

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 4 | Issue 3

2022

© 2022 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in **International Journal of Legal Science and Innovation**, kindly email your Manuscript at editor.ijlsi@gmail.com.

Right to Primary Education - A Constitutional Mandate: Issues and Challenges

ROHIT SAINI¹

ABSTRACT

Education is the mirror of society, on which all its social achievements are reflected. Education is also considered an indicator of social prosperity; it is the key to progress in civil society. The 86th Constitutional Amendment Act, 2002 makes the education system more effective as well as accessible to all, which is really a commendable effort itself. To seek education has become a fundamental human right under Article 21-A of the constitution. The central government has enacted the Right of children to free and compulsory education (RTE) Act 2009. The Act provides for children's right to free and compulsory admission, attendance and completion of elementary education. Section 3(1) provides that every child between the age of 6 to 14 years must be provided with free education in the nearest school. Section 12(1)(c) of this Act mandates unaided schools to keep aside 25% of seats for underprivileged children of society. Article 51-A(K) of the constitution imposed a legal duty on parents/guardians to make ensure the education of their wards. Article 45 imposed a duty on the government to provide early childhood care and education for children below 6 years. Despite all these provisions, the contemporary education system has become very worst, and this is becoming a great concern for all of us day by day. In this paper, an attempt has been made to indicate the various issues and problems as well as their suggestions.

I. INTRODUCTION

Education is the most important aspect of society. Education is considered to be the prosperity of the society, which is indispensable for all - round development of the nation. It is the tools of progress of civil society. Education plays a significant role to construct of nation as well as character of an individual. Part III of our constitution, titled as '**Fundamental Rights**' secures to all citizen of India as well as persons living in India with some restrictions. These fundamental rights are as - Right to equality, right to freedom (with six special freedoms) right to life and personal liberty, protection against exploitation, protection against self-incrimination, protection against arresting in certain offences, right to

¹ Author is a PhD Research Scholar at Deendayal Upadhyay Shekhawati University, Sikar, Rajasthan, India.

freedom of religion and cultural and educational rights etc. It is pointed out that all fundamental rights are subject to the reasonable restrictions except right to education, no restrictions could be imposed on right to education. The supreme court in its various decisions, has held that the right to ‘**life under article 21**’ and the dignity of an individual could not be assured unless it was accompanied by the right to education. The court thus declared ‘the right to education flows directly from right to life and there could not be any curtailment on it.’² Article 41 of the constitution provides that ‘the state shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to ‘**Education**’ and to public assistance in cases of unemployment old age, sickness and disablement and in other cases of undeserved want. Further Article 45 of the constitution titled as *Free and Compulsory Education for children*, provides that the state shall endeavour to provide, within a period of ten years from the commencement of this constitution, free and compulsory education for all children until they complete the age of fourteen years.

The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.³

Article 51-A, sub article (K) provides as ‘who is a parent’ or guardian to provide opportunities for education to this child or as the case may be, ward between the age of six and fourteen years.⁴ The principle enshrined in article 41 read with article 45 provides that it is not only necessary but also desirable for the performance of the states’ ultimate duty and responsibility, to provide education to all citizen. It has been held that Articles 29 and 30 relating to cultural and educational rights should be read in the backdrop of article 41 and 45.⁵ In **Unni Krishnan V. State of A.P**⁶ The Supreme Court laid down the while right to free and compulsory education up to the age of 14 years constituted a fundamental right forming a part of the right to life contained in Article 21, Right to further education could be enforced against the state, but subject to its economic capacity and development.

The observations of the Apex court made in Unni Krishnan case, were acknowledged and incorporated by the constitution (**86th Amendment**) **Act 2002**, inserting a new **Article 21-A**, in constitution, which is as follows:

² See ; Mohini Jain V. State of Karnataka AIR 1992 Sc 1858 and Bandhua Muktimorcha V. Union of India, AIR 1984 SC 802.

³ Subs. by constitution (Eighty Sixth Amendment Act) 2002, Sec. 3 (w.e.f. 1-4-2010)

⁴ Added by the constitution (86th Amendment Act) 2002.

⁵ In re Kerala Education Bill 1958 SC 956

⁶ AIR 1993 SC 2178

Article 21-A “ the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may by law determine.”

This new Article makes education from 6 to 14 years old, a fundamental right, within the meaning of part III of the constitution, Article 21-A may be read with new substituted Article 45 and new clause (K) inserted in Article 51-A by the constitution (86th amendment) Act 2002. While the substituted Article 45 obligates the state ‘to endeavour to provide early childhood care and education for all children until they complete the age of six years.’⁷ Clause (K) in Article 51-A impose a fundamental duty on parent/guardian ‘to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years’.

To ensure proper implementation of the provisions of the 86th Amendment 2002. The Right of Children to free and compulsory Education (RTE) Act 2009⁸ has been enacted by central govt. to translate the constitutional intent into action. The Act, 2009, provides for children’s right to free and compulsory admission, attendance and completion of elementary education. Section 3(1) of the Act provides that every child between the age of 6 to 14 years must be provided with free education in the nearest school till that child completes his/her elementary education.

