

RIGHT TO EDUCATION IN INDIA - A DREAM OR A REALITY?

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INTRODUCTION

The Annual Status of The Education Report of 2018², having conducted a survey on 546,527 children aged between 3 to 16, who were chosen from 354,944 households of 596 districts in rural India, presents a positive picture of the situation. The statistics of the report unravel that a proportion of children between the age group of 3 to 16, not enrolled in the school, had fallen from 3% to 2.8% in 2018. The survey also showed that girls between the age group of 11 to 14 who were absent from the school has fallen to 4.1% from 10.3% in the year 2006. However, an upward trajectory reflected in the status report of 2018 purports to be a positive growth but practically failed to reach the expected growth both in enrolment ratio and quality education to all. Universal quality education is the primordial importance of the state machinery. Inadequate ratio between teacher and pupil, low budget allocation by the Government towards strengthening the education, poor implementation of the Education Policies, high taboo system towards female education in the remote areas, lack of skill and job-oriented education in the schools, illiteracy and lack of motivation by the parents towards education etc. are some of the reasons for slow progress of right to education in India. Gradual downward move in the public expenditure by converting education to be a private sector could also be one of the reasons for its downfall. The governments, ever since the introduction of Liberalization, Globalization and Privatization (LPG) in 1991, have failed to accomplish the goal of right to education with suitable provisions of free education under its fiscal policies. In this research article, while elucidating the system of education developed through the centuries beginning from ancient times till date, analysis will be done on how far the right to education to all has fulfilled its dream.

HISTORICAL DEVELOPMENT OF EDUCATION SYSTEM IN INDIA

Ever since its inception, the Indian education system is centred around culture and traditions of man and not merely on a technical education, so called a 'Liberal or Modern Education'. Since from the Early Vedic period, there was a tradition of learning and generally the aim of

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² Annual Status of Education Report (Rural) 2018, *ASER Centre*, 41, New Delhi, (2019)

<http://img.asercentre.org/docs/ASER%202018/Release%20Material/aserreport2018.pdf>

ancient education system was the formation of character, personality, preservation of ancient culture and training in the spheres of social and religious duties³. In ancient India, the training centres were normally 'Gurukuls', where all were considered to be equal and Guru (teacher) and Shishya (students) lived in the same house or nearby places. The subjects of study centred on techniques of worship and sacrifice and teachers were mostly Brahmins who succeeded from the priestly class⁴. It is noteworthy that education, in ancient India, was considered not merely a mechanical process of imparting information from outside, rather it was considered a biological process, a process of growth from within and considered something which depends on caryā - practice or realization, and not on mere theory or intellectual apprehension of truth⁵. The ultimate end of the highest education is thus expressed in Manu's Book of Laws; "To learn and to understand the Vedas, to practise pious mortifications, to acquire divine knowledge of the Law and of Philosophy, to treat with veneration his natural and his spiritual Father (The Priest) - these are the chief duties by means of which endless felicity is attained"⁶. The Laws which were collected and written under the name of Manu were of great antiquity, but their formulation does not date back prior to 600 B.C⁷. The oldest and famous university among existing universities in India was the Banaras Hindu University⁸ and Taxila, the Buddhist learning centre was prominent for the Medicine, Law and Military Science which attracted scholars from distant parts of India⁹. The Sarnath Monastery under Ashok's reign became famous as a centre of learning captivating large number of Buddhist monks¹⁰.

During the medieval period, Sanskrit language was prominent, and the literature was mostly in the form of metaphor, imagery, adjectives and adverbs. Since it was difficult for simple people to understand, it widened the gap between the landlords and the peasants. The literature became the asset of elitist class which led to have an authoritarian trend in

³ Altekar, A. S. Ideals, Merits and defects of Ancient Indian Educational System, (15), *Annals of the Bhandarkar Oriental Research Institute*, 137,138 (1933), *JSTOR*, www.jstor.org/stable/41694847.

⁴ Choudhary, Sujit Kumar., Higher Education in India: A Socio-Historical Journey from Ancient Period to 2006-07, (8) *Journal of Educational Enquiry*, 50, 52 (2008)

⁵ Mookerji, Radha Kumud. Glimpses of Education in Ancient India, 25, *Annals of the Bhandarkar Oriental Research Institute* 63, 66 (1944) <http://www.jstor.org/stable/41688549>.

