

## INTRODUCTION

Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. Education emerges as the single most vital factor spinning the wheel of progress in the developed nations. It has been established that an educated citizen not only improve the economic and social status of the nation but political scenario also.

Education in its general sense is a form of learning in which the knowledge, skills, and habits of a group of people are transferred from one generation to the next through teaching, training, or research. Education frequently takes place under the guidance of others, but may also be auto didactic. Any experience that has a formative effect on the way one thinks, feels, or acts may be considered educational.

### **The Concepts of Education as given by prominent educationists are as follows.**

Principles of Education and School Organization;

Vivekanand: "Education is the manifestation of the divine perfection, already existing in man."

Gandhi: *"By education, I mean an all-round drawing out of the best in the Child and man body, mind, and spirit."*

Sri Aurobindo: *"Education which will offer the tools whereby one can live for the divine, for the country, for oneself and for others and this must be the ideal of every school which calls itself national"*.

Friedrich Willian Froebel: *"Education is unfoldment of what is already enfolded in the germ. It is the process through which the child makes internal external"*.

Education is indispensable for everyone. It is the level of education that helps people earn respect and recognition. In my opinion, it is a requisite part of life both personally and socially. However, the unequal criterion of education is still a major problem that needs to be solved.

The significance of education is unquestionable for every single person. It goes without saying that education has a positive effect on human life. Education plays such an elementary role on our society that we cannot even imagine a life without it. It is an unwavering element for the development of human civilization. Although education has a momentous influence on life, the average education is not the same in different areas. As a result, strategies are being made to resolve the problems. Without education, life would be devastating and disadvantageous. Education help in imparting moral values which is missing in our youth and needs to be addressed carefully for creating a good society. While most feel that education is an inevitability, they tend to use it as an instrument for reaching a specific target or personal mark, after which there is no further need to seek greater education.

Nonetheless, the significance of education in humanity is indispensable and cohering, which is why society and knowledge cannot be ever separated into two diverse entities.

### **Purpose of Education in Society**

Education has a very vital role in the shaping of society

- Education is Self-Empowerment
- Financial Stability and Dignity of Life
- Augmentation in Personal Aspiration
- On the Job Efficiency
- An Idle Mind is The Devil's Workshop
- An essential human virtue
- A necessity for society
- Important for integration of separate entities
- Gives significance of life
- Educated men are superior. -Aristotle
- Sign of freedom. -Epictetus
- A controlling grace. -Diogenes
- Basis of good life.

It is misfortune that our country is unsuccessful to eliminate the menace of illiteracy even after 6 decades of independence and our legislators have abandoned this prime area of human resource development for such a lengthy time. Because, it is and should be the prime duty of the state and centre governments to provide free Education and Health facilities to all the citizens of the country without any sort of prejudice. Anyway, because of the efforts made by our worthy educationists, academicians, NGO'S and civil society groups who followed a rights-based approach that resulted in the passing of 86th constitutional amendment by the parliament and **Article 21 A** in the year of 2002 which made Right to Education a fundamental right. Subsequently, "**Right to Free and Compulsory Education Act**" was approved by the president of India on 26th August 2009 and got officially published in the gazette of India on 27th August 2009.

India became one of the 135 countries to make education a fundamental right for its citizens when the Act came into force on 1st April, 2010. It put the Right to Education at par with Right to life. This Act bounds all the stakeholders like parents, schools, society, states as well as central governments to play their roles in order to provide free and compulsory education to the children between the 6-14 years of age. All the practitioners of education welcome the intent of the Act and believe it as a momentous movement towards the universalization of elementary education though out the nation.

## LEGAL BACKGROUND UNDER INDIAN CONSTITUTION

The following provisions have a great bearing on the functioning of the educational system in India:

- **Article 28:** According to our Constitution **Article 28** provides freedom as to attendance at religious instruction or religious worship in educational institutions.
- **Article 29:** This article provides equality of opportunity in educational institutions.
- **Article 30:** It accepts the right of the minorities to establish and administrate educational institutions.
- **Article 45:** According to this article “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 14 years. “We notice that the responsibility for universal elementary education lies with the Central Government, the State Governments, the Local Bodies, and voluntary organizations.
- **Article 46:** It provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.
- **Article 350A:** This article relates to facilities for instruction in mother tongue at primary stage.
- **Article 350B:** It provides for a special offer for linguistic minorities.
- **Article 351:** This article relates to the development and promotion of the Hindi language.
- The seventh schedule of the Indian Constitution contains legislative powers under three lists viz. The Union List, the State List and the Concurrent List.

