

RIGHT TO EDUCATION, STILL AN UNFULFILED DREAM

- Manne Vaishnavi Rao*

ABSTRACT

Right to free and compulsory Education is a fundamental right of every child from the age six to fourteen years. There are various provisions and case laws under this act and right. This article is an attempt to understand Right to Education and the provisions under it. Right To Education is still an unfulfilled dream of many, the reasons of its unfulfillment is focused in the article.

Keywords: Right To Education, Article 21A, Indian Constitution, Fundamental rights.

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The Right of Children to Free and Compulsory Education Act or mostly known as Right to Education Act (RTE), is an Act which the Parliament of India enacted on 4 August 2009. This act describes the modalities of the importance of free and compulsory education for children between the age group of six and fourteen in India under Article 21(a) of the Indian Constitution. After this act came into force on 1st April 2010, India became one of 135 countries which made education a fundamental right for every child. This act makes sure that education is a fundamental right for every child between the age six to fourteen. It even requires that the private schools should reserve 25% of seats for children who cannot afford the price of schooling, this gets reimbursed by the state as in it's a part of the state-private partnership plan. This even makes sure that unrecognized schools are prohibited to function, even makes provisions so that the act of donation or capitation fees is not practiced and makes sure that no interview of the child or parent will be taken for admission. This Act also sees that no child will be held back, expelled, or required to pass the board examination until the completion of elementary education. There is also a provision for special training for the school drop-outs to bring them to par of those students who are of the same age.¹Right to education act is even for the disabled children until the age of 18, this comes under the persons with disability Act, 2016². Right to education also has many other provisions

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¹Right To Education main page < <http://righttoeducation.in/know-your-rte/about>> accessed 16 September 2019

²(2019) <<http://vikaspedia.in/social-welfare/differently-abled-welfare/policies-and-standards/rights-of-persons-with-disabilities-act-2016>> accessed 15 September 2019.

like improvement of school infrastructure, teacher-student ratio and many others. Like in other countries, for example like the US sending the children to school isn't the government's duty but the parent's duty, but in India it is the government's duty.

Right to Education has come a long way from Clause 23 to a Fundamental Right. The Constituent Assembly made Clause 23, where every citizen is entitled to free education till the age of fourteen and it is State's duty to provide within a period of 10 years from the commencement of the constitution. Then they added this to the list of Non-Justiciable Fundamental Rights which was later known as Directive Principles of State Policy. In 2010, the constitution was amended by inserting Article 21A which is provide free and compulsory education to all children in the age group of six to fourteen years as a Fundamental Right.

Even after 10 years of this act there is no much improvement in the aspect of education in India. Many teachers in the government schools do not know the provisions under the Right To Education Act. The schools do not own basic equipment which are necessary for a school to function under the act, like a fire extinguisher which is mentioned in the judgement of *Avinash Mehrotra v. Union Of India, 2009*³. The Supreme Courts and the High Courts have passed many verdicts regarding this field, for example –

***Mohini Jain v. State Of Karnataka, 1989*⁴:**

In this case there were two issues which were addressed by the Supreme court, the issues were- whether 'right to education' is guaranteed to the people of India under the Constitution? and if it does so, then the concept of 'capitation fee' fit in that guarantee. In this case Supreme court of India in the year 1992 stated down that the directive principle of Article 14 is been violated. It was held that the capitation fee should not be taken by the educational institute for admission of a student.

³(2009) 6 SCC 398

⁴92 AIR 1858

Re Kerala Education Bill Case, 1958⁵:

Under the Article 30(1) of the Indian constitution, the linguistic or religious minorities has the right to establish and the right to administer the established educational institutions of their choice. In this case, the supreme court has opined that ‘the right under Article 30(1) is not absolute and the state has the 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 like establishing and administering the academic institutions.

State Of Madras v. V.G Row, 1952⁶:

In this case, supreme court held that there are numerous factors which are equivalent to the character of the people imagined to be infringed, even the underlying purpose of this restriction, the extent and urgency of the wanted should be remedied, the disparity of the restriction and also the prevailing conditions at the of imposition of the restriction, would all be relevant in deciding the reasonableness of restriction placed on the elementary freedom contained in Article 19.

T.M.A Pai Foundation v. State Of Karnataka, 2015⁷:

This was a case between the educational institutes which questions the scope of the right of minorities to establish and administer educational institutions of their choice under the Article 30(1) along with Article 29(2) of the Indian Constitution. Supreme Court held in this case that the state governments and universities cannot regulate the admission policy of unaided instructional establishments which go past the linguistic and spiritual minorities, however state governments and universities will establish instructional qualifications for college students and build rules which are made to keep up educational principles.