⁶ Laurie, S.S. The History of Early Education. III. The Aryan or Indo-European Races, 1, *The School Review*, 668, 676 (1893) <http://www.jstor.org/stable/1074070>,

⁷*Id.*, at 676.

⁸ GUPTA, AMITA, 'EARLY CHILDHOOD EDUCATION, POSTCOLONIAL THEORY, AND TEACHING PRACTICES IN INDIA' BALANCING VYGOTSKY AND THE VEDA', 41 (Palgrave Macmillan, New York, and Hound mills, Basingstoke, Hampshire, England, 2006)

⁹ S. R. DONGERKERY, UNIVERSITY EDUCATION IN INDIA, 1-2 (Manaktalas, Mumbai. 1997)

¹⁰ Choudhary, *supra note* 4, at 53

intellectual life¹¹. During the Mughal period education was considered to be an important asset and under Akbar's rule the mode of education (madrasas) was brought under state purview. A comprehensive education, stressing on branches of sciences along with religious learning, was prevalent. During the reign of Humayun, some schools were constructed. References also can be found for the existence of medical sciences, even though not like those of Aleppo, Egypt or Iran, but some students were sent to other countries for further studies¹².

British period saw a rapid progress in western science and literature through the medium of English. Various Christian missionaries along with religious teachings made remarkable contributions in the spheres of education for all, women education, and adult literacy etc. The British education reformation unified all the states and regional kingdoms removing gender and caste bias despite virtually banishing the traditional gurukul system and other religious holistic ancient schools that were prevalent in the country¹³. After the conquest of Bengal in 1757, the history unravels, the education became a profitable venture and schools came up like mushrooms. Advertisements were given on the school curriculum, facilities and fee structure. Under these schemes, prominence was given for girls' education including new subjects like dancing skills, embroidery, stitching, etc., and boys were offered with special subjects like accountancy, mathematics along with traditional subjects¹⁴.

The Charter Act of 1813 rejuvenated the education system by providing financial assistance to revive and improve the literature among the intellectuals of native Indians and employed various methods to promote sciences among the inhabitants of British territories¹⁵. Despite methodological drawbacks in implementation of given objects, the Charter Act of 1813 was considered to be a remarkable legislature and a great initiative of British rulers in the field of education¹⁶. Subsequent developments in education reforms came from Lord Macaulay

¹¹ SHARMA, R.S., INDIA'S ANCIENT PAST, 293-294 (Oxford University Press, 2005)

¹² Rezavi, Syed Ali Nadeem, The organization of Education in Mughal India, 69, *Proceedings of the India History Congress*, 389-397 (2007), <https://www.jstor.org/stable/i40173377>

¹³ Krishnamoorthy A, Srimathi H. Education Of India In Pre-Independent Yore , 9, *International Journal of Scientific & Technology Research*, 2251 (2020)

¹⁴ Manzar, Nishat, European Education in Indian Environment: Early History of Western Educational Institutions in India (17th and 18th Century), 75, *Proceedings of Indian History Congress*, 1389 (2014), www.jstor.org/stable/44158542

¹⁵ H. Sharp, Ed., Selections from Educational Records, Part I (1781- 1839), 22 (Bureau of Education, Superintendent Government Printing, Calcutta, 1920. (Reprint) Delhi: National Archives of India, (1965)

¹⁶ S. NURULLAH & J. P. NAIK, HISTORY OF EDUCATION IN INDIA DURING THE BRITISH PERIOD, 68 (The MacMillan Company, New York, 1943)

(Minutes of 1835), Wood's despatch 1854 famously known as Magna Carta of English Education in India, The Indian Education Commission of 1882, The Shimla Conference in September 1901, The Government Resolution on Educational Policy of 1913, and finally The Calcutta University commission of 1917-19 are some of the important developments in education under British India. The Montague - Chelmsford Reforms of 1919 has transferred the education department under provincial control.

