

LEGISLATION REVIEW ON RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 (Act No. 35 of 2009)

Author - KRITIKA NARWARIYA

STUDENT AT ICFAI UNIVERSITY DEHRADUN

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ABSTRACT

Education is the backbone for development of any nation. Specifically, the elementary education is the base and foundation of entire education system. Thus, imparting free and compulsory education to children between 6 to 14 years of age is a need for the country since independence. Various international perspectives have caged India to take expressive and meaningful measures for the promotion and learning of elementary education in the country. The free and compulsory elementary education become expressive in the constitution in the form of Fundamental Right and Fundamental Duty by 86th Amendment Act of 2002. Any Right of Children to Free and Compulsory Education Act, 2009 was introduced after six years of span but led to great and productive efforts. The act covered all the dimension of imparting free and compulsory education without any hinderance or discontinuance along with the holistic development and grooming of the child. The key focus was on promotion of elementary education which is the means to eradicate discrimination, exploitation, debarring of children of tender age. The act not only focused on imparting education but also the reformation in schools, development in schools and teaching system, access to schools, formation and regulation of curriculum, any unfair practice in respect to the children. Thus, it has certain loopholes in the practical applicability and needs reformation in it for better functioning.

KEYWORDS- Education, Exploitation, Development, Promotion, Learning.

INTRODUCTION

The theme of this is which is based on legislation The Right of Children to Free and Compulsory Education Act, 2009. According to Aristotle, Education is nothing but creation of sound mind in sound body to develop rational thinking. He believes that development of moral character is the aim of education. Learning of the world and experiencing is the part of education. He believes that supreme good to which we all aspire to is happiness but the happy man is neither a noble nor savage but instead he is an educated man¹. Socrates and Plato stated that the 'aim of education is to attain knowledge'. International perspective involves the need and desire of education as provided under Article 13 of International covenant on economic, social and cultural rights recognize the right of everyone to education. Also, Article 26 of Universal Declaration of Human Rights (UDHR) provides the right to compulsory elementary education. Thus, this international pressure created the need of education as fundamental right after 50 years of independence which inserted a new article 21A as fundamental right, DPSP as well as fundamental duty. Right to education fulfills the concept of equality and justice because it is available to all children of 6-14 years of age (primary education) equally without any kind of discrimination. Thus, it increases social status (social justice), lead to job opportunity and

¹ Lobkowichz, 1970

employment (economic justice) and increase political status (political justice) of the preamble. Article 21 A is secular in nature as it didn't create any discrimination for imparting primary education. The same was safeguard under the Article 24 of convention related to status of refugees which impart public education for all including the refugees as well, UNESCO convention against discrimination in education to eliminate any discrimination in education, Article 24 of convention on right of person with disability provided education equally to disabled person as well. Education is the matter in which it is the duty of the state to provide education being a DPSP, duty of parents to educate their children being fundamental duty, the fundamental right of the children to be educated.

BACKGROUND OF LEGISLATION

The concept of education was reflected by the great scholars from a long history by Socrates, Plato, Aristotle etc. this shows that the need and development of education is prevalent from ages. The vedas, Qurans purans, Gita, and various other religious reflections impart education in one or the other way. During colonial period, development in education took place where in the concept of modern and formal education uplift. After independence, education was though considered to be of crucial nature but the same was not expressly embodied in the Indian Constitution. After 50 years of independence, education was considered as fundamental right and India became one among 135 countries where education is a fundamental right of every child. Free and compulsory education was a matter of concern since independence. Volume 7 of constitutional assembly debate was based on article 35 of Indian Constitution wherein, free and compulsory education for 10 years to all the children from 6 to 14 years from the commencement of the constitution. Leaders opined that the education is the backbone of the nation identity and individual personality. As, children are the future of the nation, so

imparting education is the most important and crucial part of the nation. Thus, curbing illiteracy and poverty, the most effective way was to educate the children of tender age from 6-14 years of age so that they are not deprived of education on any ground of discrimination. But this was added later by 86th amendment act, 2022 under article 21A, 45 and 51(J) of Indian Constitution. It took nearly 50 years to add the provision in the Indian constitution due to international pressure of UDHR which guarantee compulsory elementary education to all children from 6-14 years of age.

Moreover, proper enactment of statute with respect to it was done in 2009 as the 'right of children to free and compulsory education act, 2009'. The same was enshrined by Aristotle in the theory of education that it is the responsibility of the state to provide the education, schooling should be provided by the state and 'one and same for all'. Education being the subject matter of concurrent list is the duty of the center and the state as well.

I. ANALYSIS OF PROVISION

A. LEGISLATION INTENT AND APPLICABILITY OF ACT

The Right of Children to Free and Compulsory Education Act, 2009² is an act enacted by the parliament in the sixteenth year of republic of India. it comprises of 7 chapters and 39 sections. This act provides for free and compulsory elementary education for children 6-14 years of age and such age is determined by the birth certificate. The preamble of the act states that 'an Act to provide for free and compulsory education to all children of the age six to fourteen years'. This act extends to whole of India except Jammu and Kashmir. This act was enacted by parliament and provides ambit to be exercised by the states being education as a subject matter of concurrent list. However, this act does not apply on the institutions imparting religious instructions like madrasa, Vedic Pathshalas etc by virtue of section 1 of the

² Act No. 35 of 2009 [26th August, 2009]

act. This act is applicable to schools established, owned or controlled by appropriate government or local authority, aided school receiving grant or aid to meet whole or part of its expense from appropriate government or local authority³. According to the act, no university can ask or compel for capitation fee for admission of the child which can lead to cancellation of license of that school being not a prescribed fee and liable for fine of 10 times then of capitation fee demanded. Whereas, any screening procedure by school for admission is punishable with fine of maximum 25 thousand rupees and fifty thousand rupees for each subsequent contravention.

