

## **Critical Analysis of Right to Education Act, 2009**

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### **INTRODUCTION-**

Education is a fundamental right of every citizen according to 86<sup>th</sup> Constitutional Amendment and Article 21 A in the year 2002. In the present scenario of globalization, teachers are the most fundamental actors in the field of education. Education is very vital for exercising human rights. Not only this, “Education” is the weapon to change the world, live a quality life with respect & dignity. Education can only help in shaping a good society. The progress as well as the advancement of a state primarily rests upon the quality of education given to the people. Right to Education for all is the most difficult task faced by the national community because it is sad to mention that our strong nation has failed to eliminate the peril of illiteracy even after 70 years of Independence still our strategy makers have ignored this central area of Human Resource Development for such a long period of time. It is a very well-known fact that education is a dynamic process which starts from birth and ends till death. It is a journey of Knowledge, wisdom, truth & enlighten. Therefore, the Right to Free & compulsory education is a human right to which a person is entitled to and can claim.

Subsequently, Right to Free & Compulsory Education Act, 2009 was given consent by the then President of India on twenty sixth August, 2009. It was formally revealed within the Gazette of India on twenty seventh August, 2009. India was amongst alternative one hundred thirty five countries to form education as a elementary right for its subject. This Act came into force on first Apr 2010 that covers all the stakeholders like- folks, schools, teachers, societies & the central government conjointly that play a very important role to supply free education to the kids between 6-14 years elderly cluster. It's thought of as noteworthy effort taken towards the promotion of the educational activity throughout the country.

## **HISTORICAL BACKGROUND OF RIGHT TO FREE & COMPULSORY EDUCATION ACT, 2009-:**

The importance of Education has been very significantly recognized by many jurists & scholars. According to Earl Warren ,Chief Justice of Supreme Court of United States-“Education is perhaps the most important function of state & local governments. It is a foundation of good citizenship.

## **INTERNATIONAL BASIS OF RIGHT TO FREE AND COMPULSORY EDUCATION ACT 2009-:**

The roots of Right to Free & Compulsory Education Act, 2009 can be found in Universal Declaration of Human Rights. According to Art 26 of the Universal Declaration of Human Rights which states that- “Everyone has the Right to Education which shall be free atleast in the elementary and fundamental stages in which elementary education shall be made mandatory.

The International Covenant on Civil & Political Rights in the year 1966 & the International Covenant on Economic, Social & Cultural rights in the year 1966 and also the Convention of the Elimination of all forms of Discrimination against women in the year 1979 and the Convention on the Right’s of Child in 1989 have given focus for providing education to all. Moreover, the International Community head also approved the Right to Free& Compulsory Education Act, 2009 in the year 2000 at the World Education Forum.

According to the United Nation Economic Cultural Social and Cultural Organization(UNESCO), the position of RTE, 2009 was at the forefront in the year 1990 with its agenda. Even the Dakar Forum has talked about six goals which were very important and affordable as- Improving early childhood care & education, ensuring good quality of education for girls & ethnic minorities in different circumstances, equal access of education to young people and adults through skill programmes, to achieve 50% improvement in the literacy level of women, to eliminate gender inequality in primary & secondary education with equality and good quality of education and to improve all the aspects of quality education especially in literacy & numeracy.

The Constitution of United Nation Economic Cultural Social and Cultural Organisation(UNESCO), has also mentioned the belief of it’s founders in -“full & equal educational opportunities for all.

## **INDIAN PERSPECTIVE OF RIGHT TO FREE & COMPULSORY EDUCATION ACT 2009 -:**

The genesis of education can be traced back in the ancient time when there was traditionally a Gurukul System. In Gurukul System, basically anyone, who wants to study could go to the teacher's (Guru's) house(Ashram) where he/she could study subjects such as Sanskrit to Mathematics to Metaphysics. The learning's were closed related to nature which had a different feature of life

After the Gurukul System of teaching, School System came in India which was divided into different sections from junior to senior blocks. Here, the students learned both the theoretical & practical knowledge.

## **CONSTITUTIONAL PROVISION FOR SAFEGUARDING RIGHT TO FREE & COMPULSORY EDUCATION ACT,2009-:**

According to Constitution of India in the year 2002, 86<sup>th</sup> Amendment got inserted in the Act in Art 21A which mentions about-"Free & Compulsory education for all the children between the age of 6 to 14 years. This Act chiefly supports & promotes free & compulsory education which means that no child is allowed to pay any fee or any kind of charges for completing and getting education which also means that it is the duty of the government and local authorities to check for proper attendance of students, proper admission with respect to fundamental education of every child.

### **TIMELINE OF RTE ACT 2009-:**

#### **December 2002**

86<sup>th</sup> Constitutional Amendment Act (2002) by means of Article 21A (Part III) looks to frame free and required instruction a rudimentary Right for all youngsters at interims the general population 6-14 years.

