

## **Child's Right to Education: A Perspective**

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### **Abstract:**

The children of a nation are its most valuable assets and the nation's future is very much dependent on their proper development. An investment in children is an investment in nation's future. A healthy and educated child of present is an active and intelligent citizen of the future.<sup>1</sup> It is therefore the socio- economic development of nation is best judged and justified by only when its children enjoy constitutional rights equally and develop their full potential to grow into responsible adults of tomorrow. If they are neglected today, tomorrow will be full of miseries. It was rightly stated that children are world's vulnerable resources without them there would be no tomorrow and therefore we must give top most priority to these resources. In this paper, an attempt is being made to analyze the problem of infringement of child's right to education.. And also deals reasons for infringement of right instead of such policies. This paper enlightens the meaning of "Right of Children to Free and Compulsory Education" and the position of the same in the present day's society, by considering various legislative attempts made to control and eradicate the present problem. Further it also attempt to give some meaningful suggestions to eradicate the problem of a child's right to education.

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<sup>1</sup>R.N.Tagore(Nobel Laureate) quoted from R.K.Kumar(1988), child development in India, health, welfare and Management. Ashish Publishing House New Delhi ,1998,p. 21.

## Introduction

Future of a nation depends on the fact that how its children grows and develop. A large trees grows from a small seed, similarly, a great and developed nations are born out of children, who later become its citizens. According the Hon'ble Mr. Justice P.N. Bhagawati,<sup>2</sup> the child is the soul with being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional intellectual and spiritual being, otherwise, there cannot be a healthy growth of nation.

Children need special protection and care because of their tender age, maturity and development. The environment in which the children are brought up will have a tremendous impact on the future of the child and the future of the nation.

Before Independence, many social evils like Sati system, child marriage and polygamy were prevalent in India. With the advent of the British, they helped to wipe out many of these social evils. After Independence, practices like child labour continued. The main reason why child labour started was due to the lack of access to education for the children and social and economic conditions at their houses.

The significance and the importance of the child lie in the fact that the child is the universe. If there was no child, there would be no humanity and there cannot be a universe without humanity. Therefore, mankind owes to the child the best that it has to be given.<sup>3</sup> If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of government of the day. Every society, must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they would receive adequate training, education and guidance, in order that they may be able to have their rightful place in society which they grew up.<sup>4</sup> The importance of child welfare services lies in the consideration that the personality of man is built up in the formative year, and the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages.<sup>5</sup> Social justices must begin with children, unless tender plant is properly tended and

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<sup>2</sup>BabuTamchi v. The State of Uttar Pradesh , AIR1984 SC 46

<sup>3</sup>Miss Y. Vishnupriya, —International Concern for Protection of Rightl, Supreme Court Journal, Vol. I & II May / June 1992, P-16

<sup>4</sup>Hon'ble Mr. Justice P.N. Bhagavati, CJ and Hon'ble Mr. Justice R.S. Pathak in SheelaBarsevs The Secretary Children Act Society, Supreme Court Journal, 1987, P-585, Para II

<sup>5</sup>Sanir Das Gupta —Child Labourl A National Problem, Yojna, Vol. XXIII/20, Nov. 1979, P-25

nourished, it has little chance to growing into a strong and useful tree.<sup>6</sup> So first, priority in the scale of social justice shall be given to the welfare of children.

Right now it is the time his bones are being formed, his blood are being made and his sense being developed. To him we cannot answer "Tomorrow". His name is "Today".<sup>7</sup> The protection arm of the law has therefore; to be long and strong enough if distributive justice<sup>8</sup> to the adults of tomorrow is to be secured employment of children has continued thereafter to be a problem.<sup>9</sup>

Throughout history, in virtually every culture, children have worked. It is largely through work, usually in a family context, that children are socialized in many adult skills and responsibilities through work, they not only earn status as family and community members, but they acquire skills which promote their self-esteems and confidence as capable and independence human beings. However, the burden of work may become too great while its educational and social role is neglected it can become a threat to their health and development. Child's right to education is actually viewed, more as a social problem of a greater magnitude than other related problems. Connected with the development of human beings, is abnormally high in under developed and developing countries of the world.<sup>10</sup>