B. FREE AND COMPULSORY EDUCATION

Section 3 provides the right of child to free and compulsory education to child of age 6-14 years including the child belonging to disadvantage of group, severe disability, weaker section entitled for elementary education from first to eight class. It includes reservation of 25% to weaker and disadvantage group. This is to ensure equality and inclusivity of children in receiving education. Objective of this section is for harmonious development of child, international understanding, preparation of life, good citizenship and national integration and various other aspects. The most important and effective provision is mention under section 4, wherein any child who had not admitted above 6 years of age or admitted but not completed his elementary education then such shall be entitled even after 14 years in an appropriate class to his age along with the special training sessions for better understanding. Such child cannot be restraint of elementary education on the reason that he has not enrolled in specified time of 6 years. Child is entitled to transfer within the state or in different state by providing the transfer certificate. Disciplinary action could be taken under service rule of the state for holding unnecessarily the transfer certificate⁴. It provides the duty of the appropriate

government to establish schools within local area or limits of neighborhood so that child cannot be deprived of schooling. The respective state rules prescribe the limit of areas. For hilly areas, the geographical mean is taken out as houses are segregated in random distances. Being, a matter of concurrent list it is the duty of the center as well as the state government for finance. The same is decided under budget allocation as per the need. State government demand fund from central government. Additional grant could also be made by request to the president who shall then refer to the finance minister under article 280 of Indian Constitution.

C. HOLISTIC LEARNING AND GROWTH OF CHILD

In lieu of the children benefit, no denial in admission can be made out and no child could be hold back due to low performance till class 8th. Also, the corporeal punishment is ban through which includes mental or physical disturbance to the child. The important provision is the providing number of teachers to the slab of students so that no child can be left un-interacted with the teacher. It is the duty of the state to provide sufficient number of teachers for the welfare of all the children in the class. Non availability of the teachers or unqualified teachers in the schools are also the manner of deprivation of education to the children. School management committee is must to monitor the working of the schools as per the provisions of this act. National Council of Educational Research and Training (NCERT) is the central body which regulates the working of schools and curriculum of the education including the course handout, books, examination pattern etc. it also provides the qualification, selection, enhancement of the teachers and not allowed to take private tuitions.

D. BOON TO EDUCATION SYSTEM IN INDIA

The importance of this act is the compulsory and free education, benchmark mandate for

³ Refer section 2(n)
⁴ Refer section 5

ration of student and teacher, special training programs, zero tolerance against discrimination by providing harassment cells, all round development, creating inclusive space for all by providing the reservation to student, grievance redressal mechanism to resolve grievances if arise any.

II. CONSTITUTIONALITY OF ACT

The validity of education was challenged in the case of **Mohini Jain v. State of Karnataka**⁵, famously known as the education case. court held that every person below 14 years of age have right to access free education and such education is the part of fundamental rights. Right to education is required for overall development of personality without which one would not be able to enjoy one's own right to life, as right to education is a part of 'right to life and personal liberty'. Purpose of life is baseless without education.

Similarly in the case of **Unnikrishnan v. state of Andhra Pradesh**⁶ held that the right to education till 14 years of age after which it is limited by the state's economic capacity and development. Moreover, in the case of the **Tamil Nadu and others v. K. Shyam Sunder and others**⁷ where the need of uniform system of education and common curriculum was opined. Supreme court, read the article 21A with article 14 and 15 as well and put forward that right to education is not restricted to free and compulsory education but also with the quality education without any biasness to economic, social and cultural background.

III. CRITICAL ANALYSIS

1. Act fails to impart Quality education in the schools in effective manner to children of tender age
2. The slab of 6-14 years of age is challengeable in nature as it leaves the child below 6 years which is the basic education.

3. On ground, many children are still deprived or not entitled to enroll in the school of their choice.
4. No detention policy was challenged. But later the amendment act of 2019 specify that the fresh exam could be conducted to reappear and could be detained if cannot clear the re-examination.
5. Teachers are indulged in private tuitions and though turned biased for children coming to tuitions of that school itself.
6. Reservation criteria is not fulfilled at grassroot level. Various date analysis shows that there is lack of admission of children in the schools.
7. There involves other charges like transportation fee which are not capable to be fulfilled by poor parents.
8. Marginalised children lacks in getting education or struggle in taking education.
9. Non availability or lack of qualified teachers in the school
10. No proper regulating or competent authority to check over the education system and the problems arises.

IV. SUGGESTIONS

1. Quick and effective check is need on the admission and enrollment of students in the schools for elementary education
2. Various programs and reforms must be initiated for the improvement in teaching quality and imparting effective education to children
3. Enrollment of teachers need to be regulated by the local authority or state
4. Curriculum should be set up in such a fashion which include extra-curricular and holistic development in true sense
5. Special check on marginalized children to engage them in the schools

CONCLUSION

The act is a great initiative of legislation for the empowering and strengthening of education system in India for children 6-14 years of age. It is a roadmap for the right to free and

⁵ 1992 AIR 1858

⁶ 1993 SCR (1) 594

⁷ (2011)8 SCC 737

compulsory education in lieu of fundamental right, fundamental duty and directive principles of state policy under Indian constitution. The act is introduced way later but sustain value for the promotion of elementary education. The act reflect the proactive mechanism for the principles enshrined under constitution regarding free and compulsory education system. It is justifiable in nature and various Right to Information application has been filed to look into the functioning of the schools in accordance to the provision of this act. Ensuring all round development , inclusive space for all children of the age, zero tolerance against discrimination and exploitation of children, continuous and regular studies of children are some key highlights. However, more and more development and reformation are a need in education system for elementary education in free and compulsory fashion.

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