



RIGHT TO EDUCATION IN INDIA: CHALLENGES AND ACCESSIBILITY

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Abstract: *Right to Education is a basic Human Right. It is sine qua non for the development of a human and only with the development of its subjects, a country develops. Constitution of India imposes the obligation on the government to provide education to the citizens. Right to education is included in the right to life enshrined in Article 21 of the Constitution of India which provides right to live with dignity and it is the education which brings-forth the dignity of a human. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. The Constitutional Amendment Act, 1976 included the subject 'Education' in the Concurrent List of the VII Schedule of the Indian Constitution which enables the Union Government to make law on this subject. Right of Children to Free and Compulsory Education Act, 2009 passed by the Indian Parliament on August 4, 2009, came into force from 1st April 2010. The Act promises to ensure education for all children between 6 and 14. The question which arises is, has the government succeeded in its motive by passing the Right to Education Act or has failed in providing right to education. There are a number of challenges to access free and compulsory education in India. The main purpose of this research paper is to point out the difficulties in providing education to all.*

Keywords: *Fundamental Right, Directive Principles, Human Right, Right to Education*

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1. INTRODUCTION:

Education is a progressive discovery of our ignorance.

*Will Durant**

The importance of education in the life of a human being cannot be valued. It is significant to make a child mentally strong and active citizen. Education is must for the development of a country. Education is like a candle which enlightens and removes the darkness of ignorance. It is only with the education that illiteracy passes away and literacy spreads. Pestalozzi, a Swiss education reformist often reiterated the belief that society could be changed by education.¹ He said education is a constant process of development of innate powers of man which are natural, harmonious and progressive.² Education is divided into pre-primary, primary, middle (or intermediate), secondary (or high school), and higher levels.³ About the education with its importance and effectiveness, Article 26 of the Universal Declaration of Human Rights⁴ provides that:

- i) 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.
- ii) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- iii) Parents have a prior right to choose the kind of education that shall be given to their children.

India is second most populous country in the world having 1.22 billion people. More than 50 percent of India's current population is below the age of 25 and over 65 percent below the

* U.S. Author and Historian, <http://www.lhup.edu/~dsimanek/eduquote.htm>

¹ http://faculty.knox.edu/jvanderger/202_K/Pestalozzi.htm

² <http://www.mightylaws.in/623/study-education-india>

³ <http://countrystudies.us/india/37.htm>

⁴ http://www.newworldencyclopedia.org/entry/Universal_Declaration_of_Human_Rights



age of 35. About 72.2 percent of the population lives in some 638,000 villages and the rest 27.8 percent in about 5,480 towns and urban agglomerations.⁵

Census 2011 shows the increase of 9.21 percentage points in literacy rate from 64.83 percent in 2001 to 74.04 percent in 2011 and data shows that 26 percent of the population is still unlettered.⁶ The question arises, is the increase of this 9.21 percent literacy in 10 years is satisfactory in the light of unlettered strength, as population is growing faster than the growth in education facilities. According to EFA Global Monitoring Report 2011, literacy rates are rising but not fast enough to prevent the number of illiterate adults from increasing by 11 million in the first half of the past decade.⁷ If we look world wide, India has the largest number of illiterates in the world.⁸ Unlettered strength is a blot on the world wide image of India. Illiteracy is a main stumbling block in the development of India.⁹ We all recognize that illiteracy is bad, that it prevents the cultural growth of a person.¹⁰ Illiteracy significantly limits a person's ability to access, understand and apply health-related information and messages. Illiterate people are more likely to be on unemployment benefits having dropped out of school or being unable to find work. Illiteracy also causes the poverty.¹¹

In India, education falls under the control of both the Union Government and the State Governments, with some responsibilities lying with the Union and the States having autonomy for others.¹² Entry 66 of the Union Subject List provides the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.¹³ Before Constitutional Amendment 1976, education was the exclusive responsibility of the States.

