. The Court then held that, “the right to education flows directly from

the right to life” as “the right to life and dignity of an individual cannot be assured unless it accompanied by the right to education. Education is the primary vehicle for human, economic and social development, profiting both the individual and society. It is very difficult for individuals to exercise their civil, political, economic and social rights unless they receive the basic education. The Supreme Court in Mohini Jain and Unnikrishnan cases recognized the right to education as an implied fundamental right. According to the court, the education has proximate relationship with life, protection of environment, eradication of untouchability, child prostitution and other related rights. The National Commission on review of the working of the Constitution has also endorsed a similar view. As a result the Parliament inserted Article 21-A to the Constitution by the 86th Constitutional Amendment in 2002. This Amendment also introduced new fundamental duty on parents to provide education to their Children under Article 51- A of the Constitution.

Right to Education under the Constitution of India: BACKGROUND

In the original Constitution, education was confined to Part IV of the Constitution; Article 41 of the Constitution of India provides that the State shall within the limits of its economic capacity and development, make effective provisions for securing the right to work, and the right to education.

Constitution resolves that these objectives can be achieved only if the country’s children are not in work and are attending schools and as far as dignity of the individual is concerned, without education, dignity of the individual cannot be assured. Hence, some child specific provisions are contained in both ‘Directive Principles’ and ‘Fundamental Rights’. ‘Our Constitution-makers, wise and sagacious as they were, had known that India or their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit-makers for their personal gain had to be first indicted. It is this need, which has fund manifestation in Article 24, which is one of the two provisions in Part IV of our Constitution on the fundamental right against exploitation. The framers were aware that this prohibition alone would not permit the child to contribute its mite to the nation building work unless it receives at least basic

education. Article 45 was therefore inserted in our paramount parchment casting a duty on the State to endeavor to provide free and compulsory education to children. (It is known that this provision in Part IV of our Constitution is, after the decision by a Constitution Bench of this Court in *Unni Krishnan, J.P. v. State of Andhra Pradesh* has acquired the status of a fundamental right.)

Realizing the Government's lethargic attitude and delaying tactics in implementing the Constitutional commitment of education that was basically in the provisions of Directive Principles of State Policy, the Court shows an activist approach, by effective recharacterization of the right to education as a fundamental right. It was in fact Supreme Court public interest cases that set in train the movement to create an enforceable Constitutional Right to Education in India. Thus, it confers a fundamental right to socially and educationally backward classes to seek better educational opportunities from the state. The object of clause (3) and (4) of Article 15 is to improve the educational opportunities of the neglected segments of society. 19 The Court's initiative had a huge impact in terms of mobilizing civil society, legitimating demands for a right to education, and unleashing extensive pressures on the government to formally amend the Constitution so as to bring it into line with the Court's approach. The Central government responded the Apex Court's agenda of re-characterization of the right to education as a fundamental right, by establishing two committees to investigate both the desirability and financial implications of amending the Constitution to establish primary education as a fundamental right.

The Sarkaria committee concluded in 1997 that the Constitution should be amended to create as 'fundamental right' the right to free and compulsory education from six to fourteen years of age, and to impose a 'fundamental duty' on parents to provide opportunities for education to their children in this age group. A second expert committee, the Majumdar Committee concluded in 1999 that the universalisation of No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. (Article 29 is not confined to minorities but extends to all sections of

citizens). In 1992 and 1993, the Supreme Court of India decided two PIL cases Mohini Jain Vs. State of Karnataka, AIR 1992 SC 1858; Unni Krishnan J.P. Vs. State of Andhra Pradesh, AIR 1993 SC 2178. Here, the Court took the opportunity to develop a precedent that governed the public provision of elementary education.

Constitutional Perspective Regarding Right to Education in India

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. The founding fathers of the nation recognizing the importance and significance of right to education made it a constitutional goal, and placed the same under the constitution of India.

The commitment enshrined in the preamble and various articles of the constitution. –

- Article 15(3) enables the state to make special provisions.
- Article 21A deals with Right to Education.
- Article 24 prohibits employment of children below the age of 14 years in hazardous jobs.
- Article 39(f) recommends the protection of childhood against exploitation and moral and material abandonment. The founding fathers made these safeguards to protect interest of the weaker sections of the society. –
- Article 45 directs the state to provide free and compulsory education to all the children under the age of 14 years.