CONSTITUTIONAL PROVISIONS ON EDUCATION

The issue of education was primordial in the minds of the framers of the Constitution and it was even discussed in the Constituent Assembly Debates during the deliberations on Part III and IV of the Constitution of India. Right to education did not find a place under the fundamental rights (Part III) of the Constitution despite strong discussions on other related issues of education like language, age of the child, minority rights etc. It was placed under article 45 (Directive Principles of State Policy) of the Indian Constitution which provided, "the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years"¹⁷. Even though Article 29 of the Constitution provides, "no citizen shall be denied admission into any educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste or language"¹⁸, but it failed to place the right to education under the fundamental rights of the Constitution and provide guarantee to the foundational or elementary education to all irrespective of their social and economic background. Finally, the amendment to the Constitution was made to amalgamate the educational right as a fundamental right at the instance of Supreme Court's decisions. The most significant amendment to the constitution for the inclusion of education as a fundamental right was 86th amendment in the year 2002. The said amendment included Article 21A within Part III of the Constitution 'considering right to Education as a fundamental right and children aging from 6 to 14 are provided with free and compulsory education'¹⁹.

¹⁷ INDIA CONST. art. 45

¹⁸ INDIA CONST. art. 29

¹⁹ INDIA CONST. art. 21A

NATIONAL EDUCATION POLICES

The extensive debates on free and compulsory education up to the age of 14 years in the Constituent Assembly ultimately took shelter under the Directive Principles of State Policy. The goal set for the country's educational policy was to work out a system of universal elementary education by 1960. Necessary changes were also affected in the system of secondary and higher education in keeping with the needs of the country²⁰. Much deliberation on the topic of education and reporting has also taken place. The country observed several commissions like the Radha Krishnan Commission on university education (1948-49), the Kher Committee on primary education (1948), the Mudaliar Commission on secondary education (1953), and the last and the most comprehensive effort on education came in the form of the Kothari Commission (1964-66). These commissions have considered almost every aspect of the education²¹.

Radhakrishnan Commission of 1948 saw the academic issue in a larger perspective as universities come under its preview²². Subsequently, the Kothari Commission of 1968, while reiterating the constitutional injunctions about free and compulsory education up to the age of 14, laid emphasis on advanced outlays for education and advised the curtailment of higher education. The Gajendragadkar Commission that followed on the path of the Kothari Commission dwelt on the governance of universities that gave the State greater control on higher education. Such authoritarian structure took a great importance during the emergency when education was transferred from the State to the Concurrent list²³.

In response to the Kothari Commission, the Government of India formulated the 'National Policy on Education 1968' (NPE)²⁴. Compulsory education for the children between the age group of 6-14 years, adequate emoluments, opportunities of training and freedom to improve the teaching capacities of teachers; three language formula; equal opportunities of education irrespective of physical, social and economic background; prominence to tribal and backward areas; inclusion of local community to build national integration; importance to science, mathematics, agriculture, and technical education to improve the economy; assessment to identify the talents of students; availability of books at the reasonable rate; comprehensive

²⁰ SAIKIA, S. HISTORY OF EDUCATION IN INDIA (Mani Manik Prakash Publishers, 1998)

²¹ Kamat, A. R. Educational Policy in India: Critical Issues, 29, *Sociological Bulletin*, 189, (1980)

²² Government of India, Report of University Education Commission. (1950)

²³ Raina, Badri. Education Old and New: A Perspective, 17, *Social Scientist*, 7-8 (1989)

²⁴ National Policy on Education, 1968, Government of India (1968)

examination pattern; extension of secondary education to the remote areas and importance to technical and vocational training at the secondary education level; considerable importance to university education; establishment of part time courses in large scale; special emphasis on adult education; incorporation of sports and games within the education curriculum; protection of the minority educational interests; uniform educational system throughout the country on 10+2+3 pattern; and review of policy on every 5 years interval are some of the important provisions of NPE 1968.

The NPE, 1986²⁵ was the successive effort to bring changes in the education system. Under this policy, the role of education was seen to be manifold and considered to be essential for all with the aim of all- round development including material and spiritual. Further it brings about changes in the thought patterns and contributes to the national solidarity grounded on socialistic, secular, and democratic values which are enshrined in our constitution. Education was considered to be providing manpower, stimulus to research and development in economy leading to national self-reliance. A unique investment both in the present and future was the key principle of National Policy on Education²⁶. It aims to foster equality and motivation to the young minds to move towards international cooperation, peaceful co-existence and fraternity despite their socio- cultural diversities²⁷. To rectify the drawbacks of NPE 1986, a commission was appointed which came up with several important suggestions and they were incorporated in the NPE, 1992.