The Constitutional Amendment of 1976, which included education in the Concurrent List, was a far-reaching step. The substantive, financial and administrative implication required a new sharing of responsibility between the Union Government and the States. While the role

⁵ <http://www.indiaonlinepages.com/population/india-current-population.html>

⁶ <http://www.thehindu.com/news/national/article1588270.ece>

⁷ <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/reports/2011-conflict/>

⁸ <http://www.thehindu.com/news/national/article2845316.ece>

⁹ <http://www.ssmrae.com/admin/images/69c7ace7495050c88420b19ff0a74ea5.pdf>

¹⁰ <http://www.preservearticles.com/201103244638/essay-on-the-problem-of-illiteracy-in-india.html>

¹¹ http://articles.timesofindia.indiatimes.com/2012-04-16/news/31349398_1_world-literacy-trust-cost-of-functional-illiteracy-illiterate-people

¹² <http://www.mightylaws.in/623/study-education-india>

¹³ <http://www.vakilbabu.com/Laws/SubList/UList.htm>



and responsibility of the States in education remained largely unchanged, the Union Government accepted a larger responsibility of reinforcing the national and integrated character of education, maintaining quality and standards including those of the teaching profession at all levels, and the study and monitoring of the educational requirements of the country.¹⁴ Entry 25 of the Concurrent list provides that Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour and entry 26 of this list includes Legal, medical and other professions.¹⁵

Directive Principles of the State Policy under Chapter IV of the Constitution of India provides guidelines for the State for providing education. The State is under a constitutional mandate to provide for the educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.¹⁶ Article 41 of the Constitution of India provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Similarly, Article 45 which was substituted by 86th amendment provides that “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” Article 46 of the constitution of India provides that “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”¹⁷ Now the question arises, ‘are the States in India following the guidelines provided for them in the Constitution of India?’

The 86th Constitutional Amendment Act, 2002, inserted Article 51(A) (k), which imposes duty on the parents/guardian to provide opportunity of education to the children. This Article provides that “it shall be the duty of every citizen of India who is a parent or

¹⁴ <http://india.gov.in/sectors/education/index.php?id=2>

¹⁵ <http://www.constitution.org/cons/india/shed07.htm>

¹⁶ Mohini Jain vs State of Karnataka, AIR 1992 SC 1858

¹⁷ <http://www.right-to-education.org/node/678>



guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”¹⁸ Parliament of India passed Right of Children to Free and Compulsory Education Act, 2009. India became one of the 135 countries to make education a fundamental right of every child when this Act came into force on April 1st, 2010.¹⁹ But the problem is with such students who drop out the school because of poverty of the parents or other family problems. A glaring shortcoming of the Right to Education Act is that its mandate does not include children below the age of six. As per census 2011, 158.7 million children are under six-category.²⁰ A full bench of the High Court observed that primarily, education is service to society. Education must remain affordable and accessible to each child, ideally. But that is a gargantuan challenge.²¹ This paper has been divided into five parts. First part introduces with the subject of the Paper. Second part emphasizes that Right to Education is a Fundamental Right. Third part highlights the Challenges and Accessibility of Education in India. It describes the challenges in accessing education in India. Fourth part describes the National Policy on Education. It states that this policy is out dated and needs to be renewed. Last fifth part is relating to the conclusion and suggestions. For completing this paper we have used the doctrinal method of research methodology. Various web-cites, news papers and books have been consulted for preparing this paper.

2. RIGHT TO EDUCATION - A FUNDAMENTAL RIGHT:

Today, in India right to education has become a fundamental right of children of the age group of 6 to 14 years. Article 19 (1) (a) of the Constitution of India provides that all citizens have the right to freedom of speech and expression. Freedom of speech and expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode.²² Only the educated person can exercise the right to freedom of speech and expression in an aimed way. A Bench of Chief Justice S.H. Kapadia and Justice Swatanter Kumar also held that a child who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right

¹⁸ <http://www.halfmantr.com/display-polity/922-fundamental-duties>

¹⁹ <http://www.saching.com/Articles/Can-we-Ensure-Right-to-Education-India-13219.html>

²⁰ <http://infochangeindia.org/education/features/report-card-on-rte-two-years-after.html>

²¹ The Tribune, April 5, 2011 p. 8

²² <http://www.goforthelaw.com/articles/fromlawstu/article16.htm>



to freedom of speech and expression enshrined in Article 19(1) (a).²³ Right to education is also part of Article 21 of the Constitution of India. Article 21 of the Constitution of India says about right to life, but it cannot be completed without giving the Right to Education. The Supreme Court of India has impliedly declared the right to education as a fundamental right. The Supreme Court of India in the case of Mohini Jain vs State of Karnataka held that the Right to Education directly flows from Right to Life and every citizen has a 'Right to Education'. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its 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 fulfill its obligation under the Constitution.