### **RESERVATION IN EDUCATION**

#### **(A) Education of minorities:**

**Article 28** of the Constitution has made certain provisions for the education of the minorities including

- No religious instruction shall be provided in educational institutions wholly maintained out of state funds.
- If any institution has been established under any endowment trust even if administrated by state, can impart religious education.
- None person attending an educational institution recognized by the state or receiving funds from state government shall be required to take part in any religious worship or instruction that may be conducted in such institutions or in any premises attached

there to unless such person or if such person in a minor and his guardian has given his consent thereto.

### **(B) Cultural and Educational Rights:**

Under **article 29** and **30** for the protection of the educational interest of minorities viz.

1. **Article 29 (i):** Any section of citizen residing in the territory of India on any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
2. **Article 30 (i):** All minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice.
3. **Article 30 (ii):** The state shall not in granting and to educational institution discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.
4. To make any law providing for the compulsory acquisition of any property of any educational institutions established and administrated by minorities, the state shall ensure that the amount fixed by or determined under such law for acquisition of such property is such as would not restrict on abrogate the right guaranteed to them.

### **(C) Admissions:**

1. **Article 29 (II)** states that no citizen of India can be denied admission into any educational institution, which is either maintained by the state or receiving aid out of state funds on ground only of religion, race, caste, language or any of them.
2. **Article 15 (III)** states that to make special provisions for women. Hence, separate educational institutions for women can be established.

### **(D) Mother Tongue:**

For the promotion of teaching of the mother tongue, the Constitution of India has made some provisions for the Hindi language.

1. **Article 350 (A):** It shall be Endeavour of every state and local authority with the state to provide adequate faculties for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups: the President may issue directions to any state as he considers necessary for recurring the facilities.
2. **Article 351:** It is to promote the development of Hindi language and states that it shall be the duty of the Central Government to promote the spread of Hindi language in the entire country.

## CAUSE AND BACKGROUND OF RTE ACT 2009

Over the past few years, opinion or approach to education underwent change because of the Universal **Declaration of Human Rights**. It announces 'Everyone has the right to education', wherein elementary and fundamental education shall be 'free' and compulsory'. World Conference on Education for all implemented 'Every person – child, youth and adult – shall be able to profit from educational opportunity designed to meet their basic learning needs'. Twin notion of 'elementary and fundamental education' is surpassed by the notion of 'basic education'. At the same time a swing in emphasis from 'education' to 'learning' exemplifies people vis-à-vis society demands education to be 'free' and 'compulsory' ('educational opportunity to meet basic learning needs of people').

At a widely held discourse, learning begins at birth. Early childhood care and initial education is conveyed through involvement of community, family or institutional programme. Commencement of basic education of children outside family usually starts with primary school. Therefore, primary education must be universal and fundamental safeguarding basic learning is essential for children and further taking into account socio-cultural specificity of community. Likewise, supplementary substitute programme may help children, who have restricted or no access to formal schooling to meet their basic learning need; provided they share parallel learning process applied to school that is adequately supported.

On conflicting basic learning need of youth and adult are diverse and may be met through a diversity of delivery system. Literacy programmes are crucial because literacy is an essential skill in itself and the foundation of other life skills. Literacy in mother-tongue supports identity and legacy of community and its people. Other needs of learning and education may be helped by skill drill, apprenticeship, formal and non-formal education programmes in health, nutrition, population, agricultural technique, environment, science, technology, family life including productiveness awareness and other societal issues.

Accordingly accessible instrument and channel of information, communication and social action could be used to help transfer in dispensable knowledge to educate people on social issues. In addition to traditional methods, library, television, radio and other audio-visual methods can be organized to meet their simple educational need of people. All these components should constitute a combined system – complementary, mutually reinforcing and of comparable standard, and they should donate to creating and developing possibility for lifelong learning. Scope of 'basic education' has been extensively understood across community and society to comprise, among other things, 'early childhood care and initial education', i.e activity intended to meet 'basic learning need' of children

before they reach school-going age. In this context prevalent concern exists among nations across globes to remove mock barrier within basic education, particularly for addition of children with special educational need in consistent schools.