Further, Article 46 declares that state shall promote with special care the education and economic interest of the weaker section of the people. It is important to mention here that among several Articles enshrined in Part IV; Article 45 has been given much importance as education is the basic necessity of the democracy. In simple words, compulsory education is one of the elements for stability of democracy, social integration and to

eliminate social evils.

RIGHT OF CHILDREN EDUCATION – NATIONAL PERSPECTIVE

National Policy on Education (NPE-1968)

The Commission recommended that the Government of India should issue a statement on the National Policy on Education which should provide guidance to the state Governments and the local authorities in preparing and implementing educational plans. In 1967 the Govt. of India constituted a committee of Members of Parliament on Education to prepare the draft of a statement on the National Policy of Education. The Committee brought together the leading members of almost all the political parties in the country and prepared a draft which was considered by the Central Advisory Board of Education. A general consensus on the National Policy on Education emerged in the course of the Board's deliberations. The educational objectives, during these years, laid more stress on further democratization of education, emphasized on quality improvement and a planned, more equitable expansion of educational facilities, improving access to education, and also its quality at all stages, better educational opportunities for disadvantaged, achieving more regional equity, increasing the range of educational opportunities introducing increased vocational bias in the curricula, more relevance to socio economic needs, developing alternate strategies, broadening the concept of continuing education, increasing access of women to all levels of education and awareness of environmental problems. The committee showed its concern over the large incidence of wastage and stagnation at the elementary stage should be stopped forthwith. To meet the problem, it suggested the launching of free and compulsory programme of primary education all over the country and to provide all facilities also mentioned in the Education Commission Report, So as to attract the children to the schools and retain them there. It also suggested the every possible incentive be given to the girls to attract them to the schools It emphasises on the development of 'Three-Language Formula' (i.e.) Hindi, Sanskrit, regional languages at the secondary stage. The regional languages are already in

use as medium of education at the primary and secondary stages. It incorporated development of the various regional languages even at the university stage too, as without incorporating regional languages the creative energies of the people will not be released, standards of education will. It highlighted that strenuous efforts should be made for the early fulfillment of the Directive Principle under Article 45 of the constitution seeking to provide free and compulsory education for all children up to the age of 14 Before the 86th Constitutional Amendment Act, 2002, and to develop suitable programmes should be developed to reduce the prevailing wastage and stagnation in schools and to ensure that every child who is enrolled in school successfully completes the prescribed course. It acknowledged the importance of teachers by signifying that ‘The teacher is undoubtedly the most important of all the factors which determine the quality of education and its contribution to national development. It is on his personal qualities and character, his educational qualifications and professional competence that the success of all educational endeavors must ultimately depend.

ANALYSIS AND INTERPRETATION ON “RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009”

Legal issues for interpretation: Section 2(f) of the Act, states that “elementary education means the education from first class to eighth class”. This is the old philosophy, which our ancestors thought that physically as well as mentally a child can study only after the age of five. But, due to era of information technology the exposure of children is above than that. Hence the defect identified that the Act had not concentrated to the present wants and needs of the society.

2. Section 3 of the Act states that, Right to free and compulsory education for the children mandatory. This provision failed to specify with whom the obligation vests? and if the child in not in a position to attain studies, what are those other education available in lieu of academic such as sports, art, vocational, etc.

3. Section 6 of the Act states that, the duty vested with the appropriate Government and local authority to establish schools within the period of three years from the date of

commencement of this Act. But, this provision failed to specify that if the authorities are not accomplishing the target within the said period, what those remedies available to implement this provision are. This provision looks like a morality rather than legality.

4. Section 10 of the Act states that, it is the duty of the parents and guardians to admit their children in the neighbourhood schools. This provision does not mention the mandate of the schools should admit those children to provide quality education wherever they are.

5. Section 11 of the Act states about the pre-school education for children up to the age of six years. Preschool education run by the state has no proper system of training to the children. Now-a-days, mushroom growth of Montessori's i.e., play schools, without any proper regulation, makes the children physically as well as mentally depressed.