#### **October 2003**

A first draft of the legislation envisaged within the on top of Article, viz., Free and required Education for youngsters Bill, 2003, was ready and announce on this web site in Oct, 2003, tantalizing comments and suggestions from the general public at giant.

## **2004**

In this way, contemplating the recommendations got on this draft, a changed draft of the Bill entitled Free and required Education Bill, 2004

## **June 2005**

The CABE (Central arranging leading body of Education) advisory group composed the 'Right to Education' Bill and submitted to the Ministry of HRD. MHRD sent it to North Atlantic Council wherever Mrs. Sonia Gandhi is that the administrator. North Atlantic Council sent the Bill to PM for his perception

## **14th July 2006**

The commission and committee rejected the Bill citing the shortage of funds and a Model bill was sent to states for creating the mandatory arrangements. (Post-86th modification, States had already cited lack of funds at State level)

## **2009**

The free and mandatory education bill, 2008, handed in every houses of parliament in 2009. The law got president's consent in august 2009.

## **1 April 2010**

Article 21-A and the RTE Act come into effect

## **OBJECTIVES OF RIGHT TO FREE & COMPULSORY EDUCATION ACT, 2009-:**

The passing of the RTE Act, 2009 depicts a historic moment for the children in India. This Act always serves as a building lump to ensure that every child has his/her Right to get a quality elementary education with the help of the state, families , local authorities & communities. Thus, the most important features of RTE Act, 2009 are as follows-:

- To provide Free & compulsory education to all the children of India between 6-14 years of age group .
- No child shall be held back , removed or required to pass a board examination until the completion of elementary education.
- On the off chance that a kid over 6 years old has not been conceded in any school or couldn't finish his or her basic instruction, at that point he or she might be conceded in a class fitting to his or her age. Be that as it may, if a case might be the place a tyke is straightforwardly conceded in the class suitable to his or her age, at that point, so as to be at standard with others, he or she should have a privilege to get uncommon preparing inside such time restrains as might be recommended. Given further that a kid so admitted to rudimentary training should be qualified with the expectation of complimentary instruction till the fulfillment of basic instruction even following 14 years.
- There shall be a proof of age for the admission of the child which will be determined in the Birth certificate. It will have the provisions of birth but no child shall be denied admission in a school for lack of age proof.
- A Certificate will be awarded to every child who completes elementary education
- There should be a call in need to be taken for a fixed pupil-teacher ratio.
- There should be 25% reservation for economic disadvantaged communities to take admission to Class I in all private schools.
- There should be improvement in the quality of education which is most essential of all.
- School teachers will need adequate professional degree within 5 years or else they will have to lose their job
- If any school infrastructure has any problem then it needs to be improved in every 3 years otherwise recognition will be nullified
- The financial burden will be shared between the State government in the ratio of 55:45 & the Central government too.

## **SHORTCOMING'S OF THE RIGHT TO FREE & COMPULSORY EDUCATION ACT,2009-:**

The NITI Aayog in 2015 has taken out the following drawbacks of RTE Act,2009 mentioned below-:

- Looking on the age criteria of the RTE Act, which only allows children between the age of 6-14 years but not 0-18 years to get the same privilege on which India has signed the United Nation's Charter.
- Secondly, the "Reservation" policy according to the Act mentions only about 25% seat for reservation in private/public unaided school for less privileged children. Therefore, there will be a wide gap between cost of education of per children & reimbursement by the government so then the question of deficit portion will emerge.
- Since the Act came into enforcement in the year 2010 but still there is an inability to meet the distance criteria & also there is a problem in getting important certificates from the government authorities because of lack of awareness among the people and poor response from them.
- Fourthly, about the bridge courses according to the Act which specifies that the child should be assigned to the class according to the age which in a way is a good step because wasted years of education can be saved but no bridge course is suggested that can prepare the child to adjust to the admitted class.
- Another lacuna of this Act is that it has no provision to give education to children to children with disabilities which means more precisely for the children with special needs (CWSN).For CWSN in school, there are no drops steadily in higher standards.
- It is also noted that there are no prescribed penalties in the RTE Act 2009 if the government authorities fail in discharging their respective duties. Most State governments avoid taking initiatives that incur huge expenditure & want to only rest on the Central assistance which arrives at unpredictable intervals.
- Lastly, RTE Act 2009, fails to provide quality education to the children. This Act along with other government initiatives has very well invited children to schools but giving them education is still a very distant dream for them.