II. SALIENT FEATURES OF RIGHT TO EDUCATION (RTE) ACT 2009⁹

- i. The main objects and aims of RTE is to provide primary education to all children aged 6-14 years.
- ii. It enforces education as a fundamental right under article 21 and 21-A of the constitution.
- iii. 25% seats would be reserved in private schools for children from poor as well as OBC, SC and ST families. Besides this prohibited donation or capitation fee.¹⁰
- iv. Provisions for a non-admitted child to be admitted to an age appropriate class.
- v. It also states that sharing of financial and other responsibilities between the central and state govt.
- vi. It lays down the norms and standards related to- (a) Pupil Teacher Ratio (PRTs), (b) Building and infrastructure (c) School working days (d) Teacher Working Hours

⁷ Article 45 contains a directive principle of state policy.

⁸ The RTE Act 2009 came into force on 1st April 2010.

⁹ See also dristiiias.com

¹⁰ Article 12 (i)C of the Act, see also *TN Nursery V. State of Tamil Nadu* AIR 2010 Mad 142.

- vii. Provides to prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament and disaster relief.
- viii. It provides for the appointment of teachers with the requisite entry and academic qualifications.
- ix. Focuses on making the child free from fear, trauma and anxiety through a system of child friendly and child centered, learning.
It prohibits as (a) physical punishment and mental harassment. (b) Screening procedures for admission of children (c) donation and capital fee (d) private tuition by teachers (e) running of schools without recognition.
- x. Provision for cancellation of recognition of private school in case no admission done of 25% of reserved seats.
- xi. Provision for development of curriculum in consonance with the values enshrined in the constitution and which would ensure the - round development of the child, building on the child's knowledge, potentiality and talent.
- xii. It specifies that duties and responsibilities of appropriate govt. local authority and parents in providing free and compulsory education to child. Besides this specifies the compulsory students-teacher ratio.

The RTE Act, 2009 entitled a child to free and compulsory education between the age of 6-14 years in neighbourhood school. Even the private unaided schools shall not charge any capitation fee from any child, nor will they do any screening of the child or its parents. For better social inclusion every unaided school is under an obligation to admit **25** per cent students from weaker sections of the society in the neighbourhood. The state shall reimburse the school for expenditure on these students. The supreme court has upheld this provision subject to the clarification that it shall not apply to unaided minority schools.¹¹ Later, it also excluded from this requirement even aided minority schools.¹² To ensure quality in education, the act also provides for the recognition of schools, teacher students ratio, presence of teachers in the school, formation of management committees etc. currently the implementation of the Act and the realisation of the right in Article 21-A is facing enormous problems.¹³ After the validity of the Act was upheld, the validity of Clause (5) of Article 15¹⁴

¹¹ *Society for unaided private schools of Rajasthan V. Union of India* (2012) 6 SCC 1, AIR 2012 SC 3445.

¹² *Pratima Educational and Cultural Trust V. Union of India*, (2014) 8 SCC, 259.

¹³ See, e.g. problem of vacancies of teachers in schools even in the National Capital of Environmental &

as well as Article 21-A, both of which were added by amendments of the constitution, was challenged on the ground that they violated the basic structure of the constitution.

The court rejected these challenges and upheld the amendments. But the battle is still not over and the matter is still in the court. However, the right in Article 21-A is now being realized through enhanced allocation of grants for the promotion of elementary education and better supervision of the schools, but this is not sufficient for getting the achievement of goal of the Act. There are some weaknesses of this Act as well as stakeholders. The first and foremost weakness of this Act is **lack of funds** from Governments, for best implementation of this, secondly lack of appropriate infrastructure with all basic needs of life and liberty. Shortage of qualified and trained teachers as well as teachers- students ratio is a big challenge. The policy of not detaining students in a class as prescribed by the Act is one that has proved to be a loophole. This policy overall promotes carelessness and laid back attitude amongst teachers as well. Simply because there is no possibility of detention, there is no definite need for them to ensure their students gain as much knowledge. Though the Act stated that ‘the children who is disable shall have the right to be provided with education in an appropriate environment but there is no facilities specified in the Act for such child who needed.

III. A CRITICAL EVALUATION AND SUGGESTIONS

Today, education is the most important function of the state and local governments... It is required in the performance of our most basic responsibility, even services in all sectors, whether govt. or private. 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.

To improve the condition of primary education the Government has enacted **The Right of Children to free and compulsory education (RTE) Act 2009**, as well as inserted an article **21-A** in constitution which secures the primary education as a fundamental human rights. Besides this a provision has substituted in Article 45, by 86th Amendment Act 2002, for protection early childhood, care and education for all children age up to 6 years. A sub-article (K) in Article 51-A was also added in constitution by this amendment, which imposed a legal duty on parent or guardian to providing the opportunities of education to their wards. Despite all these efforts, there has been no improvement are showing in education system so far, the situation of primary education is still remain pathetic. The RTE Act 2009 came into force on

Consumer Protection Foundation V. Delhi Admin. (2017) 7 SCC, 55

¹⁴ Inserted by the constitution (Ninety Third Amendment) Act 2005, w.e.f. 20-01-2006.