6. Section 12(c) states that 25% of the seats shall be allotted for the backward communities, poor and under below poverty line. This provision also states the penalty for the wrong doer, but it is very difficult to punish the offender because, the people themselves want quality education for their children, they are ready to pay any cost, because all institutions are not equally in par. that neither can the policy of reservation be enforced by the State nor any quota or percentage of admission be carved out to be appropriated by the State in a Minority Educational Institutions. Hence, the State cannot regulate and control the admission in these institutions.

In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age.

Six years after an amendment was made in the Constitution of India, the union cabinet cleared the Right to Education Bill in 2008.² The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), which was passed by the Indian parliament on 4 August 2009, describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Constitution of India. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. The bill

was approved by the cabinet on 2 July 2009. Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 3 Sept 2009 as The Children's Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Manmohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India."

Youth is the future of the Nation and their empowerment through RTE. In ancient times youth was not compelled to study but at present times he has to study to deal with the present world as illiterate person may be deceived or may not know his right and duties towards society and family. The Constitution of India has recognized the importance of education for social transformation and is committed to social justice. The Preamble determines, to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. Literacy forms the foundation stone for making the provision of equality of opportunity a reality. The objective specified in the Preamble contains the basic structure of the Constitution, which cannot be amended, and the preamble may be invoked to determine the ambit of Fundamental Rights and Directive Principles of State Policy. Judicial interpretation has brought alive many an Article of the Constitution, which if read literally may seem to be a colorless Article.

In *Francis Coralie Mulin v. Administrator, Union Territory of Delhi* (1981), Justice Bhagwati observed: "The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human

person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings.”

Again, the Supreme Court in its judgment in the case of *Bandhua Mukti Morcha, etc. vs. Union of India* (J.T. 1997 (5) SC 285) specifically referred to the earlier judgments made in this connection as under: “In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi* JT 1991 (2) SC 296, right to education at the secondary stage was held to be a fundamental right.

In *J.P. Unnikrishnan V. State of Andhra Pradesh* JT 1993 (1) SC 474, a constitution Bench had held education upto the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.” Prevailing Laws relating to RTE is adequate or not to deal with the existing problems and their resolution is main concern. Moreover, to give suggestions relating to the Right to education. Now most of the nations of the world have also accepted their obligation to provide at least free elementary education to their citizens.

Article 26 of the Universal Declaration of Human Rights declares: “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 generally available and higher education shall be equally accessible to all on the basis of merit”. RTE is beneficial for downtrodden, pauper/ poor and mass citizens of country. According to Mahbub Ul Haq and Khadija Haq in *Human Development in South Asia, 1998*, Chapter 2, “The education is not merely a means better income and employment opportunities for individuals or for higher-economic growth potential for their nations. The social benefits of education spread in many directions. Education leads to better health care, smaller family norms, greater community and political participation, less income inequality, and a greater reduction of absolute poverty. The role of education

in removing poverty is decisive. No educated society can remain politically, socially or economically repressed for long. Education is a basic component of social cohesion and national identity.”

Education is a continuous process which aims to prepare a person to play his role as an enlightened member of the society. Realizing the gaps in the system of education introduced by the British Government in India, the nation since Independence, has been trying to restructure its education policy to suit the needs of technological and industrial developments. National Policy on Education (NPE, 1986) was last declared in 1968 and has been responsible for considerable expansion of education in the country at all levels. However, due to a lack of financial and administrative support, gaps in implementation remained. In 1986 Government published a document on education which formed the base for new NPE with special emphasis on the removal of disparities and to equalize educational opportunity, especially for Indian women, Scheduled Tribes (ST) and the Scheduled Caste (SC) communities. National Committee’s Report on UEE in 1990 stated that schools increased 4 times to 9,30,000. Enrolment at primary level increased 6 times to 110 million. Enrolment increased 13 times at upper primary level. Enrolment of girls increased 32 times. 94% population had access to primary education. At the same time the report highlighted that the picture was not so rosy. 59 million school children were not attending school including 35 million girls. There was high dropout rate. Low level of learning achievements, low coverage of disadvantaged groups, inadequate school infrastructure, poorly functioning schools, high number of teacher absenteeism, large number of teacher vacancies, poor quality of education, and inadequate funds were some of the things highlighted in the report.