THE CONCEPT OF RIGHT TO EDUCATION IN INDIA

Right to education, of course, does not mean the right to same kind or same degree of education for all individuals but it means the minimum standard or basis of quality education to all, be it an elementary, basic or foundational education. Article 26 of the Universal Declaration on Human Rights mentions, “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 made generally available and higher education shall be equally accessible to all on the basis of merit”²⁸. Further it says,

²⁵ National Policy on Education 1986, Government of India (1986)

²⁶ Sen, Rahul & Bhattacharya, D. K. Education in India, 21, *Indian Anthropologist* 68 (1991)

²⁷ GHOSH, S. C. THE HISTORY OF EDUCATION IN MODERN INDIA, 184 (Orient Longman Limited, New Delhi, 2000)

²⁸ Article 26 Clause (1) of Universal Declaration of Human Rights, United Nations Organisation, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

“Parents have a prior right to choose the kind of education that shall be given to their children”²⁹. The Convention on the Rights of the Child demands the States Parties to recognise the right of the child to education in a progressive manner particularly making primary education compulsory and available free to all with the measures like encouraging regular attendance at schools and reduction of the dropout rates³⁰. These international conventions inadvertently focus on the compulsory and free education to all and further the obligation to impart education is on both the State as well as parents and guardians.

It was aptly admitted that right to education, in India, is a fundamental right coupled with right to quality education. The Constitution of India, by inserting article 21A, made it obligatory on the part of the state, parents and society at large to play a vital role to create education as a fundamental human right to all, irrespective of their social and economic background. The Supreme Court and High Courts have upheld the right to free and compulsory education through their various landmark judgments. The Parliament subsequently enacted the Right to Education Act in the year 2009 and implemented in 2010. Following the 1986 education policy, changes have been taken place to a great extent. Several mission mode programmes like “District Primary Education Programme (DPEP) followed by the Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA), Rashtriya Uchchar Shiksha Abhiyan (RUSA), the Constitution (Eighty- sixth) Amendment Act (2002) and the Right of Children to Free and Compulsory Education (2009), acceptance of external aid for education programmes in the early 1990s and the mobilisation of additional domestic finances through the levy of an education cess, restructuring of teacher education programmes, and expansion of both government and private education institutions at all levels of education”³¹.

²⁹ *Id*, Clause (3)

³⁰ Article 28 Clauses (a) and (e) of Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, United Nations Human Rights, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, It provides, “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all.... (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates...”

³¹ Dewan, Hridaykant, and Archana Mehendale. Towards a New Education Policy: Directions and Considerations. 50, *Economic and Political Weekly*, 15, 16, (2015), www.jstor.org/stable/44002890

RIGHT TO EDUCATION ACT

It is an axiomatic truth that an individual obtains equal opportunities under right to education in order to develop his faculties to the fullest to become a complete human being. To accomplish the goal of right to universal education, article 21A of the constitution obligates the State to provide education to all. It says, “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”³². In pursuance of this article the Right of Children to Free and Compulsory Education Act, 2009 (RTE)³³ was enacted and it came into effect from April 1, 2010.

The RTE Act, 2009 is a child-centric and proposes the re-orientation of the teacher to accommodate himself to the situations of the child. It aims to provide the primary education to all children aged between 6 to 14 years as a fundamental right. The act also mandates 25 per cent reservation for disadvantaged sections of the society which include SCs and STs, Socially Backward Class, and Differently abled children. It makes provision to include drop out and other children to the classes appropriate to their age. Sharing of the responsibilities between central and state governments towards the financial and other educational assistance to the children, prohibition of deployment of teachers for non-educational work except specified under the Act, and providing safety and security by eradicating fear, trauma and anxiety through establishing a child-friendly and child-centred learning are some of the important features of the Act

JUDICIAL RESPONSE ON RIGHT TO EDUCATION

Originally, article referring to the right to education was incorporated under the Directive Principles of State Policy rather than placing under the Fundamental Rights. Assumptions could be made that the framers of the Constitution were intended to make the State responsible in providing quality education to its citizens without differentiating on social or economic background. When the right to education was denied, the Supreme Court time and again has interfered to assert the right in a fair way. While upholding the right to education as a fundamental right under Article 21 of the Constitution, the Supreme Court in *Mohini Jain v.*

³² INDIA CONST, art. 21A

³³ Right of children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India)

*State of Karnataka*³⁴, observed that a citizen cannot be denied the right to education by charging exorbitant fee in the form of capitation fee. Proceeding in this line, the Supreme Court in *Unni Krishnan v. State of TN*³⁵, reiterated the same and further held that every citizen has a right to education until the age of 14 years at free of cost and thereafter it is subjected to the economic and capacity and development of the State.