In the case of Unni Krishnan, J.P. vs State of Andhra Pradesh, Supreme Court limited the right to education age wise and held that every child/citizen has a right to free education up to the age of 14 years and thereafter it is subject to limits of economic capacity and development of the State.

Article 21 A was inserted in the Constitution of India by 86th Constitutional Amendment Act, 2002 which made the education of the children a fundamental right. It provides that 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.

Passing the Right to Education Act, 2009 for the children between the age of six to fourteen is a landmark in the field of education. Now in India, all children between the ages of 6 and 14 shall have the right to free and compulsory elementary education at a neighborhood school. There is no direct (school fees) or indirect cost (uniforms, textbooks, mid-day meals, transportation) to be borne by the child or the parents to obtain elementary education. The government will provide schooling free-of-cost until a child's elementary education is completed. It was the historical moment to the children in India.²⁴ The new law makes it obligatory on part of the State Governments and local bodies to ensure that every child gets education in a school in the neighborhood.²⁵

²³ <http://www.thehindu.com/todays-paper/article3309124.ece>

²⁴ http://www.unicef.org/india/education_6144.htm

²⁵ http://lib.ohchr.org/HRBodies/UPR/Documents/session13/IN/JS6_UPR_IND_S13_2012_JointSubmission6_E.pdf



3. CHALLENGES AND ACCESSIBILITY OF EDUCATION IN INDIA:

No doubt right to education is a fundamental right in India but still there are a number of challenges in accessibility of education, which are discussed as under:

i) Out of School Children:

It is a reality that the number of out-of-school children has declined from 25 million in 2003 to 8.1 million in mid 2009. The most significant improvements have been in Bihar, Jharkhand, Manipur and Chhattisgarh. The percentage of out-of-school children in highly populated states like Uttar Pradesh, West Bengal, Orissa and Bihar remains a cause of concern.²⁶ The number of out of school children is a challenge before the government. With more than one-third of its population below 18 years, India has the largest young population in the world. Out of every 100 children, 19 continue to be out of school.²⁷ According to UNESCO's report on progress in primary education, around 7.74 crore children around the world are out of school. Three-fourths of these out-of-school children reside in 15 countries including India, Bangladesh, Pakistan, Indonesia, China, Brazil and the African nations. With one-third of the world's illiterate, the report places India 105th among 128 nations.²⁸

ii) Financial Constraints:

Availability of funds is a challenge in accessibility of education. The funding for the mechanisms and structures, the Act demands are the biggest challenges staring at the central and state governments in the implementation of the Right to Free and Compulsory Education of Children Act.²⁹ Funding of the Right to Education Act, which is done through the Sarva Shiksha Abhiyan (SSA) is another area of concern. The enactment of RTE saw the approval of Rs 2.31 lakh crore for implementation of RTE-SSA. The total funds provided in the Eleventh Plan amounted to Rs 78,000 crore, a figure that is not much higher than the original approved outlay of Rs 71,000 crore, without provision for RTE-related expenses. There is a significant shortfall of funds required for implementation of the RTE-SSA programme, especially as the first two years called for the heaviest expenses, including hiring of additional teachers, enhancement of infrastructure and administrative changes required to move to the new rights-based regime. Due to staff shortages, the release of

²⁶ http://www.unicef.org/india/education_196.htm

²⁷ <http://infochangeindia.org/agenda/child-rights-in-india/status-of-children-in-india.html>

²⁸ <http://infochangeindia.org/education/backgrounders/challenges-in-implementing-the-rte-act.html>

²⁹ <http://dilipkumar.in/articles/india/india-rte-after-63-years.html>



funds is delayed, ultimately leading to under-spending of allocated funds. This is a problem in itself. The government has spent just 70% of the funds allocated for the SSA and RTE in 2010-11 compared to 78% the previous year.³⁰

iii) Insufficiency of Teachers:

Vacant seats of teachers, non availability of teachers and slow process of recruitment of teachers are also a challenge before accessing education. Two years after the Right to Education, 36% of sanctioned teacher posts lie vacant; several states do not meet the required pupil: teacher ratio.³¹ According to the Union Human Resource Development Ministry, in 2010-11, 907,951 teacher posts have been lying vacant in primary schools across the country. Further, according to the ministry, in 45.76% of primary schools, the teacher-student ratio is more than 1:30. Likewise, in 34.34% of upper primary schools in the country, the teacher-student ratio has been over 30. What's more, almost 25% of teachers in most states are para-teachers; in Jharkhand, for instance, almost half the teachers in schools are para-teachers.³² These teachers are ill paid and almost untrained in teachers training.³³

iv) Lack of Infrastructure:

Lack of infrastructure is also a challenge in accessibility of education. In many schools across the country, students from kindergarten to class five sit stuffed together in a single classroom. According to the RTE Act, a school must have at least one classroom for each teacher, a room that serves as the office, headmaster's room and store, separate toilets for boys and girls, clean drinking water, kitchen, playground, library and a boundary wall or fence by April 1, 2012. But over a quarter of all elementary schools across India don't have enough classrooms. Not only in rural India but in many urban areas as well, students have to sit out in the open, in the blazing heat or bitter cold, and have to sit on the floor in the absence of any benches.

One in every four schools has no access to drinking water for children to quench their thirst. 46% of the country's elementary schools don't have a boundary wall, 37% don't have a playground, 16% don't have a kitchen and 29% don't have a library. 56% schools have no functioning toilet for girls. Almost four out of every 10 schools in rural India have unusable

³⁰ <http://infochangeindia.org/education/features/report-card-on-rte-two-years-after.html>

³¹ <http://infochangeindia.org/education/features/report-card-on-rte-two-years-after.html>

³² <http://infochangeindia.org/education/backgrounders/challenges-in-implementing-the-rte-act.html>

³³ http://lib.ohchr.org/HRBodies/UPR/Documents/session13/IN/JS6_UPR_IND_S13_2012_JointSubmission6_E.pdf



toilets, because of a lack of water or any sanitation. These include not just government schools but private schools as well. The Right to Education Act requires that there should be at least one school in each neighbourhood, i.e. within a 3 km stretch. But the latest Sarva Shiksha Abhiyan report shows that this target is too far from being met.³⁴

iv) Poverty:

Poverty is also a challenge in access to education for all. Poverty is often given as an important reason for why learners drop-out of school. Inability to pay school fees, the costs of uniform, shoes, transport, stationary, added to the opportunity costs of what children might be contributing to household labour, eat away at meager resources and push children from school.³⁵ Right to Education Act provides that private schools and special category schools will have to take 25% of their class strength from the weaker section and disadvantaged groups of the society through a random selection process.³⁶

The schools will be reimbursed for this proportion of children by the state, at the state's cost estimates.³⁷ But it is a challenge to enforce 25% quota of economically weaker section children in all private schools as mentioned in Right to Education Act. 40% of the population in India is living below poverty line.³⁸ Child labour is also a hurdle in accessing education. Poverty is the largest factor behind sending children to work instead of school. According to the NSSO's latest statistics – about 4.5 million children of school-going age continue to spend their days working for a livelihood for themselves and their families, instead of attending school. There are several aspects to the problem.³⁹

4. National Education Policy:

The national policy on education was adopted by Indian Parliament in May 1986. A review committee was constituted under the chairmanship of Acharya Ramamurti in May 1990 to review the national policy on education and to make recommendations for its modifications, which submitted its report in December 1990. A committee was constituted in July 1991 under the chairmanship of Shri Janardhana Reddy to consider the recommendations for modifications of NPE made by Acharya Ramamurti Committee and to make

³⁴ <http://www.cgpi.org/hi/node/2271>

³⁵ http://www.create-rpc.org/pdf_documents/povertyequityandaccesstoeducation.doc

³⁶ <http://socialissuesindia.files.wordpress.com/2010/07/right-to-education-act-2009.pdf>

³⁷ http://www.ashanet.org/siliconvalley/asha20/pdfs/d3_rte.pdf

³⁸ <http://www.authorstream.com/Presentation/kartavyaindia-1392008-lack-of-child-education-in-india-full/>