National Commission for Protection of child Rights (NCPCR, 2007) is a statutory body under the Commissions for Protection of Child Rights Act, 2005. Vested with powers of a civil court to enquire into complaints and take notice of matters related to deprivation and violation of child rights, NCPCR’s broad mandate is to protect, promote and defend child rights countrywide.

Sarva Shiksha Abhiyan (SSA, 2000) is Government of India's flagship programme under

RTE Act for achieving the universalisation of elementary education. SSA a partnership between the central, state, and local governments has to ensure that all children (focus on special groups namely girl child and the disabled) are in school, complete and satisfactory primary education is provided, all gender and social category gaps are bridged and universal retention is achieved by 2013. To achieve these objectives support is sought from teachers, community, NGOs, and women organizations. Strategies central to SSA programme are institutional reforms, sustainable financing, community ownership, institutional capacity building, and improving mainstream educational administration, community based monitoring, Centres under the Education Guarantee Scheme (EGS) are intended to provide access to formal schooling, through a regular curriculum and textbooks, to children in habitations that do not qualify for a regular school due to existing state norms for opening schools. Often, EGS centres are sanctioned in remote habitations with few children, with the expectation that the State will alter its norms for opening schools and upgrade these EGS centres to regular schools within 2 years. Alternative and Innovative Education (AIE) centres intended for children in difficult circumstances, with no regular schooling experience or whose schooling has been disrupted, using specially tailored curriculum and pedagogic practices, required age/grade specific knowledge and skills, ensures that the child is ready to enrol in a regular school and continue her studies there, within a short period of 9 months to a year,. In spite of all this, a division between policy and practice still exists. According to a report by Akanksha Trust, in India 96% of primary school-age children are enrolled in school. The quality of learning indicators is of persistently low levels – with low standards of education, up to 25% absenteeism amongst government school teachers, a 50% drop out rate between grade 1 and grade 5, and 90% dropout by grade 10. Reports show that 13,000 government schools in the state of Bihar don't provide drinking water to students. The challenge faced by the NGO, is in raising the awareness of parents enough to send their wards to school, and not out to work. Urban areas remain undemocratic, in spite of large numbers of educational institutions and so drawing general conclusions based only on the number of institutions would.

National Education Policy, 2020

- School Education:
 - Universalization of education from preschool to secondary level with 100% Gross Enrolment Ratio (GER) in school education by 2030.
 - To bring 2 crore out of school children back into the mainstream through an open schooling system.
 - The current 10+2 system to be replaced by a new 5+3+3+4 curricular structure corresponding to ages 3-8, 8-11, 11-14, and 14-18 years respectively.
 - It will bring the uncovered age group of 3-6 years under school curriculum, which has been recognized globally as the crucial stage for development of mental faculties of a child.
 - It will also have 12 years of schooling with three years of Anganwadi/ pre schooling.
 - Class 10 and 12 board examinations to be made easier, to test core competencies rather than memorised facts, with all students allowed to take the exam twice.
 - School governance is set to change, with a new accreditation framework and an independent authority to regulate both public and private schools.
 - Emphasis on Foundational Literacy and Numeracy, no rigid separation between academic streams, extracurricular, vocational streams in schools.
 - Vocational Education to start from Class 6 with Internships.

- Teaching up to at least Grade 5 to be in mother tongue/regional language. No language will be imposed on any student.
- Assessment reforms with 360 degree Holistic Progress Card, tracking Student Progress for achieving Learning Outcomes
- A new and comprehensive National Curriculum Framework for Teacher Education (NCFTE) 2021, will be formulated by the National Council for Teacher Education (NCTE) in consultation with [National Council of Educational Research and Training \(NCERT\)](#).
 - By 2030, the minimum degree qualification for teaching will be a 4-year integrated B.Ed. degree.
- Higher Education:
 - Gross Enrolment Ratio in higher education to be raised to 50% by 2035. Also, 3.5 crore seats to be added in higher education.
 - The current Gross Enrolment Ratio (GER) in higher education is 26.3%.
 - Holistic Undergraduate education with a flexible curriculum can be of 3 or 4 years with multiple exit options and appropriate certification within this period.
 - M.Phil courses will be discontinued and all the courses at undergraduate, postgraduate and PhD level will now be interdisciplinary.
 - Academic Bank of Credits to be established to facilitate Transfer of Credits.
 - Multidisciplinary Education and Research Universities (MERUs), at par with IITs, IIMs, to be set up as models of best multidisciplinary education of global

standards in the country.