April 1, 2010. But this effort could not get its objects or achievement as desired. The report of 'The Census of India' 2011 reveals that 11.71 millions of children (age group 05-16 years) were engaged as child labour in various industries and they could never join the main stream of education, the 5.9 million children do not attend the school of India, out of 200 million children in the age group of 6 to 14 years. In rural areas, amongst schedule tribes or other backward classes girls are more likely to be employed as casual agricultural labourers than boys. 35 percent of population are stand below poverty line, they are not able to maintain their primary needs such as food, shelter and child education etc. 90% children are interested to attend the schools but their economic conditions are not allowing them. Only 10% are not willing because they does not like to go to school.¹⁵ **A National Survey on Estimation of 'out of school children 2014'** report¹⁶, says that a total number of children in the age group of 6-13 years are **21.45** crores, out of which, around **61.41** lakhs (**3.16%**) are out of the school. About **600,000 (28%)** special needs children between six and thirteen years of age are out of school. It must be noted that in India **45%** Indians with special need are illiterate. Among children with special needs, as many as **44%** of children with more than one disability are out of school, and children with mental (**36%**) and speech (**35%**) disabilities are more likely to be out of school than those with other kinds of disability. In the **RTE** age group, the traditional gender norms push girls into the helping with household chores and sibling care and once they are dropped, it becomes virtually impossible for them to re-enter. section 12(1)(C) of this Act to mandate unaided schools to keep aside 25% seats for underprivileged children of society. Private schools do not fill up these reserved seats due to various reasons, most of the school operators says that there is no fee providing by Govt. in lieu of these seats, whereas due to political and other interference, the genuine and needy are not able to get admission. Not only this, sometimes, some private school owners deliberately refuse to fill these seats due to high political approach or make excuse of non-availability of seats. Therefore implementation of the provisions of the Act has become a day dream. Section 6 of the Act obligates the state govt. to establish more of such public school, whereas the reality is just quite opposite of this. In rural areas, many govt. schools have been closed and some are on the verge of closure, due to non-availability of students. There are so many reasons behind the closure of schools such as no qualityful education, lack of infrastructure and basic amenities, lack of trained and sufficient teachers, migration from village to city etc. In Uttarakhand alone, 1387 govt. primary and junior high schools have been closed till

¹⁵ See also Dr. J. S. Chandpuri, Legal Regimes on prohibition of child labour: A critical study, Indian Streams Research Journal, Vol. 5, Issue 12, Jan. 2016 at Page 9.

¹⁶ 2014 National Survey of out of school children report.

January 2022 and 1212 schools are on the verge of closure where the students strength is 10 or less. So what could be more ironic than this? Article 51-A(K) imposed a legal duty on parent/guardian to make ensure the education of their wards, but due to an, apathy of some parents or guardian towards education, this provision could not get an achievement. Mid day meal scheme has become just a joke, the idea of balanced diet for just rupees 3 is only a day dream. In rural area, all teaching responsibilities has been handed over only a single teacher or shikshamitra. How can this possible that all subjects will be teach by a single teacher of all classes. Besides this the single teacher is suffering from extra work load. This is the main reason of decreasing the popularity of government school among the society in day by day. The government has launched various program such as Serva Shiksha Abhiyan (SSA), DPEP, SPSB, School Chalo Abhiyan, Beti bachao beti padhao, RMSA and many more for betterment of primary and junior schools but these programs could not get achievement as desired. Hence, we can say without any hesitation that, the government policy for betterment of primary education has become only a day dream, nothing else than it...

IV. SUGGESTIONS

Thus we can say that, the present situation of primary education has become a great concern in society. Although the government has made various legal provisions to improve the condition of education, but the desired achievement is still far away. Right to Education, has become a fundamental human right but, mere enactment of a law does not end any problem, strict implementation of such law, is required. Article 51-A(K) should be strictly enforced and if a parent does not comply with it, then his/her legal responsibility should be fixed. For educational improvement the social participation with govt. and social responsibility is also required. The provisions of filling up of 25% reserved seats for socially weaker sections in private schools should be strictly enforced. Educational facilities like library, adequate and trained teacher, playground, toilet and clean drinking water and proper arrangement of balanced mid-day meal etc. are required, lacks in many areas and the loopholes should be mended by the people as well as the government. The main focus should be towards the quality of education and quality of teachers. Meritorious students in every school should be rewarded. So that they could become an inspiration to others. Special care should be taken for children with special needs. The RTE Act provides free and compulsory education for age group of 06 to 14 years which is discriminating, therefore, children up to 18 years of age should also be included in this act.