### **Right to Education in India**

To ensure global and international covenant on education, earnest struggle is made and essential amendment are brought in constitution of India to safeguard educational right to all citizen in light of global principle.

### **86th Constitutional Amendment Act 2002**

**86th Amendment Act, 2002**, makes three exact provisions in constitution to facilitate understanding of free and compulsory education to children between age six and 14 as a fundamental right. These are:

1. Adding **Article 21 A** in Part III initiating provision that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norm and standard.
2. Modifying **Article 45**, and
3. Adding a new clause (k) under **Article 51 A** (fundamental duties), making parent or guardian responsible for providing opportunity for education to their children between 6 and 14 year. Need to address inadequacy in retention, residual access, particularly of un-reached children and question of quality are most compelling reason for insertion. After much dithering for almost seven years subsequent to 86th Amendment to constitution, **RTE Act 2009** received presidential assent on 26<sup>TH</sup> August 2009, taking forward agenda of free and universal elementary education.

After many rounds of drafting and redrafting that went into **Right of Children to Free and Compulsory Education Act of 2009**, which would be a genuine instrument for any child to demand her basic entitlement. By using a participatory process this framework of the 4-A's can become a tool to permit people to think through what the right to education means to them and relate their current reality to this ideal context.

### **Availability –**

that education is free and funded by the government and that there are sufficient infrastructure and trained teachers able to support education delivery.

**Accessibility** – that the system is non-discriminatory and available to all, and that positive steps are taken to comprise the most marginalized.

**Acceptability** – that the content of education is appropriate, non-discriminatory and culturally appropriate, and of quality; that the school itself is harmless and teachers are professional.

**Adaptability** – that education can develop with the changing needs of society and contribute to challenging inequalities, such as sex discrimination, and that it can be adapted locally to suit it specific circumstances.

#### MAIN FEATURES OF RTE ACT

1) Every child of India in the 6 to 14 years age group; has a right to free and compulsory education in a neighbourhood school till the achievement of elementary education.

2) Children who have either dropped out from the school or have not been present at any school will be enrolled in the schools and no school can reject them for taking admission.

3) Private and unaided educational institutes will have to reserve 25 percent of the seats for the students belonging to economically weaker section and disadvantaged section of the society in admission to class first (to be reimbursed by the state as part of the public-private partnership plan).

4) All schools except government schools are required to be recognized by meeting the specified norms and standards within 3 years, failing of which they will be penalized for up to Rs. one lakh. It also prohibits all unrecognized schools from practice and makes provisions for no donation or capitation fees and no interview of the child or parent at the time of admission.

5) For the purpose of admission in a school, the age of a child shall be determined on the basis of 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.

6) The National Commission for Protection of Child Rights (NCPCR) and state commissions will monitor the implementation of the Act.

7) All schools except private unaided schools are to be managed by school managing committees with 75% parents and guardians as members.

8) Child's mother tongue as medium of instruction, and comprehensive and continuous evaluation system of child's performance will be employed.

9) Financial burdens will be shared by the centre and the state governments in the ratio of 55:45 and this ratio is 90:10 for the north-eastern states.

Various initiatives like Five year plans, *Sarva Siksha Abhyan (SSA)*, Mid-Day Meal Scheme, *Rashtriya Madhmayak Siksha Abhyan (RMSA)* were launched by the central government to promote universalisation of primary education before the induction of the RTE Act. To make this Act most effective tool for eradication of illiteracy, we have to plug the lacuna based on the experience gained through earlier launched schemes and follow the track of roles being played with different parties and to take remedial measures to prevent the deviations from the set path.