- The National Research Foundation will be created as an apex body for fostering a strong research culture and building research capacity across higher education.
- Higher Education Commission of India (HECI) will be set up as a single umbrella body for the entire higher education, excluding medical and legal education. Public and private higher education institutions will be governed by the same set of norms for regulation, accreditation and academic standards. Also, HECI will be having four independent verticals namely,
 - National Higher Education Regulatory Council (NHERC) for regulation,
 - General Education Council (GEC) for standard setting,
 - Higher Education Grants Council (HEGC) for funding,
 - National Accreditation Council (NAC) for accreditation.
- Affiliation of colleges is to be phased out in 15 years and a stage-wise mechanism to be established for granting graded autonomy to colleges.
 - Over a period of time, every college is expected to develop into either an autonomous degree-granting College, or a constituent college of a university.
- Other Changes:
 - An autonomous body, the National Educational Technology Forum (NETF), will be created to provide a platform for the free exchange of ideas on the use of technology to enhance learning, assessment, planning,

administration.

- National Assessment Centre- 'PARAKH' has been created to assess the students.
- It also paves the way for foreign universities to set up campuses in India.
- It emphasizes setting up of Gender Inclusion Fund, Special Education Zones for disadvantaged regions and groups.
- National Institute for Pali, Persian and Prakrit, Indian Institute of Translation and Interpretation to be set up.
- It also aims to increase the public investment in the Education sector to reach 6% of GDP at the earliest.
- Currently, India spends around 4.6 % of its total GDP on education.

Way Forward

A New Education Policy aims to facilitate an inclusive, participatory and holistic approach, which takes into consideration field experiences, empirical research, stakeholder feedback, as well as lessons learned from best practices.

It is a progressive shift towards a more scientific approach to education. The prescribed structure will help to cater the ability of the child – stages of cognitive development as well as social and physical awareness. If implemented in its true vision, the new structure can bring India at par with the leading countries of the world.

Judicial Contribution towards Right to Free and Compulsory Education

The judiciary showed keen interest in providing free and compulsory education to all the children below the age of 14 years. In the year the Supreme Court of India decided two Public Interest Litigation cases i.e. Mohini Jain and Unni Krishnan case in which the

court enforced right to education. In reality, both cases concerned the impact of certain state laws on private educational institutions of higher learning, the court took the opportunity to develop a precedent that also governed the public provision of elementary education.

In Mohan Jain vs. State of Karnataka, popularly known as the ‘capitation fee case’, the Supreme Court has held that the right to education is a fundamental right under Article 21 of the constitution which cannot be denied to a citizen by charging higher fee known as the captivation fee. The right to education flows from right to life. In the instant case the petitioner had challenged the validity of a notification issued by the government under the Karnataka Education Institution (Prohibition of Captivation Fee) Act 1984 passed to regulate tuition fee to be charged by the private medical colleges in the state. The division bench of two judges held that the right to education at all level is a fundamental to citizen under Article 21 of the constitution and charging captivation fee for admission to education institutions is illegal and amount to denial to citizen’s right to education and also violative of Article 14 being arbitrary, unfair and unjust.

Subsequently, in Unni Krishna vs. State of Andhra Pradesh, the Apex court was asked to examine the correctness of the decision given by the court in Mohini Jain case. The five judge bench by 3-2 majority partly agreed with the Mohini Jain Decision and held that right to education is a fundamental right under Article 21 of the constitution as ‘it directly flows’ from right to life. But as regards its content the court partly overruled the Mohini Jain’s case, and held that the right to free education is available only to children until they complete the age of 14 years, but after the obligation of the state to provide education is subject to the limits of its economic capacity and development. The obligation created by Article 41, 45 and 46 can be discharged by State either establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. Thus, the Supreme Court by rightly and harmoniously construing the provision of Part III and Part IV of the Constitution has made right to education a basic fundamental right.