Basing on these judgments, the Constitution was amended and inserted three new provisions to the Constitution; They were Articles 21A, 45 and 51A. Article 21A which says, “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”³⁶. Article 45 provides, “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”³⁷. Article 51A says, “Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”³⁸. The above-mentioned articles clearly elucidate that the state along with the parents or guardians of the child have an obligation to provide education at free of cost up till the age of 14 and early childhood care of children below 6 years. While observing the responsibilities of state, the Supreme Court in *Avinash Melhrotra v. Union of India & Others*³⁹ held that there is a fundamental right to get education free from the panic of safety and donation, and the educational right incorporates the provision of secure schools pursuant to Articles 21 and 21A of the Constitution of India. No issue where a family seeks to educate its children (i.e., including private schools), the State must make sure that children suffer no damage in practicing their fundamental educational right.

RIGHT TO EDUCATION IN INDIA- A DREAM OR A REALITY?

In India, assessing the situation in general, the enrolment figures show an upward trend at all levels. Statistics of 2018 mention that 1291 lakh students for the primary have been enrolled in 2015-16 and 676 lakhs for the upper primary, 391 lakhs for the secondary, and 247 lakhs for the senior secondary have enrolled in 2014-15⁴⁰. The status of education in India,

³⁴ AIR 1992 SC 1858

³⁵ 1993 AIR 217; 1993 SCC (1) 645

³⁶ INDIA CONST. art. 21A

³⁷ INDIA CONST. art.45

³⁸ INDIA CONST. art.51A

³⁹ WRIT PETITION (CIVIL) NO.483 OF 2004

⁴⁰ Children in India, 2018: A Statistical Appraisal, Social Statistical Division, Central Statistical Office Ministry of Statistics and Programme Implementation, Government of India, 41 (2018)

however, has acquired a steady but gradual growth since its independence, yet not satisfactory as it ought to be. Inadequate ratio between teacher and pupil, low budget allocation by the Government for the education, entry of private sector into education due to investment of FDI, poor implementation of the Education Policies, high taboo system towards female education in the remote areas, lack of skill and job-oriented education in the schools, illiteracy and lack of motivation by the parents towards education etc. are some of the reasons for slow progress of education in India. Largely, on the one hand children belong to remote and socio-economic backward areas failed to enrol themselves into secondary education and on the other urban children failed to get into some professional courses due to unreasonable fee structure. Right to education has become a dream to many rather than a reality. Overall data of Indian education reveals that the right to education has not been effectively accomplished despite the efforts of State and non-state entities. The budget allocations hardly reached to their purpose, and it is observed that public expenditure on education declined by 4 per cent in 1990 and 3.5 per cent by 2000. Increasing fee hikes, withdrawal of stipends is the inevitable fallout of the austerity measures of the global capital⁴¹.

The framers of the constitution felt the need of right to education and made provision under the Directive Principles of State Policy to make the State to shoulder the responsibility of education. The successive governments, though enacted policies one after the other, failed to accomplish the intention of the framers of the constitution due to lack of commitment and widespread corruption in the system. Right to education implies the right to compulsory and free education at the elementary or foundational level and higher education depending on the calibre of the students and their economic status. While upholding the right to education various International Conventions, Agreements, Protocols and Declarations mention that the essential components of education are availability, accessibility, acceptability and adaptability⁴². At the national level, the Constitution, the Right to Education Act and Judicial pronouncements assume that right to education is a fundamental right. The national policies

http://mospi.nic.in/sites/default/files/publication_reports/Children%20in%20India%202018%20%E2%80%93%20A%20Statistical%20Appraisal_26oct18.pdf

⁴¹ Bej, Sourina. How government is planning to put India's education sector on sale, dailyo, (11-12-2015)

<https://www.dailyo.in/politics/occupy-ugc-smriti-irani-higher-education-modi-government-wto-gats-chennai-hrd-ministry-digital-india/story/1/7891.html>

⁴² General Comment no. 13, para. 6.