## **JUDICIAL APPROACH**

***State of Madras v. Shrimati Champakam Dorairajan*** is a landmark judgment of the Supreme Court of India. This decision led to the First Amendment of the Constitution of India. Supreme Court held that providing such reservations was in infringement of **Article 29(2)** of the **Indian Constitution**. Court held:

*“The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate Article in Part III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion that is the correct way in which the provisions found in Part III and Part IV have to be understood. However, so long there is no infringement of any Fundamental Right, to the extent conferred by the provisions in Part III, there can be no objection to the State acting in accordance with the directive principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution.”*

The right to education was produced under **Article 21**, read with **Article 19(1)(a), (b) and (c)** in 1978 in the case of ***Ananda Vardhan Chandel v. Delhi University***. The judge observed that the merely disparity in the nature of the rights under Part III and IV of the Constitution is that the Fundamental Rights are ‘natural rights’, which people forever enjoyed and which do not need definite socio-economic conditions to be produced by the State before they can be imposed as is the case with the DPSP which are ‘man-made rights’.

In ***Bandhua Mukti Morcha v. Union of India***, the Supreme Court held that while exploitation of the child must be gradually banned; other substitutes to the child should be developed including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person.

The question of right to free and compulsory education was elevated in the case of **Mohini Jain**, in 1992, popularly known as “capitation fee case”.

The issues of the case were:

1. Is there a ‘right to education’ guaranteed to the people of India under the Constitution?
2. If so, does the concept of ‘capitation fee’ infract the same?
3. Whether the charging of capitation fee in consideration of admission to educational institutions is arbitrary, unjust, and unfair and as such violates the equality clause contained in **Article 14** of the Constitution?

The division bench of the Supreme Court held that the ‘right to life’ is the compendious phrase for all those rights which the Courts must implement as they are indispensable to the dignified enjoyment of life. Court stated:

*“The right to education flows directly from right to life. The right to life under **Article 21** and the dignity of an individual are not being assured unless it is accompanied by the right to education. The state is under an obligation to make endeavour to provide educational facilities at all levels to its citizens”.*

Judges declared that the education in India has never been a commodity for sale. It further settled that *“We hold that every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions – whether State-owned or State recognised in recognition of their ‘right to education’ under the Constitution. Charging capitation fee in consideration of admission to educational institutions is a patent denial of a citizen’s right to education under the Constitution.”*

Court considered that the Constitution made it compulsory to give education to all its citizens. This interpretation alone, said the court, would assist the people to differentiate the objectives of dignity, political economic and social justice. They found that charging capitation fee of large sums by institutions of higher education is a disavowal of the right to education.

The Supreme Court observed the accuracy of the verdict given by the court in Mohini Jain in the case of **Unnikrishnan**.<sup>[12]</sup>

The five Judges bench by 3-2 majority partially agreed with the Mohini case decision and held that right to education is fundamental right under **Article 21** of the Constitution as it directly flows from

“right to life”. As consider its content, the court partially overruled the Mohini Jain’s decision and held that the right to free education is available only to children until they complete the age of 14 years, then the responsibility of the State to provide education is subject to the limits of its economic capacity and development. The duty created by **Articles 41, 45 & 46** can be executed by the State either by establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. Court mentioned that **Article 45** in Part IV has to be read in ‘harmonious construction’ with **Article 21** in Part III of the Constitution, as the impact of right to life is of no use without education. The apex Court made the following interpretation:

*“It is thus well established by the decisions of this Court that the provisions of Part III and Part IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV. It is also held that the fundamental right must be constructed in the light of the directive principles.”*

Court held that children of the nation are an extremely important asset. Their nurture and attentiveness are our responsibility, children’s programme should find a noticeable part in our national plans for the development of human resources, so that our children grow up, to become healthy citizens, physically fit, mentally alert and morally healthy; endowed with the skills and enthusiasms needed by society. Equal opportunities for development to all children during the period of development should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

**M.C. Mehta v State of Tamil Nadu &Ors.**, The Supreme Court stated that Article 45 had obtained the status of a fundamental right following the Constitutional Bench’s decision in Unnikrishnan. In addition, the Court said that, it is not necessary that in order to treat a right as fundamental right, it should be expressly stated in Part III of the Constitution: *“the provisions of Part III and Part IV are supplementary and complementary to each other”*. The Court discarded that the rights in the provisions of Part III are superior to the moral claims and aspirations in the provisions of Part IV.