In the case of Bandhuwa Mukti Morcha vs. Union of India and others, it has been held that it is the solemn duty of the state to provide basic education to children also working in

different industries or factories and the court directed the government to take such steps and evolve scheme assuring education to all children either by the industry itself or in coordination with it.

In the case of *TMA Pai Foundation vs. State of Karnataka* the scheme formulated by the court in the case of Unni Krishnan was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions. Consequently, all order and directions issued by the state in furtherance of the directions in Unni Krishnan's case was held to be unconstitutional. The court observed that right to establish and administer an institution includes the right to admit students; rights to set up a reasonable fee structure; right to constitute a governing body; right to appoint staff and right to take disciplinary action. Frankly speaking, TMA Pai foundation's case for the first time brought into existence the concept of education as in 'occupation', a term used in Article 19(1)(g) of the Constitution. The majority held that Article 19(1)(g) and Article 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. Additionally, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice.

In *Islamic Academy of Education vs. State of Karnataka*, another issue arose for the determination of fees structure in private unaided professional educational institutions. It was submitted that management has been given complete autonomy not only as regard to admission of students but also as regards to fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of education. The Apex Court also held that right of education further means that a citizen has a right to call upon the state to provide educational facilities within the limits of its economic capacity and development.

In connection to this, the Supreme Court in the case of *State of Bihar and others vs. Project Uchcha Vidhya, Sikshak Sangh and others vs. Union of India*, also observed that establishment of High Schools may not be a constitutional function in the sense that citizens of India above 14 years might not have any fundamental right in relation thereto,

but education as a part of human development indisputably is a human right. Chief Justice of India Dr. A.K. Lakshmanan rightly observed:

“(E)ducation is perhaps the most important function of state and a local government. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the 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 and child may reasonable be expected to succeed in life if he is denied the opportunity of education.”

Thus, compulsory education is one of the duties of the states for stability of democracy, social integration and to eliminate social evils. The Supreme Court by rightly and harmoniously construing the provision of Part III and IV of the Constitution has made right to education a basic fundamental right. The Government of India by Constitutional (86th Amendment) Act, 2002 had added a new Article 21-A which provides that, “the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine.”

It is submitted that on the basis of constitutional mandate provided in Article 41, 45, 46, 21A as well as, as per the various judgments’ of the Supreme Court, the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the schools for one or the other reasons.

CONCLUSION

While highlighting the main aspects of the Right to Education Act 2009, there are certain limitations like, children below the age group of six are not covered; Act failed to

promote a common school system; lack of provisions for children with disabilities; criteria for reservations of seats; financial assistance; provision regarding reimbursement to the private school; lack of clear cut provision for competent authority; assuring quality standards; action against government authorities in case of negligence in services etc. the implementation of the Right to Compulsory and Free Education Act 2009 must be implemented in letter and spirit to fulfill the desired objectives. The Right to Education Act also doesn't speak about millions of children who are in the age group below five years. There must be appropriate provisions for penalties for those flouting norms. Families and communities need to play a vital role to make the Right of Children to Free and Compulsory Education Act, 2009 a major success in India. Mental disorder children also need basic facilities or necessary training and mental development scheme to be at once launched. As per the Act, existing schools were also required to make basic infrastructures available within three years of enforcement of the Act. But unfortunately, five years have already been going to pass after the enforcement of RTE Act, still majority of schools are lacking requisite infrastructures in India. The government should immediately taken action to ensure all the basic facilities in the school like proper food, drinking water, sanitation, library, playground etc. Besides these basic necessities the schools must also provide proper teaching by way of visual aids, globes, charts, pictures, through projects etc. They must also ensure co-curricular activities, excursions, paintings, games, dance, music, quizzes to attract the students and help them in their personality development. At the government level, allocation of funds required for effective implementation of free and compulsory education as per the RTE Act 2009 should be estimated by the department. The allocation must be planned in different phases. There is a great need for coordinating with various government departments for effective implementation of government programmes and avoid duplication of beneficiaries, fund utilizations etc. At last but not the least, existing monitoring system may be streamlined and a comprehensive monitoring system that looks into academics and administration should be designed to achieve the desired objectives.