³⁹ <http://www.cgpi.org/hi/node/2271>



recommendations regarding modifications to be made in the NPE, which submitted its report in January 1992. The report was considered by the central advisory board of education (CABE) in its meeting held on May 5-6, 1992 and recommended a few changes in the policy.⁴⁰ National Policy on Education, 1986 (NPE) was conceived during Rajiv Gandhi's tenure.⁴¹

This Policy laid down many objectives for the development of education system in India but it has not been successful in achieving all of them. It has specified that the examination system should discourage the memorizing but it is what is going on. The education in India seems to encourage rote learning instead of experimentation and questioning. There is some disparity in assessment as all the State Boards have different standards of evaluation. The reservation on the basis of caste and religion is also a negative point in Indian education. Corruption is visible in the allocation of seats of institutions of higher studies and student politics is another sore point. These are some of the issues, which need to be worked upon.⁴² There is no provision of reservation on the basis of economically backwardness. Human Rights education is not treated as a separate area of the curriculum but is integrated into various subjects at different stages of school education.⁴³

The existing National Policy on Education was framed in the year 1986 and during the 26 years, since then, our education scenario and nature of employment opportunities have changed substantially.⁴⁴ Today's education system in India is not paced with global rate. Private universities have just become the factories to produce useless products and only concentrate on profit accumulation. Today India needs to overhaul its education system in such a way that it could compete with the pace of globalization. Government universities are also in deteriorated conditions. Infrastructure is in very bad condition. Professors/teachers come to institutions only to pass their valuable time for which they are highly paid.⁴⁵ The government also believes that "education policy formulated in 1986 does

⁴⁰ http://mhrd.gov.in/sites/upload_files/mhrd/files/NPE86-mod92.pdf

⁴¹ <http://www.thehindu.com/news/national/article2366743.ece>

⁴² <http://www.mapsofindia.com/india-education.html>

⁴³ <http://www.hurights.or.jp/pub/hreas/6/04India.pdf>

⁴⁴ http://www.epsfi.org/reco_dpsingh.htm

⁴⁵ <http://www.thehindu.com/news/national/article2366743.ece>



not fit into the context of current educational scenario nor can it meet the present day employment requirements.”⁴⁶

There is an urgent need to frame a new national policy on education to meet new challenges. The new policy will seek to bring substantial changes in education system by introducing academic reforms so as to bring improvement in quality of education. The vocational education will be another focus area, besides increasing access and quality in education to meet the international standards, to take advantage of the demographic dividend of the country and to fulfil the aspirations and rights of youth to gainful employment and contribute to national productivity.

National-level conference of Vice-Chancellors, organized by the University Grants Commission in March 2011, had also recommended a new education policy at the earliest. It had suggested that it was important to look into the kind of a policy framework appropriate for analysis of access, equity and quality in higher education in India. The participants underlined that development of tertiary education is largely dependent on the output of secondary education as the secondary school sub-sector contributes substantially to access and equity concerns observed at the entry level of the undergraduate courses.⁴⁷

5. CONCLUSION AND SUGGESTIONS:

The present study signifies the importance of education in the development of a nation. Corruption in education is omnipresent in India and it should be removed from its root. The Right of Children to Free and Compulsory Education Act, 2009 is a mile stone which secure the right to education for children of the 6 to 14 years of age group. By this Act, to educate the children has become the responsibility of all stakeholders like state, parents and teachers. What about the children below 6 years and above 14 years. No provision has been made in the higher education for the economically weaker families. Therefore, liberal education and scholarship loans with less procedural formalities should be made available.

With the free education the concentration should be on providing the quality education and for this purpose the exploitation in the employment should be removed and for removing the harassment of the teachers the best way is the recruitment, which should be made as

⁴⁶ <http://post.jagran.com/Central-Government-contemplates-new-National-Policy-on-Education-1306905007>

⁴⁷ <http://prayatna.typepad.com/education/2011/06/periscope-june-13-2011.html>



early as possible. In the success of every project funds play a vital role so in spreading education the problem of shortage of funds should be removed. The main purpose of the education should be to remove the unemployment from India.

Succinctly, it can be said that it is only the light of education which can remove the darkness of ignorance in the life and make a citizen responsible and efficient personality which is the need of the day for the development and progress of India.