**SUGGESTION'S TO MAKE RIGHT TO FREE& COMPULSORY  
EDUCATION ACT, 2009 MORE EFFECTIVE-:**

The following suggestions can bring out better results of the RTE Act,2009 which are as follows-:

- There should be increase in the age of children which is 6-14 years only. It should be raised upto the secondary as well as vocational level courses also.
- Most importantly, parents play a vital role in carving out a child's career through education so,they should be made familiar with the RTE Act,2009 through counseling,media, pamphlet campaigns and rallies.
- CSS (Common School Program) was a very important step for achieving equality decades ago but now-a-days it should be modified into MSS(Model School System) based on the needs & demands of the society where education should be given free of cost & on the private institute patterns.
- There should be a provision for strict punishment regarding the violation of this Act should be made & the responsibilities of State government, Central government,parents ,teacher's,administrators, owners of the school,children & society members should be fixed.
- The quality of teachers is the backbone of any teaching program. Therefore, unskilled & unintended teacher's can deface any program, no matter how pioneering it is. Creating a standard training program to train teacher's is very important for bringing out good result of the RTE Act,2009
- Thus, the Judiciary is expected to play a major role in enforcing the RTE Act,2009.Therefore, the courts have been acting & have to continue to act as first port of call in the absence of proper statutory bodies and also grievances redressal .
- Also, a rational fee structure should be adopted by the management which should not be entitled to change a capitation fee.
- Lastly, there should be a ban on commercialization of education because majority of people in India are socially, economically backward & illiterate also.

## **CASE LAWS WITH RESPECT TO RIGHT TO FREE AND COMPULSORY EDUCATION 2009-:**

Article forty-one of the constitution lays down that the state shall, at intervals the bounds for economic capability and development, create effective provision for securing the right to education. Article forty five of the Constitution provides that the State shall provide babyhood care and required education for all kids till they complete the age of six years. The following cases are discussed in the light of this Act-:

- **UNNIKRISHNAN VS STATE OF A.P.-:**

The right to education up to the age of fourteen years has been raised, by the decision of the Supreme Court, in Unni Krishnan v. State of A.P.<sup>33</sup> to the level of fundamental right. It was held by the court that right to education flows directly from right to life under Article 21. The Constitution (86th) Amendment Act, 2002, inserts new Article 21 A in the Constitution to make right to education a fundamental right for all children between six and fourteen years of age. The obligation of state to provide education to the children above the age of fourteen years would still depend upon the economic capacity and development of the state.

- **BANDHUA MUKTI MORCHA VS UNION OF INDIA-:**

Supreme Court command that whereas exploitation of the kid should be step by step banned; alternative substitutes to the kid ought to be developed as well as providing education, health care, nutrient food, shelter and alternative suggests that of resource with self respect and dignity of person.

- **T.M.A PAI FOUNDATION VS STATE OF KARNATAKA-:**

Supreme Court held that the state governments and universities cannot regulate the admission policy of unaided instructional establishments go past linguistic and spiritual minorities, however state governments and universities will establish instructional qualifications for college kids and build rules and rules to keep up educational principles.

- **STATE OF MADRAS VS V.G ROW-:**

Supreme Court has command that numerous factors equivalent to the character of the proper imagined to be infringed, the underlying purpose of the restriction, the extent and urgency of the evil wanted to be



remedied, the disparity of the restriction, and also the prevailing conditions at the time of imposition of the restriction, would all be relevant in deciding the reasonableness of the restriction placed on a elementary freedom contained in Article 19.

- **RE KERALA EDUCATION BILL CASE, 1958:-**

Supreme Court opined that ‘the right under article 30(1) is not absolute. The state has power to regulate the administration of the institutions established by the minority communities. It implies that the minority establishments cannot be left to their whims and fancies whereas establishing and administering the academic institutions.

## **CONCLUSION:-**

RTE Act,2009 which has been passed by the Parliament can play an important role in accomplishing universal elementary education in India only if it is implemented in a proper manner. The success & failure of RTE Act 2009 would rest on consistent political attention. Every educated person should come forward & join hands together to spread the usefulness of education to illiterate parents who are not able to teach their children because of the social evil practices in India.

Education is the pillar of the nation.If the citizens of the nation are educated, they become assets for the nation & can help in achieving economic growth & development otherwise illiterate citizens can be liability for their nation.Hence, the 4A’s should be taken into consideration for bringing out the real effect of the RTE Act,2009 which are availability,accessibility,acceptability & adaptability.These are to be respected, protected & fulfilled by the government as a supreme duty bearer but at the same time other actors in the educative playfield such as-parents,teacher’s ,schools,local authorities,government schemes etc should also cooperate to understand the value of education.

One-sixth of the world’s population nearly 855 million people are illiterate. Over 130 million children in the developing countries do not even get basic education facilities. In our global economy, educational deprivation is one of the biggest challenges faced with the problem of unemployment, poverty, poor economic development & high crime rate etc. Educational deprivation can have dire consequences as it can easily diminish political power and can also lead to corruption easily.

The dream of free & compulsory education for each and every child in India seems to be still shaping up but the question again prevails that this Act passed by the Parliament will help to improve the situation in a considerable manner or not. To conclude, it is vital to state that the quote of Pt. Jawahar Lal Nehru -Children are like the buds in a garden. They should be carefully and lovingly nurtured, as they are the future of the nation and the citizen's of tomorrow.