⁵1959 1 SCR 995

⁶1952 AIR 196, 1952 SCR 597

⁷ (2002) 8 SCC 481

***Bandhua Mukti Morcha v. Union Of India*⁸:**

This is a public interest litigation case (PIL) which was filed under article 32 of Indian Constitution directly before the Supreme court of India in the year 1997. In this case the supreme court held that the exploitation of child should be banned step by step and asked the state of Uttar Pradesh to eliminate the usages of children as labourers in the carpet industry. It even held that alternative substitutes should be brought to the child for his or her development and the state of Uttar Pradesh to provide children, the access to education and health facilities in order to abolish child labour.

***Unnikrishnan v. State Of Andhra Pradesh, 1993*⁹:**

The Right to Education act has been raised to the level of fundamental right, by the decision of the Supreme Court, in the landmark case of Unni Krishnan v. State of Andhra Pradesh. It was held by the supreme court that the Right to Education flows directly from right to life under Article 21. Under the Constitution Amendment Act, 2002, also known as the 86th amendment inserts a new article that is Article 21(A) in the Constitution to make Right to Education a fundamental right for all children aged between six to fourteen years. The obligation of state is to provide education to the children above the age of fourteen years would still depend upon the economic capacity and development of the state.

In 1990's, the World Bank funded a number of measures to set up schools within easy reach of rural Communities and there are many provisions under the Right To Education Act, which are unknown to many. According to section 3(1) and 3(2) of the Right To Education Act, 2009 it states that it is the fundamental right of the children aged from six to fourteen to attain free and compulsory education in their own neighbourhood and it is also mentioned that the education is provided without any financial barriers, no kind of fee or charges are charged from the students. To the contrary few government schools or government aided schools take money from the students for their examinations or any other event that happen in their school. Section 7(1) states that the central and state governments should take the responsibility of providing funds for carrying out the provisions of RTE Act. Section 13(i) states that no student or parent while admission shouldn't go through any kind of screening procedure and shouldn't be asked to pay

⁸(1997) 10 SCC 549

⁹(1993) 1 SCC 645

any capitation fee. Section 12(1)(c) explains that students belonging to the weaker sections and disadvantaged groups should get 25% of the seats in unaided schools and schools that belong to special category. Section 16 explains that no child should get expelled or held back in class till completion of elementary education. Section 21(1) states that, other than the unaided schools, every other school should form a committee which consists elected representatives from local authority, parents or guardians of children enrolled in such schools and teachers. It is also specified that the three-fourth of the members should be the parents or guardians. Section 28 states that no teacher, teaching in government schools should engage themselves in private tuition or any private teaching activity. Section 29(1) states that the curriculum and evaluation procedure for the elementary education will be laid down by an academic authority which will be specified by the appropriate government which is done by notification.

The provisions under this act, along with other related laws regarding education have been implemented to improve the rate of literacy in India. These policies and provisions are backed up by many programmes and schemes but on the other hand providing quality education in India is still an unfulfilled dream as a good number of children still aren't able to access basic education. There are many landmark judgements in the field of RTE but still the implementation of these accords aren't done properly. There are many reasons for it like the lack of political will, economic situation of the parents which makes the child go into child labour and many other. There is provision under RTE, where selected officials should visit the school every month to check the maintenance of it but as we see there aren't many regular checks. In the case *STATE OF TAMIL NADU v. K. SHYAM SUNDAR*¹⁰, the court decided that a right of a child should not be only restricted to free and compulsory education but also it should be extended to have quality education without any discrimination based on gender, colour, caste, religion or economic, social and cultural background. But the quality of education in a government school is usually not that great when compared to a small private school.

The rules, regulations and the provisions are beautiful and meticulous on the paper but in reality it is a hard dream to achieve due various social enemies like corruption, poverty and other societal evils. The wide spread poverty and unawareness in the country makes the people think that education is a luxury which is not affordable by them. As they want more food and money on the table so they send their kids to work and it is profitable to them. The children are stuck in that cycle of poverty due to this. The government schools and provisions end up till the age of fourteen,

¹⁰ (2011) 8 SCC 737

what about higher education? No policy maker has given a thought to this. Just with primary education the child couldn't get into a better place, he'll still be on the same level as his parents. So the parents think that education is a waste of time as after fourteen they still have to continue doing menial work. So their mind works in way that if in the end they still have to do the same work, why not start it early. It is profitable to them and it eases their burden a little.

Even when a child studies in a government school, he doesn't have a bright future as he never saw the real world. They just see it in their dimly lit classrooms and they are trapped in it. They can't seem to get out and see the real world as something is stopping them. Their weak and frail body which isn't fed properly can't seem to grasp that there is no getting out for them. They need external help which is unbiased, faithful and non-corrupted. The government needs to step up and give them their well-deserved freedom by implementing the laws correctly, by encouraging them and also to give them something after the age of fourteen. Education empowers the future generation and it will make the country reach the sky. There is a saying, sky is the limit, so with this thought the government should act as the support system for the children to spread their wings and help them reach their limit which is the sky.