It is the duty of the State to protect children's right by legislative and other means because the needs and requirements of the child is the primer dial ground norm of this universe. The investment in the child is, therefore, investment in the future society of a nation that is dreams builds. In this paper, an attempt is being made to analyze the problem of child's right to education. And also deals reasons for infringement of child's right to education instead of such policies. This paper enlightens the meaning of "Right of Children to Free and Compulsory Education" and the position of the same in the present day's society, by considering various legislative attempts made to control and eradicate the present problem. Further it also attempt to give some meaningful suggestions to eradicate the problem of child's right to education.

### Constitutional Provisions

<sup>6</sup>Vijay Veena —Child Labour Need for Special Awarenessl Yojna, Nov 1, Vol. XXII/20 P-13

<sup>7</sup>Quoted by V.R. Krishna Iyer in Law and Life, 1979, P-8

<sup>8</sup>Sudesh Kumar Sharma, —Child and The Constitutionl, An appraisal in distributive Justice Perspective, Supreme Court Journal, Vol. 2, Part —I May 1989, PP 9-10

<sup>9</sup>Report of the Director General ILO; Youth and Work, Part —II, 1960, P-311

<sup>10</sup> UNICEF, ECOSOC, —Children in especially difficult circumstancesl, Executive Board Session, 1986

Article	Title	Description
21A	Right to Education	The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.
24	Prohibition of Employment of Children's in Factories	No child below the age fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.
39	The state shall in Particular direct its policy towards securing	That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

At present, there are five articles in the constitution of India which have Children as their special focus. These articles are Article 21A, 24, 39 & 45 and 51A (k). Thus special provisions for children find place in our constitution in Fundamental Rights, Directive Principles as well as Fundamental Duties.

- **Article 21A:** The Right to Education inserted in constitution via 86<sup>th</sup> amendment act.
- **Article 24:** No child below the age of 14 years shall be employed to work in any factory or mine or engaged in hazardous employment.
- **Article 39 (f):** The State shall, in particular, direct its policy towards securing—  
That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 45:** The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.
- **Article 51A (k):** 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.

### **Definition of “Child”**

In general parlance, a child is a person under the age of majority. ‘A minor is an individual who is not yet an adult or who has not reached the age of majority. Most jurisdictions have defined child in terms of a specified age of majority. But where a statute is silent on the point, the common law applies. An attempt has been made by the Indian Legislature to define child ‘for the purpose of application of Law. They are as follows:

### **Child’s Right to Education Definition, Nature, Magnitude and Key issues**

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

The RTE Act provides for the:

- Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. ‘Free’

means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,
- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

#### **Key issues for achieving RTE**

RTE provides a ripe platform to reach the unreached, with specific provisions for disadvantaged groups, such as child labourers, migrant children, children with special needs, or those who have a “disadvantage owing to social, cultural economical, geographical, linguistic, gender or such other factor.” RTE focuses on the quality of teaching and learning, which requires accelerated efforts and substantial reforms:

1. Creative and sustained initiatives are crucial to train more than one million new and untrained teachers within the next five years and to reinforce the skills of in-service teachers to ensure child-friendly education.

2. Families and communities also have a large role to play to ensure child-friendly education for each and every one of the estimated 190 million girls and boys in India who should be in elementary school today.
3. Disparities must be eliminated to assure quality with equity. Investing in preschool is a key strategy in meeting goals.
4. Bringing eight million out-of-school children into classes at the age appropriate level with the support to stay in school and succeed poses a major challenge necessitating flexible, innovative approaches.

#### **Mechanism available if RTE is violated**

The National Commission for the Protection of Child Rights shall review the safeguards for rights provided under this Act, investigate complaints and have the powers of a civil court in trying cases.