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13Therighttoeducation(article13)(1999).aspx)

on education have been drafted by taking into consideration the above assumptions. But due to their poor implementation and moreover the lack of will of the policy makers the universal right to education remained far from the reality. Among them, ineffectiveness of Right Education Act and desire towards Privatisation are important one.

POOR PERFORMANCE OF RTE ACT 2009

RTE Act 2009 is an attempt to serve the purpose of education to all. Expectations to reap the fruits of the Act were very high but it failed to render the desired results due to its poor execution. Though there was an effort to enact a bill in the year 2006, due to lack of funds, the then Finance Committee and Planning Commission rejected the proposal. In the year 2009, when the bill became an Act and implemented on April 1, 2010, it raised a great deal of expectations in the minds of general public. It was considered a great step towards education for all and of national importance. “In principle, the RTE Act 2009, with appropriate modifications and financial provisioning, offers a great opportunity to correct the anomaly of poor education outcomes, and can deliver on the long-standing commitment of providing basic and quality education to the so called ‘demographic dividend’ of the country”⁴³.

The Act had an aspiration to fulfil the aim of Sustainable Development Goal 4 which speaks about education for all by the end of 2015 along with Millennium Development Goal. But it faced several challenges in the wake of its implementation. Certain challenges which the Act faced during its initial stage are mainly the shortage of funds, lack of proper infrastructure, the accountability of the schools mentioned under the Act, shortage of human resources in the form of teachers, the implementation of public- private partnerships, etc. Giving a death blow to the implementation of the Act at the initial stage, various states raised their contention against the financial burden that they had to bear for the 25 per cent children from disadvantaged groups who seek education under the Act⁴⁴. A civil society survey at the nationwide shows that lack of proper infrastructure and human resource in the form of teachers had equally a great set back to the Act for its effective implementation. While exhibiting the eligibility of qualified teachers and the availability of infrastructure, the report observes, “...a shockingly high percentage, 93, of teacher candidates failed in the National

⁴³Jha, Praveen and Parvati, Pooja. “Right to Education Act 2009: Critical Gaps and Challenges”, XLV, *Economic and Political Weekly*, 20, 23, (2010)

⁴⁴ Deccan Herald, No Funds for RTE, says Maya, (2010) <https://www.deccanherald.com/content/62144/no-funds-rte-maya-pm.html>,

Teacher Eligibility Test conducted by the Central Board of Secondary Education in 2010-11. In 2009-10, the failure was 91 per cent in the national examination, meant to test the candidates' teaching aptitude and a prerequisite for appointment of .95.2 per cent of schools are not yet compliant with the complete set of RTE infrastructure indicators⁴⁵. Even the “bureaucratic apathy and weak institutional mechanisms are some factors that have contributed to this”⁴⁶ While delving on the accountability of the schools are concerned, it is not clear the reason behind exempting or leaving out the accountability of unaided schools under the Act⁴⁷. The concept of admission of a child of any age to the appropriate class under section 4 of the Act is absurd and impractical in its very notion of implementation⁴⁸. These above-mentioned issues have made the poor implementation of the Right to Education Act in its entirety. Adding to that the litigations in the various High Courts regarding fixing the age limit for admission to a particular class, denial of admission, issues concerning inter-school transfers, and admission procedures, are some of them.

PRIVATIZATION OF EDUCATION

Right to education is not restricted to basic or elementary education but it includes right to have quality education towards a child's holistic growth. High fee structure and over competitiveness is prone to commercialisation of education rather than providing quality education to all. In the bargain, merit-based education and education to the deserving children will be at stake. Privatisation of education has hampered the growth of right to education to all. The governments, since the introduction of Liberalization, Globalisation and Privatization (LPG) in 1991, has failed to accomplish the goals of education for all by making suitable provisions of free education under its fiscal policies. An analysis of the National Sample Survey Organisation (NSSO) data for two time periods-1995-96 and 2014-15, unravel the fact that the enrolment of the student ratio in both urban and rural areas has remained either static, or it has reduced in both public and aided institutions, and has increased almost universally in private unaided institutions⁴⁹. India being one of the largest education system

⁴⁵ The Hindu, Lack of school infrastructure makes a mockery of RTE, (April 05, 2012) <https://www.thehindu.com/news/national/lack-of-school-infrastructure-makes-a-mockery-of-rte/article3281720.ece>