**T.M.A Pai Foundation v. State of Karnataka**, held that the state governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state governments and universities can identify educational qualifications for students and make rules and regulations to maintain academic principles.

In the case of **Avinash Mehrotra v. Union of India and Others**, is whether right to education comprises right to study in quality school which does not pose threat to child safety? The court held that **Articles 21 and 21-A** of the Constitution obliges that India’s school children obtain education in safe schools. The court had again stepped into the shoes of legislature by giving the aforementioned directions. The right to education has to move towards growth as merely primary education is made compulsory and

free, the secondary education and other higher levels still lag behind. The problem of drop outs even at primary level needs to be solved. It could be considered that the court will always remain the guarantor of fundamental rights such as right to education and will direct the legislature and the executive when such questions are brought before it.

The Court has protected the lives of children by recommending safety majors to be followed and thus it is a challenge to those private management schools which view education only as a business and hardly care about the lives of innocent children. The verdict has further enlarged the burden of government since by providing free education and free mid-day meals will not be adequate, the lives of children is also a condition.

### **RTE available only from Class I to Class VII**

This is the biggest drawback which RTE act is facing that it provides free and compulsory education only for students who falls in the category of class I to class VII, what about the students who wishes to appear for higher education. Also, it is an established fact that a child learns more frequently when he is young that is from 3-4 years of age, now if RTE does not extend it boundaries to pre-primary level which is nursery (LKG, UKG) then there is a serious problem in this Act.

### **SUGGESTIONS TO MAKE RTE ACT EFFECTIVE**

1. The Right to Education act should not be limited to the age of 14 years it should be up to the secondary level. The government should make some changes like introducing diplomas/degrees with specialization in IT, mobile communication, media, entertainment, telecommunication, automobile, construction.
2. CSS (Common School System) was an indispensable step for achieving equality decades ago however now it should be changed into MSS (Model school system) based on the wants and demands of the society where education should be provided free of cost and on private institute patterns.
3. Parents need to play a significant role to make RTE the main success in India. It can be done only by motivating them through counselling and they must be made aware about the RTE Act through media, pamphlets campaigns, hoardings, rallies etc. only then we can expect that our future generation will be well educated.
4. Schemes like mid-day meal, SSA, RMSA along with world organization UNICEF are playing an important role in increasing the enrolment ratio. By providing initial and basic education to Indian

children. However, these national and international agencies should aim weaker sections of the society, economically backward, females and highly populated states of India, these states and these societies should be the top priority to improve efficacy of this act.

5. Most importantly local governing bodies should get involved so as to enrol the new born babies and their record should be sent to nearby school. After that school authorities should follow up the child and sent the info for registration and admission to his/her parents without any biasness.

6. Provision for severe punishment regarding the abuse of this Act should be made and the responsibilities of state government, central government, parents, teachers, and administrators, Owners of the school, should be fixed. It should be made compulsory for all the government employees; whether state or centre or person working under centre or state funded agency, to send their children in government or in government aided institutes so as to promote these schools.

## CONCLUSION

Therefore, in the concluding remarks it is expected that that mere passing an act is not sufficient. The need of hour is to keep a proper check on the functioning of the Act. The constant monitoring and strong political will is a must to make it effective. As per the UNESCO's „Education for All Global Monitoring Report 2010, about 135 countries have constitutional provisions for free and non-discriminatory education for all. The much-awaited Right to Education (RTE) Act which has been passed by the parliament of India should play a significant role in attaining universal elementary education in India. The victory and defeat of RTE would largely depend on consistent political care. Financial allocation of funds should be adequate in this respect. The youth in India should come forward and spread the utility of education to illiterate parents who are unable to appreciate the significance of education in limiting the social evils. Social differences and monopolization by any group should not be accepted at any cost. Education which is free of cost up to a certain age must be accessible to each and every one.

Right to education for all and free education for certain age group of people is a brilliant policy by the government and we appreciate that, as key to a developed nation is that its citizens are literate enough to earn their bread and to contribute in the economy. Every coin has two faces similarly RTE faces both criticism and appreciation at the same time, The right to education is a fundamental right and UNESCO purposes education for all by 2015. India along with other countries of the world should also put genuine and honest efforts to make this goal a real achievement.