States should constitute a State Commission for the Protection of Child Rights (SCPCR) or the Right to Education Protection Authority (REPA) within six months of 1 April, 2010. Any person wishing to file a grievance must submit a written complaint to the local authority.

Appeals will be decided by the SCPCR/REPA. Prosecution of offences requires the sanction of an officer authorised by the appropriate government.

#### **25% quota for poor**

The Supreme Court upheld the constitutional validity of Right of Children to Free and Compulsory Education Act, 2009, on April 12, 2012 and directed every school, including privately-run ones, to give immediately free education to students from socially and economically backward classes from class-I till they reach the age of 14 years.

The court threw out the challenge by private unaided schools to Section 12(1)(c) of the Act that says every recognized school imparting elementary education, even if it is an unaided school not receiving any kind of aid or grant to meet its expenses, is obliged to admit disadvantaged boys and girls from their neighbourhood.

The National Commission for Protection of Child Rights (NCPCR) has been designated as the agency to monitor provisions of the Right to Free and Compulsory Education (RTE) Act.

#### **Reasons for the infringement of child's right to education**

In this twenty first century the main challenge is make sure the education for all. In the African and Asian the millions of children living in poverty, who suffer many problems, they are deprive

from the education and health. Another important matter is that how to make sure to available and accessible to all without any discrimination. Many of the developing countries do not give education high priority in their national budget, for that reason the poor people cannot send their children to educational institute. But every State are responsible to provide the free primary education and accessible to all.

### **Conclusion**

Children constitute the nation's valuable human resources. The future well being of the nation depends on how its children grow and develop. The great poet Milton said —Child shows the man as morning shows the day. So it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the future custodians and torch bearers of the Society: they are the messengers of our knowledge, cultural heritage, ideologies and philosophies. Children are really future components in the form of great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society founded (rests). Unfortunately millions of children are deprived of their childhood and right to education and thereby they are subjected to exploitation and abuse.

The education should be meaningful right and it must be available, accessible, acceptable and adaptable. Every person shall be able to get the benefit from educational knowledge which is desire to get their basic learning knowledge.

#### **1. Availability:**

Education should be available for all and without cost, minimum the primary education and fundamental level. The government should be able to make it available for the citizen. The governments have to make sure availability of school. " 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; make primary education compulsory and available free to all". The primary education and higher and also basic education should be available for all. Article 13.2(a) of the International Covenant on Economic, Social and Cultural Rights says, Primary education shall be compulsory and available free to all. The basic education should be available.

#### **2. Accessibility:**

All of the educational institute should be accessible for everybody. Nobody can be discriminate on the basis of race, sex, colour, religious, economic status, language and immigration status or



disability. The school should be safe for all; the school should be reasonable distance from the community. Education should be affordable to all and text book. Higher education should be accessible for all and also equitable for all. "Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live".

### **3. Acceptability:**

The education learning method of school should be acceptable to the parents for their children and they should be fulfilling the national norms that they set by the government also should be providing the equality educations. The method of education also is easy and acceptable to all. Adaptability should be depending on the learning method and life style.

### **4. Adaptability:**

Adaptability means the education has to be flexible and easy. Adaptability promotes equitable outcomes for learners. The education should be adaptable for children and youth and also higher student.

### **Suggestions**

1. Poverty is the main factor, which compels the young children to undertake various kinds of work instead of taking education. So poverty elimination programme must be launched widely in the districts where poverty is more, proper educational opportunity be provided there.
2. The overpopulation in the country and the number of family members in the working class community is also being a strong reason for infringement of child's right to education. Government shall make rules for compulsory sterilization after 2nd delivery.
3. While welfare policy and programme for children are formulated, care should be taken that poorer and the needy children in particular and others, in general, can (because of the economic condition of their family) get due priority.
4. The Government shall not only provide the basic education to the children but also give them training in various fields in which a child can see its future and can earn his living after completing the schoolings.
5. Attempts must be directed towards raising the income of poor section of the community because poverty and deprivation force children to work.

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