⁴⁶ Business Line, Courting justice for the right to education, (Jan. 13, 2018) <https://www.thehindubusinessline.com/opinion/courting-justice-for-the-right-to-education/article9557598.ece>

⁴⁷ RTE *supra note*, 33, Sec. 21

⁴⁸ *Id.*, sec. 4

⁴⁹ Jha, Jyotsna, Education India Private Limited, 42, *India International Centre*, 39, 40 (2015), *JSTOR*, www.jstor.org/stable/26316574.

and highest number of education institutions in terms of enrolment, provides ample opportunities for the investment and “the higher education sector of India is considered as the ‘sunrise sector’ for investment as it is a market worth US\$15 billion”⁵⁰

SUGGESTIONS AND RECOMMENDATIONS

Taking into consideration above mentioned drawbacks, suggestions for the effective implementation of the right to education policy would be -

- Strengthening the provisions of RTE, 2009 and measures to implement it at any cost. Certain rectifications need to be brought in both willingness on the part of State to execute the Act in its entirety and to amend some provisions for the effective implementation of the said Act.
- Primarily, the State should allocate funds for the same. It should allocate a substantial amount, not less than 6 per cent of the total budget, for the cause of education and must spend the whole allocated amount for the purpose without making any deviations. There must be a strict regulatory body to implement the same.
- Well qualified teaching faculty at all levels of education must be promoted by selecting qualified teachers and further providing avenues for them to have ongoing formation as years go by. The incentives of promotion must be given basing on their proficiency in teaching and not merely on the age factor.
- The amendments to be made to the RTE Act in the spheres of funds allocation to bear the expenditure of the 25 per cent children from disadvantaged groups who seek education under the Act. Present system of allocation would certainly bring dilemma between Centre and the States. Therefore, the responsibility must be given strictly either to State or Centre to avoid unnecessary confusions unlike the present system of sharing the responsibility between the Centre and the States.
- The entire mode of education should be directed towards the holistic growth of a child rather than rote learning. A comprehensive learning process including extra-curricular activities with the academic subjects should be introduced. Technical,

⁵⁰ Singh, Vikram. Higher Education of India on the Way to Nairobi for GATS, *People's Democracy* (2015), https://peoplesdemocracy.in/2015/0816_pd/higher-education-india-way-nairobi-gats.

vocational and other life-oriented subjects should be introduced to lead a child towards the mainstream of the society both in the spheres of knowledge and status.

- Commercialisation of education should be brought under the strict regulatory control and all the education institutions must follow the general fee structure decided by the state authority. All the States must encourage the state-sponsored schools or aided schools in the remote and socio-economically backward areas instead of allowing the profiteering private entities.
- Parameter of discrimination should be merit oriented and not socio-economic oriented. Elementary and Secondary quality education should be provided to all without any discrimination and talented children of tribal and backward areas must be given scholarship on the basis of merit for their higher education.
- A full-fledged education policy to implement the right to education, in an effective manner, without discriminating either on socio-economic background or urban-rural basis, is expected from the state as a welfare state.

CONCLUSION

Since India is dominated by villages, it is relevant that State imparts education to all without discrimination on the basis of social and economic backwardness of a child. Private sectors or non-state entities may provide education at the cost of high fee structure and it could hardly be accessed by poor and backward categories children. Lack good infrastructure and qualified dedicated teachers in the remote areas fails to provide quality education to the children, even at the foundational or elementary level. Government, due to its failure to upgrade public schools and colleges with the state aid, failed to compete with the private entities with good infrastructure and dedicated team of experts to raise the standard of education. National Policy on Education 1986 provides for the Universal Elementary Education to all but the up-gradation and privatisation of education sector became a road block for its implementation. Even the RTE, 2009 failed to accomplish the expected rate of growth. It is also noteworthy that quality education can only be considered if the holistic growth of a child is taken care. Literacy alone would never suffice the growth of a child but a comprehensive quality education which takes care of the development of a child is necessary. Due to lack of effective implementation of Constitutional provisions on education through National

Education Policies and RTE, the education for many has become a dream especially the socially and economically backward section of the children. Being a fundamental and human right, the State is obliged to implement the right to education on a war footing to render justice to all without discriminating on the basis of socio-economic considerations.